

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27, 674
TP 27, 675

In re: 829 Quincy Street, N.W., Units 103 & 511

Ward Four (4)

BERNSTEIN MANAGEMENT
Housing Provider/Appellant/Cross Appellee

v.

MARLO JOHNSON
Tenant/Appellee/Cross Appellant¹

**ORDER ON MOTION TO REISSUE COMMISSION'S
SEPTEMBER 14, 2005 DECISION**

August 23, 2006

YOUNG, COMMISSIONER.. This case is before the Rental Housing Commission (Commission) pursuant to a motion filed on June 12, 2006, by tenant, Marlo Johnson, requesting that the Commission's order in Bernstein Mgmt. v. Johnson, TP 27,674 & 27,675 (RHC Sept. 14, 2005), be reissued. The tenant's motion to reissue the Commission's September 14, 2005 order states in part:

District of Columbia Court of Appeals Order dismissing [sic] for lack of jurisdiction as having been untimely filed but without prejudice to petitioner pursuing a motion to vacate and reissue the September 14, 2005 order based upon claims that there is not confirmation of delivery.

Motion at 1.

I. THE PROCEDURES

On November 6, 2002, tenant Marlo Johnson, filed Tenant Petition (TP) 27,674 with the Department of Consumer and Regulatory Affairs, Rental Accommodations and

¹ Only tenant, Marlo Johnson, filed a cross appeal.

Conversion Division (RACD) alleging that the housing provider, Bernstein Management Corporation, charged her rent which exceeded the legally calculated rent ceiling, and that a rent increase was taken while her rental unit was not in substantial compliance with the housing code. Record (R.) at 7 and 10. On November 7, 2002, tenant, Belinda Sheppard, filed TP 27,675 with RACD relating to rent increases by the same housing provider. The Rent Administrator consolidated the petitions because both involved the same housing provider and related allegations. On September 16, 2003, Hearing Examiner Gerald Roper, granted TP 27,675 but dismissed Ms. Johnson's petition TP 27,674. Johnson v. Bernstein Mgmt Corp, TP 27,674 & 27,675 (RACD Sept. 16, 2003).

The housing provider filed a notice of appeal in the Commission on October 22, 2003, and on November 12, 2003, tenant Johnson filed a timely cross appeal. The Commission, affirming the hearing examiner, denied the housing provider's three issues on appeal and all eleven of tenant Johnson's appeal issues in Bernstein Mgmt. v. Johnson, TP 27,674 & 27,675 (RHC Aug. 12, 2005)..

On September 7, 2005, tenant Johnson filed a "Motion of Reconsideration of Decision and Order Issued on August 12, 2005 and Date of Receipt August 18, 2005." No opposition was received from the housing provider. In its September 14, 2005 order denying the Motion for Reconsideration the Commission stated:

The Commission used priority mail to deliver the decision and order to the parties and their representatives. The United States Postal Service (USPS) Delivery Confirmation Receipt is dated August 12, 2005, the date when the decision was mailed to Marlo Johnson, Tenant. The Track and Confirm record from the web for the USPS confirmation receipt states, '[y]our item was delivered at 9:56 am [sic] on August 13, 2005 in Washington, DC [sic] 20011.'

Bernstein Mgmt. v. Johnson, TP 27,674 & 27,675 (RHC Sept. 14, 2005) at 1-2.

The decision further stated:

In this motion for reconsideration, the thirteen business day time period for filing the motion for reconsideration commenced on August 15, 2005, which was the business day after the Commission's decision was issued and served by mail. The thirteen (13) business day period provided in rules, 14 DCMR § 3802.2-3 (2004), ended on August 31, 2005, and the appellant filed the motion for reconsideration on September 7, 2005. That was five (5) business days late and beyond the period provided in the Commission's rules.

Id. at 3 (footnote omitted). The Commission determined that the motion for reconsideration was untimely, and denied the motion for reconsideration due to the tenant's untimely filing.

In the instant motion, the tenant requests that the Commission reissue its September 14, 2005 Order on Motion for Reconsideration, "based upon claims [sic] that there is not confirmation of delivery." The record reflects that the Commission's September 14, 2005 order was mailed to the tenant through the United States Postal Service (USPS) via priority mail with confirmation of delivery. The record further reflects that on September 15, 2005, the order was delivered to the tenant's address at 829 Quincy Street, N.W., #511, Washington, D.C. 20011.

The tenant's motion to vacate provides no further explanation of the reasons for her request for re-issuance of the Commission's September 14, 2005 Order, nor does the motion clearly and concisely state any error committed by the Commission. The Commission's rules on appeals requires that the party appealing a decision provide, "a clear and concise statement of the alleged error(s) in the decision." See 14 DCMR § 3802.5(b) (2004).

II. THE LAW

According to the Rental Housing Act of 1985, D.C. OFFICIAL CODE § 42-3502.16(j) (2001), the Commission is required to provide:

A copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by *certified mail* or other form of service *which assures delivery of the decision to the parties* (emphasis added).

Further, this case is controlled by the District of Columbia Court of Appeals (DCCA) decision in Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999). In Joyce, the DCCA held that RACD's method of service, first class mail, was insufficient because it failed to mail its decision to the parties by a form of service that assured delivery and "regular mail does not fulfill that obligation." Id. at 27.

Accordingly, service is complete pursuant to the Commission's regulation, 14 DCMR § 3803.5 (2004), only when the Commission mails a decision to a proper address through certified mail or by a form of service that assures delivery. Brookens v. Hagner Mgmt. Corp., TP 3788 (RHC July 1, 2002). In the present case, the tenant requests that the Commission vacate and re-issue its September 14, 2005 order "based on the claim that she did not receive a confirmation of delivery." Motion at 1.

The Commission delivered its order to the parties by priority mail with confirmation of delivery. The tenant in the instant case, unlike the parties in Joyce does not contend that the Commission failed to utilize a proper means of service as required by § 42-3502.16(j) or that the address was no longer valid. Rather, the tenant claims that service was improper because it lacked a confirmation of delivery such as a confirmation receipt. The Commission complied with the Act when it sent the order to the parties by USPS, priority mail with confirmation of delivery on September 14, 2005. The record

reflects that copies of the September 14, 2005 decision and order were delivered at the tenant's listed addresses.

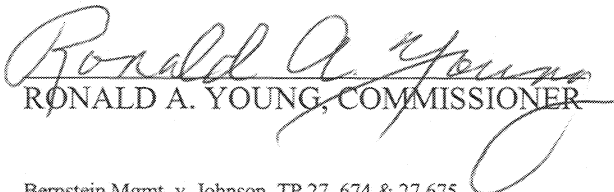
The Commission notes that the basis of tenant Johnson's claim is unclear because tenant Johnson does not assert that she did not receive a copy of the September 14, 2005 order, rather that "there was not a confirmation of delivery." The Commission further notes that the tenant's claim itself is misplaced because only the sender of an article receives a confirmation of delivery receipt, not the recipient. Therefore, tenant Johnson's claim that she did not receive a confirmation of delivery appears to result from a misunderstanding of the USPS priority mail with confirmation of delivery process rather than the Commission's failure to follow the Act, its rules, and the Court's decision in Joyce.

III. CONCLUSION

The tenant failed to show that the Commission did not serve or improperly served its September 14, 2005 Order on Motion for Reconsideration as specified in the Act or in the Court of Appeals' decision in Joyce. The substantial evidence in the record refutes the tenant's assertion that there was no confirmation of delivery of the September 14, 2005 order. The record reflects that the Commission's decision was in fact delivered to the tenant.

Accordingly, for the foregoing reasons, the tenant's motion to reissue the Commission's September 14, 2005 order in consolidated appeals in TP 27,674 and 27,675 is denied.

SO ORDERED.


RONALD A. YOUNG, COMMISSIONER

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

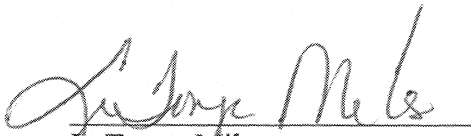
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO REISSUE COMMISSION'S SEPTEMBER 14, 2005 DECISION** was mailed by priority mail, with confirmation of delivery, postage prepaid this 23rd day of August, 2006 to:

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