

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,680

4801 41st Street, N.W.

Ward Three (3)

JOYCE BURNETT
Tenant/Appellant

v.

AMAR SHARMA
Housing Provider/Appellee

ORDER DISMISSING APPEAL

October 16, 2003

BANKS, CHAIRPERSON. On November 8, 2002, Joyce Burnett, the Tenant, filed a Tenant Petition (TP) 27,680. On July 21, 2003, the hearing examiner issued an order, which stayed the proceedings until the District of Columbia Court of Appeals (DCCA) renders a decision in the Tenant's appeal from a decision of the Superior Court of the District of Columbia Landlord and Tenant Branch. On August 4, 2003, the Tenant filed an appeal in the Commission from the July 21, 2003 order, and the Commission held its hearing on the appeal on October 15, 2003. These two appeals, this instant appeal in the Commission and the appeal in the DCCA, share one pivotal identical issue, whether Ms. Burnett is a tenant of Amar Sharma. The Tenant's notice of appeal before the Commission is from the July 21, 2003 order granting the stay of hearing proceedings on the tenant petition.

In Clarke v. Bedell, TP 24,979 (RHC Oct. 16, 2003), the Commission stated:

The Commission sua sponte raised the issue of jurisdiction over the notice of appeal.¹ The Commission's rule, 14 DCMR § 3802.1 (1991), provides: "[a]ny party aggrieved by a final decision of the Rent Administrator may obtain review of that decision by filing a notice of appeal with the Commission." Pursuant to 14 DCMR § 3807.1 (1991), the Commission has jurisdiction over appeals from final decisions and orders. In the instant appeal the final decision has not been issued, as is evident from the order, which states the de novo hearing is scheduled for October 23, 2003. Accordingly, the Commission does not have jurisdiction over this appeal. See Warner v. District of Columbia Dep't of Employment Servs., 587 A.2d 1091 (D.C. 1991) (dismissal based on lack of jurisdiction on a non-final order); District of Columbia v. Tschuden, 390 A.2d 986 (D.C. 1978) cited in Sindram v. Borger Mgmt, TP 27,392 (RHC June 25, 2002); Pegram v. Cooper, TP 27,003 (RHC June 26, 2001) (where the Commission held the notice of appeal was not from a final order of the Rent Administrator and dismissed the appeal). Accordingly, the notice of appeal is dismissed as not from a final order,

Likewise, the hearing examiner's July 21, 2003 order is not a final decision or order, which is appealable to the Commission, which advised the Tenant in its order dated March 19, 2003, in this appeal:

The Commission has jurisdiction over final decisions, pursuant to § 3802.1. Meir v. District of Columbia Rental Hous. Comm'n, 372 A.2d 566, 568 (D.C. 1977) makes clear that the hearing examiner or Rent Administrator makes the initial final decision, and the Commission is limited to its review functions, D.C. OFFICIAL CODE § 42-3502.16(h) (2001). Since there is no final decision to review, the Commission is without jurisdiction to decide this interlocutory appeal.

Again, the Commission holds that the Commission does not have jurisdiction over non final decisions or orders. The hearing proceedings for the instant tenant petition were stayed by the hearing examiner pending the final ruling by the DCCA on the issue of the Tenant's status as a tenant of the Housing Provider. After the DCCA rules, further proceedings, resulting in a final decision or order, from the hearing examiner in this tenant petition are appropriate. Therefore, the August 4, 2003 appeal of the Tenant is

¹ "A court may sua sponte raise the question whether it has jurisdiction to decide an appeal...." Brandywine Ltd. P'ship v. District of Columbia Rental Hous. Comm'n, 631 A.2d 415 (D.C. 1993) cited in Burnett v. Sharma, TP 27,680 (RHC Mar. 19, 2003).

dismissed and this case is remanded to the hearing examiner for further proceedings after the DCCA issues its final decision and the hearing examiner's stay is lifted.²

SO ORDERED.

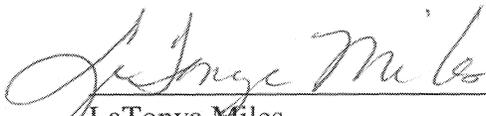

RUTH R. BANKS, CHAIRPERSON

CERTIFICATE of SERVICE

I certify that a copy of the foregoing ORDER DISMISSING APPEAL in TP 27,680 was mailed by priority mail, with confirmation of delivery, postage prepaid this **16th day of October, 2003**, to:

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MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

² On September 16, 2003, the Tenant filed in the Commission a second appeal, which was from a final order issued by the hearing examiner, who held she did not have jurisdiction over the motion for reconsideration filed by the Housing Provider and the Tenant's opposition, because the instant appeal filed earlier on August 4, 2003, removed jurisdiction from the hearing examiner to the Commission. See 14 DCMR § 3802.3 (1991), which provides for removal of jurisdiction from the Rent Administrator to the Commission, after a notice of appeal is filed. The Commission's ruling in this order moots the second appeal filed on September 16, 2003, since the hearing examiner regains jurisdiction over this case, until the stay is lifted after the DCCA rules on the appeal before it.