

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,707

In re: 1280 21st Street, N.W., Unit 310

Ward Two (2)

ELIZABETH HINES

Tenant/Appellant

v.

BRAWNER COMPANY

Housing Provider/Appellee

ORDER ON MOTION FOR RELIEF FROM JUDGMENT

February 11, 2005

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (1991), govern the proceedings.

I. THE PROCEDURES

Elizabeth Hines filed Tenant Petition (TP) 27,707 on December 23, 2002. Carl Bradford, Hearing Examiner, issued the decision and order on April 4, 2003 and denied the Tenant's motion for reconsideration on April 28, 2003. On May 13, 2003, the Tenant filed a notice of appeal in the Commission, which on June 6, 2003 mailed its Notice of

Scheduled Hearing to the parties. On September 17, 2003, the Commission mailed a Notice of Rescheduled hearing for Monday, November 17, 2003.

The notices were mailed by priority mail at the United States Postal Service (USPS). Priority mail allows the Commission to track delivery of notices and other documents on the USPS web site. The USPS web site showed the notice for Monday, November 17, 2003, was delivered to the Tenant, Charles David Nelson, Esquire, the Tenant's attorney, and Stephen O. Hessler, Esquire, the Housing Provider's attorney. The Commission's file contains the documents printed from the USPS web site. The "Track and Confirm" documents show delivery of the Commission's hearing notice for Monday, November 17, 2003, to the Tenant and the two attorneys. Both attorneys appeared at the Commission's hearing on Monday, November 17, 2003. The Tenant did not appear. In addition, the Commission's file contains a Commission document titled "Hearing Participants." It shows the Tenant's attorney, Charles David Nelson, attended the hearing and represented the Tenant.

On September 7, 2004, the Commission issued its decision and order on the notice of appeal. On January 28, 2005, the Tenant filed a Motion for Relief from Judgment. It states:

Tenant/Appellant, Elizabeth S. Hines, requests relief from Judgment to have the matter of TP 27,707 reversed and that she be granted an extension of time to respond based on the fact that appellant's counsel did not receive Notice from the Commission. (emphasis added.)

Motion at 1.

II. THE LAW

The Commission's rules do not provide for Motions for Relief from Judgment. That motion is provided for only in the Rent Administrator's rules at 14 DCMR 4017

(1991). The Commission's rules provide for reconsideration of its decisions and orders by motion for reconsideration filed within ten (10) days from receipt of the decision. 14 DCMR § 3823.1 (1991). The USPS Track and Confirm documents show delivery of the Commission's decision on September 14, 2004, to the Tenant, and to her attorney on September 8, 2004, which is one day after the Commission mailed its decision on September 7, 2004. The Tenant's motion for relief of judgment was filed on January 28, 2004, and was not filed within ten days of the Tenant's receipt of the decision on September 14, 2004, as required by the Commission's rule on reconsideration. There are no Commission rules that allow for extension of time to file documents, when the record shows proper delivery to the parties. Here, the assertions by the Tenant are contrary to the facts in the Commission's record, and the facts in the USPS records as described herein.

III. THE CONCLUSION

The motion of the Tenant is denied, because the Commission's records show the Tenant and her attorney received the Commission's notices of hearing, and that the Tenant's attorney appeared at the Commission's hearing and represented her. Neither the Tenant nor her attorney timely filed a motion for reconsideration in the Commission. In addition, the Tenant requested reversal of the hearing examiner, who was reversed by the Commission in three of the issues on res judicata raised in the Tenant's notice of appeal. See Hines v. Brawner Co., TP 27,707 (Sept. 7, 2004) at 4-7.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

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 for Relief from Judgment in TP 27,707 was mailed by priority mail, with confirmation of delivery, postage prepaid this 11th day of February, 2005, to:

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1627 I Street, N.W. #700
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