

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,926

In re: 201 I Street, S.W.

Ward Six (6)

THE NEW CAPITOL PARK TWIN TOWERS TENANTS
Tenant/Appellant

v.

AMERICAN RENTAL MANAGEMENT COMPANY
Housing Provider/Appellee

ORDER DISMISSING APPEAL AS UNTIMELY

January 23, 2004

BANKS, CHAIRPERSON. On December 30, 2003, Hearing Examiner Gerald Roper issued a decision and order which dismissed Tenant Petition (TP) 27,926, because he held that the property was exempt under the Housing Finance Agency Act, which provides at D.C. OFFICIAL CODE § 42-2703.08(a) (2001) entitled "Exemption from Rent Control:"

Housing projects assisted by the Agency or through the auspices of the Agency under the provisions of this chapter shall be exempt from the provisions of Chapter 35 of this title.

The decision and order stated that appeals must be filed no later than January 19, 2004. Kevin Fitzgerald, Tenant,¹ filed the notice of appeal by mail. The envelope containing the appeal document was post marked January 20, 2004. Since January 1, 2004, was the New Year's Day holiday, and January 19, 2004, was the holiday honoring the life of Dr. Martin Luther King, Jr. and the District

¹ The hearing examiner's decision and order consolidated and dismissed 16 tenant petitions. However, one Tenant untimely filed the instant notice of appeal.

Government was closed both holidays, the Commission allowed two extra days, to January 20, 2004, in its determination that the appeal was untimely filed in the Commission on January 22, 2004. 14 DCMR § § 3801.2; 3816.3 (1991).

The Rental Housing Act of 1985 provides that appeals may be made to the Commission from the decisions of the Rent Administrator within ten (10) days of the Rent Administrator's decision. D.C. OFFICIAL CODE § 42-3502.16(h) (2001).

The Commission is required by law to dismiss appeals that are untimely filed, because time limits are mandatory and jurisdictional. United States v. Robinson, 361 U.S. 209 (1960); Hija Lee Yu v. District of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. District of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974). The Commission determines the time period between the issuance of the OAD decision and the filing of the notice of appeal by counting only business days, as required by its rules. See 14 DCMR § 3802.2 (1991); Town Center v. District of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

For appeals, the Commission's rules state:

No pleading or other documents shall be deemed filed until actually received at the Commission's office and compliance with time requirements shall be calculated from the date of actual receipt.

14 DCMR § 3801.2

A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and if the decision is served by mail an additional three (3) days shall be allowed.

14 DCMR § 3802.2 (1991).

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the

matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by § 4014.

14 DCMR § 3802.3 (1991).

When the time period is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

14 DCMR § 3816.3 (1991).

If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.

14 DCMR § 3816.5 (1991).

In this appeal, the thirteen business day time period commenced on December 31, 2003, which was the first business day after the Rent Administrator's decision was issued and served by mail. The thirteen business day period provided in rules, 14 DCMR § 3802.2-.3, ended on January 20, 2004, which was the date the appellant mailed the notice of appeal to the Commission. The notice of appeal was received in the Commission on January 22, 2004. That was two days beyond the statutory period provided in the law and the rules. See also Camp v. Ghani, TP 27,533 (RHC Jan. 27, 2003) (where the Commission dismissed the appeal, because it was filed too late); Jassiem v. The Jonathan Woodner Co., TP 27,348 (RHC June 24, 2002) (where the Commission dismissed the appeal, because it was untimely filed by one day).

Accordingly, the appeal is dismissed as untimely filed.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

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."

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's Rule, D.C. App. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk." 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

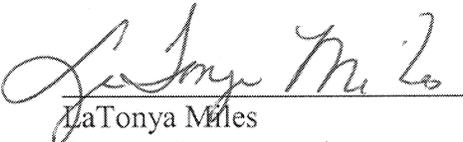
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER DISMISSING APPEAL in TP 27,926 was mailed by priority mail, with confirmation of delivery, postage prepaid this 23rd day of January, 2004, to:

Kevin Fitzgerald
201 I Street, S. W.
Unit V 525
Washington, D.C. 20024

Jeneba Jalloh Ghatt, Esquire
Willkie Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, D.C. 20006

Richard Luchs, Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036



LaTonya Miles
Contact Representative
(202) 442-8949