

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,938

In re: 3517 13th Street, N.W., Unit 3

Ward One (1)

EVAN McANNEY
Tenant/ Appellant

v.

LAURENCE SMITH
Housing Provider/Appellee

ORDER ON MOTION FOR RECUSAL

January 13, 2006

YOUNG, COMMISSIONER. This matter is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAP A), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004), govern the proceedings.

On August 23, 2005, Evan McAnney filed a notice of appeal from a decision and order issued by the Rent Administrator on August 4, 2005. The Rent Administrator certified and transmitted the record of the proceedings below to the Commission on November 16, 2005. On November 28, 2005, the Commission issued the Notice of Scheduled Hearing and of Certification of Record. The Commission scheduled the appellate hearing on December 14, 2005.

On December 6, 2005, Mr. McAnney filed a motion to continue the Commission's hearing. However, he filed the motion in the Housing Regulation Administration. The Commission received the motion on December 12, 2005, two days before the scheduled hearing. On December 12, 2005, the Commission issued an order denying the tenant's motion to continue the hearing.

The Commission convened the hearing on December 14, 2005. On December 14, 2005, prior to the Commission's hearing the tenant filed a Notice of Withdrawal of Appeal. The notice also contained a request by the tenant that Commissioner Ronald Young recuse himself from consideration of the tenant's appeal based on a December 12, 2005 telephone conversation between Mr. McAnney and Commissioner Young. In his Notice of Withdrawal of Appeal the tenant stated, in relevant part:

Appellant then spoke with the aforementioned Mr. Young, extensively discussed^[1] the motion for continuance, giving indication that he was opposed to accepting the motion. Mr. Young stated that the motion had not been sent to the landlord's correct address, and when appellant pointed out that voice records at both DCRA and DC [sic] Superior court [sic] have the Appellee on record as stating that his address IS [sic] the one used, Mr. Young went on a fishing expedition, trying to find some way to argue that the motion for continuance be denied. Mr. Young then stated that there had not been enough time for mailing included in the filing date. Appellee^[2] indicated that a law student had informed him that December 6th [sic] was within the proper time frame, and Mr. Young stated that this was incorrect. Young [sic] then stated that the motion would also be denied because

¹ Mr. McAnney failed to state in his "affidavit" that the "extensive discussion" between he and Commissioner Young concerned Commissioner Young's repeated reference to and verbatim quote of the Commission's procedural rules at 14 DCMR §§ 3815.1-.3 and 3803.2 (2004). Commissioner Young did not express opposition to the motion, but repeatedly emphasized that the Commission's rules required that motions for continuance be submitted five (5) days before a hearing and that absent extraordinary circumstances continuances are not granted by the Commission when that rule is violated. Mr. McAnney explained during the conversation that he needed the continuance in order to obtain the assistance of counsel. Commissioner Young again, without expressing opposition to the motion for continuance, referenced the rules which state his need to obtain counsel was not considered a good reason to grant a continuance.

² Mr. McAnney is the appellant in the proceedings before the Commission.

it was not served on the landlord's attorney. Appellant stated that he has [sic] no way of knowing whether or not the the Appellee currently has an attorney, or whom that might be. It became evident that Mr. Young was hostile to Mr. McAnney personally, and and appellant stated that he believes Mr. Young should recuse himself from the case.

Notice of Withdrawal of Appeal at unnumbered page 2.

I. THE LAW

There is no Commission rule on recusal. Pursuant to 14 DCMR § 3828 (2004), when the Commission rules are silent on a procedural issue, the Commission may refer to the rules of either the District of Columbia Court of Appeals or the rules of the Superior Court of the District of Columbia for guidance.

Superior Court Civil Rule (Sup. Ct. Civ. R.) (2003) 63-1 states:

- (a) Whenever a party to any proceeding makes and files a sufficient affidavit that the judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned, in accordance with Rule 40-1(b), to hear such proceeding.
- (b) The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be accompanied by a certificate of counsel of record stating that it is made in good faith.³

A review of the applicable case law and other authorities reflect two major considerations, in deciding a motion for recusal. The first consideration is whether the statement made in the party's affidavit⁴ provides a reason from extrajudicial sources that reflects prejudice or bias by a judge. See Scott v. United States, 559 A.2d 745 (D.C. 1989), cited in Redman v. Graham, TP 24,681& TP 24,681 (RHC Apr. 21, 2003). In the

³ Mr. McAnney is a pro se tenant therefore, no good faith statement made by his counsel is possible.

⁴ Mr. McAnney failed to submit an affidavit. However, the Commission accepts Mr. McAnney's above quoted statement as sufficient to note his request for recusal of Commissioner Young.

instant case, the alleged source of the bias was a telephone call to the Commission, by the tenant, to ascertain the status of his motion for continuance. In his motion, Mr. McAnney relates his version of the events which took place during that conversation.⁵ Nothing in the affidavit relates to extrajudicial information related to the disputed appeal issues or related to the record facts in the tenant's pending appeal.

Commissioner Young's attempted explanation of the Commission's procedural rules was conduct occurring inside the judicial processes, and was not extrajudicial. The dialogue cited by the tenant arose solely from Commissioner Young's contact with the appellant during the litigation of the tenant's case. Burt v. First American Bank, 490 A.2d 182, 187 (D.C. 1985), cited in Redman, *supra*. At the December 14, 2005 Commission hearing Mr. McAnney renewed his motion for a continuance which was granted by Commissioner Long by order dated December 30, 2005. See McAnney v. Smith, TP 27,938 (RHC Dec. 30, 2005).

The second consideration is whether legal authorities state that a judge should disqualify himself or herself in a proceeding in which a judge's impartiality might reasonably be questioned. See CODE OF JUDICIAL CONDUCT, Canon 3 (C)(1). This Canon has been interpreted to require recusal where there is "an appearance of bias or prejudice sufficient to permit the average citizen reasonably to question the judge's impartiality." See Anderson v. United States, 754 A.2d 920 (D.C. 2000). Here, the tenant's statements in the Notice of Withdrawal of Appeal about the telephone conversation caused him to question Commissioner Young's "hostility" and impartiality.

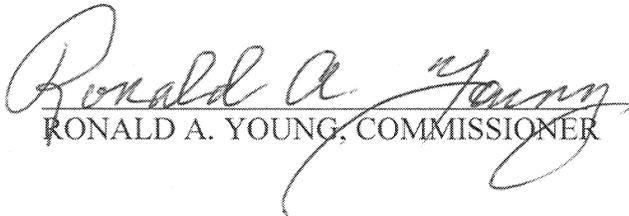
⁵ The facts as reported in the affidavit about the telephone conversation are not accurate and complete. However, the recusal issue does not turn on the veracity of either the party or the judge. It is the perception by third parties, the average citizens, that controls the appearance of impartiality.

However, a motion for a continuance of a hearing, which was “extensively discussed,” including several verbatim recitations of and explanations concerning the applicable Commission rules and procedures, does not create an appearance of bias or prejudice sufficient to permit the average citizen reasonably to question the judge’s impartiality.

II. CONCLUSION

The tenant’s “affidavit” does not state a basis for recusal, because of his disagreement with the Commission’s regulations or the interpretation of the regulations is not a cause for recusal. See Anderson, supra, cited in Redman, supra. Accordingly, the motion for recusal is denied.

SO ORDERED.


RONALD A. YOUNG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission’s rule, 14 DCMR § 3823.1 (2004), 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 may be contacted at the following address and telephone number:

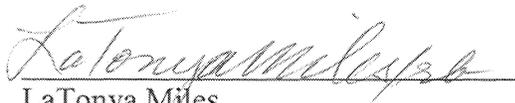
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion for Recusal in TP 27,938 was mailed postage prepaid by priority mail, with delivery confirmation on this **13th day of January, 2006** to:

Evan McAnney
5415 Connecticut Avenue, N.W.
Unit 828
Washington, D.C. 20015

Vere Plummer, Esquire
1090 Vermont Avenue, N.W.
Suite 800
Washington, D.C. 20005



LaTonya Miles
Contact Representative
(202) 442-8949