

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,938

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

Ward One (1)

**LAURANNE WINGARD**  
**EVAN McANNEY**  
Tenants/Appellants

v.

**LAURENCE SMITH**  
Housing Provider/Appellee

**ORDER ON MOTION FOR RECONSIDERATION**

**May 29, 2007**

**YOUNG, CHAIRMAN.** 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 (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004), govern the proceedings.

**I. PROCEDURAL HISTORY**

On May 3, 2007, the Commission issued a decision in the above-captioned appeal. The Commission affirmed the hearing examiner's August 25, 2005 decision and order which dismissed Mr. McAnney from TP 27,938. Wingard v. Smith, TP 27,938 (RHC May 3, 2007). On May 14, 2007 tenant, Evan McAnney, filed a Motion for

Reconsideration (Motion). No opposition to the motion was filed by the housing provider.

## II. MOTION FOR RECONSIDERATION

In his Motion for Reconsideration the tenant states:

1. The document (Decision and Order) dated May 3, 2007, begins by stating the crux of this matter:

Hearing Examiner Keith Anderson rendered a decision in favor of the tenants, and 'All other conclusions of law made by the examiner in this Decision and Order are incorporated by reference herein.' One of the primary conclusions that Mr. Anderson came to on January 5, 2004, was that the landlord, Laurence Smith, had in fact been notified in a timely fashion of the date, location and time of the hearing, that there was physical documentation to support this fact, and that the landlord had (for the second time in a row) failed to appear for the hearing. That hearing was decided in favor of the tenants, on the basis of ample evidence, and the landlord was ordered to compensate the tenants. This should have concluded the matter; all subsequent hearings should never have occurred. There was no valid basis for appeal of the January 5, 2004 hearing, and it is a travesty of justice that the landlord was allowed to appeal. The tenants proved their case, the landlord failed to appear, and the audio record clearly reflects these facts. The subsequent mishandling of the evidence on the part of DCRA should not have resulted in an appeal being granted to the landlord's false claim of failing to have been notified of the hearing. The audio record clearly states that the landlord was properly notified as required by DCRA rules. The fact that DCRA subsequently lost the paper records (but not the audio record) is not a reasonable basis for an appeal on the part of the landlord, and unfairly penalizes the tenants.

2. Allowing the landlord to appeal placed undue burden upon the tenants, who were financially stressed, living in unfit housing, and who were both suffering the effects of mental illness. The situation was made even more grotesque by the fact that the landlord was represented by private counsel, while the indigent tenants were left to fend for themselves, or to rely upon volunteer counsel, which proved woefully ineffective. This burden continued and increased over the course of three agonizing [sic] years, during which DCRA excessively delayed its decision.

3. Delays in the hearings process were never favorable to the tenants. The tenants were legitimately [sic] owed \$3,842.00 in housing code violation compensation, and had to wait to receive this money because DCRA improperly allowed an appeal, and the tenants could not afford to match the landlords resources in obtaining paid legal counsel.

4. The stress of living in unfit housing, as well as financial pressure resulted in a breakdown in the relationship between the tenants, resulting in Ms. Wingard moving to Pennsylvania, leaving Mr. McAnney to fend entirely on his own for payment of the rent, and continuance of the case. These burdens, as well as his mental illness, made it especially difficult for Mr. McAnney to obtain counsel or proceed Pro Se. None of this has been recognized or accomodated [sic] adequately.

Ms. Wingard ended up having to travel over 175 miles from Pennsylvania, taking time off from work, in order to attend the August 24, 2005 hearing. The point being, the numerous delays in this case which Examiner McNair reacted to so prejudicially [sic], were never in the tenant's favor. Mr. McAnney ended up struggling alone as an indigent, pro se, mentally ill person, against a trained attorney and a well-heeled and unethical landlord. Even were Mr. McAnney not mentally ill, McNair's unfamiliarity with the case, and the obvious disparity and injustice of the representation situation (which included ineffective representation of counsel) should have precluded McNair from imposing any time limit upon the tenants to obtain volunteer representation. The delays were a loss for the tenants, inasmuch as they were legitimately owed \$3,842.00. Mr. McAnney asserts that McNair erred in ruling against McAnney in that she put undue emphasis upon a timetable she did not comprehend. McNair harshly commented upon the delays without putting them in appropriate context. For example, McNair utterly ignored the fact that the landlord had failed to even show up for the first two hearings scheduled in this matter.

5. Issue "A" within the Decision and Order dated May 3, 2007 was improperly decided upon. If McNair was to hear and honor an untimely motion to withdraw on the part of counsel Rebecca Lindhurst, simple decency, not to mention equity, demands that she should have also heard Mr. McAnney's untimely Pro Se motion at the same time. Instead, the record shows that McNair berated Mr. McAnney in an unprofessional manner regarding delays, and showed an intent to impose an unreasonable time constraint upon him to obtain new counsel, even though she was aware that he is an indigent and could not match the landlord's ability to hire private counsel. McNair then verbally bullied McAnney and demonstrated prejudice in the case, in which event the law requires her to recuse herself.

6. The audio record shows that McNair ignored a request by McAnney to recuse herself, and ignored his assertion that McNair was prejudiced against him personally. McNair conducted herself in an arrogant, hostile and unjust [sic] manner toward Mr. McAnney, especially egregious after McNair had inappropriately fraternized with the landlord and his witnesses over her trips to the Carribean [sic] and their origins in Jamaica, which raises issues of racial discrimination as well.

7. Issue "B" within the Decision and Order dated May 3, 2007, regarding Mr. McAnney's mental disability, was improperly decided upon. Examiner McNair

erred in questioning volunteer counsel [sic] Rebecca Lindhurst as to whether or not the client-attorney relationship could be salvaged. McNair did nothing to determine why this was so. Had she done so, she would have discovered that Lindhurst was aware that Mr. McAnney is mentally ill. His status as a disabled person on Social Security [sic] was what made it possible for Mr. McAnney to obtain representation from Lindhurst's 'Bread for the City' legal clinic, and Lindhurst's neglect of the case, precipitated his strong reactions and intense anxiety, which McNair then inappropriately exacerbated [sic] instead of investigating. Lindhurst bore a burden to obtain whatever reasonable accommodations [sic] Mr. McAnney was entitled to, but she failed to do so. Mr. McAnney should not be penalized for these errors by Lindhurst and McNair.

[8].<sup>1</sup> McNair's assertion that Mr. McAnney's behavior was threatening toward the examiner is false and spiteful. This is a matter of arrogance and pique on the part of McNair, not fact. Mr. McAnney merely tried to hand McNair a copy of his pro se motion, and be heard on it, and McNair reacted inappropriately. McNair spoke in a tone and manner that heaped blame and burden upon those who had been injured, the tenants, partially due to her having a very shallow understanding of the case, not having been the original Hearings Examiner.

McNair's tone, words and manner gave every indication to Mr. McAnney that she was prejudiced against the tenants, and intended to do them harm. After having been neglected and betrayed by counsel Rebecca Lindhurst, this was too much for Mr. McAnney to endure submissively. When McNair arrogantly ordered Mr. McAnney to be seated, he correctly asserted that he is not under the authority of McNair to issue orders to him. McAnney reiterates that McNair has no legal authority to order McAnney to sit, stand or dance a jig. McNair further lied on the record, stating that McAnney was 'threatening' her, when he was doing nothing more than walking towards her with a written motion offered in his hand in clear view. The Decision and Order of May 3, 2007 utterly ignores the record of the fact that McAnney clearly denied that he was being threatening. The Decision and Order of May 3, 2007 further incorrectly ignores the fact the McAnney audibly demanded that McNair recuse herself.

[9]. Issue 'C' within the Decision and Order dated May 3, 2007, was improperly decided upon. The Decision and Order quotes McNair as having written '. . . McAnney. . . stated that he wanted the Examiner to dismiss his case.'

That assertion is utterly false. The 'case' at hand was the landlord's appeal of a decision in the tenant's favor. It was not Mr. McAnney's case, it was a case brought by the landlord, an appeal of what had been the tenant's case jointly.

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<sup>1</sup> The tenant used the numbers six (6) and seven (7) twice in his Motion for Reconsideration. Accordingly, the Commission has renumbered the tenant's issues on reconsideration to avoid further confusion.

When McNair spitefully, unprofessionally, arrogantly and hostilely threatened McAnney with dismissal, he reacted with appropriate contempt, inasmuch as McNair was indicating that she literally did not know what she was talking about. McAnney did indeed tell McNair to go ahead and dismiss the present case, that being the appeal of a decision that had already been rendered in his favor, an appeal which should never have been granted in the first place. Throughout, McNair's conduct was heavy-handed, disingenuous, and did not serve justice. This and other instances demonstrate that the Decision and Order has selectively quoted the record to impugn Mr. McAnney and cover up misconduct by McNair.

[10]. The citation of Superior Court Rule (Sup. Ct. R) 37 is disingenuous, and does not apply to this situation. Clearly an arrogant, rude, hostile and abusive order to sit down cannot be construed as a 'court order,' and McNair had no authority to give such an "order". The tenants went through excruciating stress and work to navigate a convoluted and dysfunctional DCRA system in order to bring their case Pro Se, and win it. It is dispicable [sic] and incorrect to cite a law regarding 'tenant noncompliance' as if it applies to this situation. The tenants were pushed to the breaking point, literally for years, by both the landlord and DCRA and for the adjudicators now to heap insults and misapplied law adds insult to injury.

[11]. Item 'D' highlights the shoddy and inconsistent manner in which the 'Decision and Order' was rendered. It states 'Presumably, (emphasis added) the tenant's allegation concerns the hearing examiner's failure to rule on his untimely pre-hearing motion.' Since when is justice served by making assumptions instead of examining [sic] facts? Mr. McAnney's Pro Se motion was readily available, and McNair and the RHC had no basis to just ignore it, make assumptions about it, or dismiss it as moot.

[12]. The RACD heard Mr. McAnney's appeal over his objections to the membership by a prejudicial [sic] member on the hearing committee.

[13]. DCRA conveniently "lost" documents, and conveniently ignored records pertaining to their existance [sic] and contents----documents and audio records which confirm that the landlord had been notified of the time date and place of the initial hearing and failed to appear. DCRA is known to employ criminals and felons, making this loss of documentation a flimsy and suspect pretext to justify an appeal on the part of the landlord, who is known to have operated his business in an unlawful manner. The inefficiency, corruption and injustice of the adjudicating system are [sic] common knowledge, and the law has been misapplied.

Therefore, Evan McAnney demands and moves that the Decision and Order dated May 3, 2007 be overturned and that he be given any and all such and further accomodation [sic] and justice as the law would allow.

Motion for Reconsideration at 1-8.

### III. DISCUSSION OF THE ISSUES

- A. Whether there was a valid basis for appeal of the January 5, 2004 hearing and subsequent decision which granted the housing provider's appeal.
- B. Whether permitting the housing provider's appeal placed an undue burden on the tenants.
- C. Whether DCRA improperly allowed an appeal of the Rent Administrator's February 27, 2004 decision.
- F. Whether the hearing examiner erred when she failed to act on a Motion to recuse herself from the tenant's petition.
- H. Whether the hearing examiner's assertion that the tenant behavior was threatening was false and spiteful.
- L. Whether the Commission erred when it held the appellate hearing with a member for who, Mr. McAnney alleged was prejudiced against him.
- M. Whether DCRA lost records and documents associated with the tenant's petition.

The Commission's rules on reconsideration provide:

The motion for reconsideration or modification shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful

14 DCMR § 3823.2 (2004). In its May 3, 2007 decision the Commission considered the following issues raised by the tenant on appeal:

First, the Hearing Examiner erred first granting, then withdrawing the continuance request, of a motion to withdraw and continue case filed by former counsel of Appellant/Petitioner.

Second, the Hearing Examiner erred in failing to accommodate Mr. McAnney's mental disability

Third, the Hearing Examiner erred in precluding, without any apparent authority to do so, Appellant/Petitioner's right to engage in the hearing and post-hearing process.

Fourth, the Hearing Examiner erred in failing to rule on a pre-hearing motion filed by Appellant/Petitioner.

Fifth, Petitioner/Appellant received ineffective representation [sic] of counsel.

Wingard v. Smith, TP 27,938 (RHC May 3, 2007) at 2-3. Issues A, B, C, F, H, L, and M, raised in the motion for reconsideration are new issues which were not raised by the tenant in his notice of appeal. Because these issues were not raised by appellant in his notice of appeal or considered by the Commission in the May 3, 2007 decision and order, they violate the applicable regulation, 14 DCMR § 3823.2 (2004) and are therefore dismissed.

- D. Whether, “McNair’s unfamiliarity with the case, and the obvious disparity and injustice of the representation situation (which included ineffective representation of counsel) should have precluded McNair from imposing any time limit upon the tenants to obtain volunteer representation. Mr. McAnney asserts that McNair erred in ruling against McAnney in that she put undue emphasis upon a timetable she did not comprehend. McNair harshly commented upon the delays without putting them in appropriate context.”

The record reflects that the hearing examiner orally granted the Motion for continuance filed by counsel for the tenant. The record further reflects that the hearing examiner stated that no further continuances from the tenant would be considered. The hearing examiner did not have an opportunity to set a new date for the de novo hearing because the tenant interrupted the hearing with his contumacious conduct, leading to the hearing examiner’s decision to dismiss Mr. McAnney from the petition.

Accordingly, this issue in the Motion is denied.

- E. & K Whether the Commission erred when it dismissed the tenant’s appeal issue regarding the hearing examiner’s failure to address the tenant’s untimely Motion for Continuance.

The Commission decision held that the hearing examiner did not err in failing to rule on the tenant's untimely, duplicate pre-hearing Motion. In its decision the Commission cited the Rent Administrator's regulation, 14 DCMR § 4008.6 (2004), which provides:

A party may file a motion to continue or reschedule a hearing for good cause with the hearing examiner provided the motion is served on opposing parties and the hearing examiner at least five (5) days before the hearing; however, in extraordinary circumstances, the time limit may be shortened by the hearing examiner.

Id. at 4. The Commission determined that the record showed that Rebecca Lindhurst, the tenant's attorney of record, filed both a motion to withdraw as counsel, and a motion for continuance. The record further reflects that both motions were granted by the hearing examiner prior to Mr. McAnney's contumacious behavior. Until her motion to withdraw as counsel was granted, Ms. Lindhurst was the attorney of record, authorized to act on the tenant's behalf as his legal representative. The hearing examiner properly looked to Ms. Lindhurst to prosecute the tenant's petition. The hearing examiner considered the motions in concert, granting the continuance in consideration of her ruling on the motion to withdraw. During the course of the hearing, the hearing examiner made clear her inclination to grant the motion for continuance filed by the tenant's legal representative. Therefore, disposition of the untimely motion filed by the tenant became moot, of no practical significance. The tenant's contumacious behavior interrupted the hearing and led to his dismissal before the hearing examiner could set the date for the de novo hearing.

Accordingly, this issue raised in the Motion is denied.

G. Whether the Commission erred when it dismissed the tenant's claim that the hearing examiner failed to accommodate his mental disability.

The tenant contends that the hearing examiner failed to question his counsel on whether the attorney-client relationship could be salvaged. Had the hearing examiner asked such questions, the tenant asserts, she would have learned of the tenant's mental illness and disability. The Rent Administrator's rules provide:

Any representative of a party who wishes to withdraw from a matter pending before the RACD shall give written notice to that effect to the hearing examiner and to all parties; Provided, that the hearing examiner shall consent to the withdrawal before it is effective, and shall have the right to impose such conditions upon withdrawal which shall preserve the administrative process.

14 DCMR § 4004.10 (2004). Nothing in the rule requires the hearing examiner to determine the nature of the attorney-client relationship. The rule only provides that the hearing examiner shall have the right to impose conditions before granting the counsel's motion to withdraw. If the tenant did in fact possess a disability which the Rent Administrator could accommodate, it was his obligation to make that known to the hearing examiner to permit her to determine whether in fact the asserted disability could be accommodated.

Accordingly, this issue in the Motion is denied.

- I.. Whether the Commission erred when it quoted Mr. McAnney as having told the hearing examiner to dismiss the case.
- J. Whether the Commission erred when it determined that the hearing examiner had the authority to dismiss the tenant's appeal.

The tenant argues that the "case" he was referring to when he requested that the hearing examiner dismiss the case was that of the housing provider. The decision states that on September 30, 2004, the Commission reversed the Rent Administrator's February 27, 2004 Decision and Order based on a preliminary issue, that is, whether the housing provider was properly served with notice of the RACD hearing. The

Commission determined that the RACD certified record failed to show proof of delivery of the mailed notice of the hearing to the housing provider. The Commission therefore reversed the Rent Administrator's February 27, 2004 decision and remanded the case to the Rent Administrator for a hearing de novo. Smith v. Wingard, TP 27,938 (RHC Sept. 24, 2004). The "case" before the hearing examiner on June 15, 2005, was the hearing de novo ordered by the Commission. The audio recording of the hearing reflects that Mr. McAnney approached the hearing examiner and was told to take his seat. Mr. McAnney responded, "I do not take orders from you." The record further reflects that the requests to take his seat went unheeded, the hearing examiner stated on the record that she would dismiss his case if he did not comply with her order. Mr. McAnney then instructed the hearing examiner to dismiss his case.

As we stated in our decision the Rent Administrator's rules are silent on the dismissal of appeals for failure to obey an order of a hearing examiner. The decision further stated that the hearing examiner was permitted to apply the applicable rules of civil procedure published and followed by the Superior Court of the District of Columbia. Specifically, the hearing examiner was permitted to apply Superior Court Rule (Sup. Ct. R.) 37.<sup>2</sup>

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<sup>2</sup> The applicable rule, Sup. Ct. R. 37, provides in relevant part:

**(b) Failure to Comply With Order**

*(2) Sanctions by This Court.*

[I]f a party fails to obey an order ... the Court may make such orders in regard to the failure as are just, and among others the following:

...

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or part thereof, or rendering a judgment by default against the disobedient party.

The tenant argues that the hearing examiner's order to take his seat during the hearing and to end his contumacious behavior "cannot be construed as a 'court order.'" In her decision, the hearing examiner determined that the tenant's conduct rose to the level of contumacy. Contumacy is defined as, "the refusal of a person to follow a court's order or direction." Black's Law Dictionary 331 (7<sup>th</sup> ed. 1999). The hearing examiner directed the tenant to take his seat. The tenant refused to follow the direction and order of the hearing examiner. Pursuant to the court rules the hearing examiner had the authority to issue a sanction for the tenant's failure to obey her order including, "dismissing the action or proceeding." The tenant failed to show on appeal that the action of the hearing examiner was an abuse of discretion. The tenant has failed to show that the decision of the Commission affirming the hearing examiner was in error.

Accordingly, this issue in the Motion is denied.

#### IV. CONCLUSION

For the forgoing reasons, the tenant's Motion for Reconsideration of the May 3, 2007 Commission decision and order is denied.

SO ORDERED

  
RONALD A. YOUNG, CHAIRMAN

  
DONATA L. EDWARDS, 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 for Reconsideration** in TP 27,938 was mailed by priority mail, with confirmation of delivery, postage prepaid this 29<sup>th</sup> day of **May, 2007**, to:

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