

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,270

In re: 3133 Connecticut Avenue, N.W., Unit 829

Ward Three (3)

KLINGLE CORPORATION, et al.
Housing Providers/Appellants/Cross-Appellees

v.

CHRISTINE BURKHARDT
Tenant/Appellee/Cross-Appellant

ORDER ON MOTION TO INTERVENE

October 31, 2007

YOUNG, CHAIRMAN. On November 29, 2006, Blake J. Nelson, Wendy Nelson and Michael W. Dolan filed a Motion For Leave To Intervene Of Designated Intervenors, in Burkhardt v. B.F. Saul Co. & Klingle Corp., TP 28,270 (RACD Sept. 2, 2005), which was appealed to the Commission on September 30, 2005, by the housing provider, Klingle Corporation.

In their motion, the movants argue:

The Designated Intervenors are tenants of 3133 Connecticut Ave., N. W., Apts. 802 and 819. They currently have pending before the RACD Tenant Petitions involving substantially the same issues of law and questions of fact as the above-captioned proceeding. . . . [T]he Housing Provider raises several issues in their notice of appeal in Tenant Petition No. 28,270 that they have also raised or are otherwise at issue in Tenant Petition Nos. 28,267 and 28,519, including: (1) the applicability of the decision in *Sawyer Property Management* to rent ceiling adjustments taken before the date *Sawyer* was decided by the Commission; (2) the application of “the Act’s three-year limitations period when considering the anniversary date of Housing Provider’s filing with respect to the adjustment of general applicability on the subject property;” (3) the application of the “statute of limitations in disallowing ceiling and rent adjustments and awarding damages;” (4) the application of the “Unitary Rent Ceiling Adjustment Act;” and (5) the basis for awarding treble damages to Petitioner; as well as (6) the calculation of

damages.

Petitioners' Post-Hearing Memorandum, . . . in Tenant Petition No. 28,519, addresses each of these issues raised by Housing Provider in the above-captioned appeal.

Thus, the Designated Intervenors have interests in this proceeding that cannot be represented adequately by any other party, and should be permitted to intervene, with full rights to participate, as parties in this proceeding.

Order on Motion to Intervene at 3-4 (Footnotes omitted).

The housing provider, through counsel, filed an Opposition to Motion for Leave to Intervene in the instant case and a memorandum of points and authorities in support of opposition to the motion for leave to intervene (Opposition Memorandum). The housing provider states:

Certainly, [the movants] do not have an interest in the specific transactions before the Commission which are personal to the Tenant/Petitioner in this case, Christine Burkhardt. In fact, the Proposed Intervenors have filed separate petitions which are awaiting decisions and which rely on a wholly independent evidentiary record. That evidentiary record is not part of the record below in this case and therefore, under the D.C. Administrative Procedure Act, may not be considered by the Commission in the instant appeal.

Opposition Memorandum at 2.

THE COMMISSION'S ORDER

The Commission's rules on intervention, 14 DCMR § 3810 (2004), provide:

Any person not a party to an appeal, but having a substantial interest in a case pending before the Commission, may file in writing a motion for leave to intervene.

14 DCMR § 3810.1 (2004).

Motions shall describe in detail the position and interest of the moving party and the grounds of the proposed intervention.

14 DCMR § 3810.2 (2004).

Any party may file an opposition to the motion.

14 DCMR § 3810.3 (2004).

The Commission may grant or deny the motion, or attach conditions to the participation of the moving party, if granted.

14 DCMR § 3810.4 (2004).

While the Commission's rules establish the procedures for filing a motion to intervene, the rules do not however provide a standard to be applied when intervention, at the appellate level, is sought. The Commission's rules at 14 DCMR § 3828.1 (2004)¹ provide that when its own rules are silent on an issue, the Commission may look to the Superior Court of the District of Columbia Rules of Civil Procedure and the Rules of the District of Columbia Court of Appeals. The District of Columbia Superior Court Rules of Civil Procedure (D.C. Super. Ct. R. Civ. P.), provide:

Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when applicable law confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. ... In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

D.C. Super. Ct. R. Civ. P. 24(b). The housing provider in its Opposition Memorandum, citing Pitts v. Thornburgh, 2003 U.S. App. D.C. Lexis 12883 (D.C. Cir. 1985), and Amalgamated Transit Union Int'l, AFL-CIO v. Donovan, 248 U.S. App. D.C. 411, 771 F.2d 1551, 1552 (D.C. Cir. 1985), correctly states that the courts have held that "intervention at the appellate stage, where none was sought below, is only permitted in an

¹ The applicable rule, 14 DCMR § 3828.1 (2004), provides:

When these rules are silent on procedural issues before the Commission, the Superior Court Rules of Civil Procedure and the Rules of the District of Columbia Court of Appeals may be used as guidance for the disposition of the issues(s).

exceptional case for imperative reasons.”

As previously stated, the Commission’s rule, 14 DCMR § 3810.4 (2004), provides: “The Commission may grant or deny the motion, or attach conditions to the participation of the moving party, if granted. The movants assert that the arguments raised by the housing provider on appeal in the instant case, TP 28,270, were also raised by the housing provider in TP 28,267 and TP 28,519. Accordingly, it appears to the Commission that the instant case, TP 28,270, and the movants petitions have questions of law in common, and is therefore the proper subject of intervention.

The movants seek permission to intervene, with full rights to participate, as parties in this proceeding. However, the Commission, mindful of the courts admonition that intervention at the appellate stage should only be permitted in exceptional cases for imperative reasons, the movants participation in the housing provider’s appeal of TP 28,270 is granted, with the condition that they will only be permitted to file a brief in compliance with the Commission’s regulations at 14 DCMR §§ 3802.7 and 3803.6-7 (2004).² The brief should contain a statement of the issues presented for review in the

² The applicable regulations provide:

Parties may file briefs in support of their positions within five (5) days of receipt of notification that the record in the matter has been certified.

14 DCMR § 3802.7 (2004)

Pleadings and other documents shall be served on the other party or representative prior to or at the same time as they are filed with the Commission.

14 DCMR § 3803.6 (2004)

Proof of service upon parties shall be provided for all pleadings and other documents, shall be in writing, and shall show the date, person served, address at which service was made, and the manner of service.

14 DCMR § 3803.7 (2004)

notice of appeal, and a discussion and citation to the relevant authorities, cases, statutes, regulations, and parts of the record relied upon. The intervenors have not shown that the instant case is exceptional or that imperative reasons for their intervention at the appellate stage exists, therefore, they will not be permitted to participate in oral argument before the Commission.

SO ORDERED.


RONALD A. YOUNG, CHAIRMAN

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Order on Motion for Intervention** in TP 28,270 was mailed postage prepaid by priority mail, with delivery confirmation on this 31st day of **October, 2007** to:

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Blake Nelson
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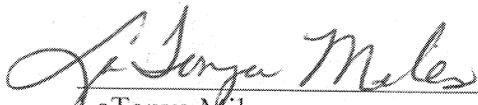
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A handwritten signature in cursive script that reads "LaTonya Miles". The signature is written in black ink and is positioned above the printed name.

LaTonya Miles
Contact Representative
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