

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,720

In re: 2000 F Street N.W., Unit 316

Ward Two (2)

HAMED M. SHAMMA
Tenant/Appellant

v.

CAFTRITZ COMPANY
Housing Provider/Appellee

DECISION AND ORDER

June 1, 2007

PER CURIAM: This case is on appeal from a final order of District of Columbia, Office of Administrative Hearings (OAH), to the Rental Housing Commission (RHC), pursuant to the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE § 42-3501.01-3509.07 (2001), and the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001). The District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) also apply.

I. PROCEDURAL HISTORY

On July 20, 2006, Hamed M. Shamma filed Tenant Petition (TP) 28,720. The tenant named the Cafritz Company, agent for the owner of the housing accommodation located at 2000 F Street, N.W., Unit 316 (Record at 24-25) as the housing provider. In the petition, the tenant stated that “[t]he rent ceiling filed with the Rental Accommodations and Conversion Division for my unit is improper (R. at 26); [and] [s]ervices and/or facilities provided in connection with the rental of my unit have been substantially reduced (R. at 28).”

In response, the OAH scheduled and conducted a hearing on January 24, 2007 at 9:30 a.m. (R. at 14). Both parties received notice of this hearing via United States Postal Service (USPS) Priority Mail with Delivery Confirmation (R. at 12,13). Mr. Shamma, the tenant/petitioner failed to appear at the hearing. The hearing proceeded, in Mr. Shamma's absence, with Robert Cooper, Esquire, counsel for the Cafritz Company and witnesses Michelle R. Brasseur and Kiviette Oliver in attendance (R. at 9). At the beginning of the hearing, Administrative Law Judge (ALJ) Cobbs confirmed the fact that a Case Management Order providing notice of the hearing was served on Mr. Shamma on December 22, 2006 [sic] (R. at audio).¹ The ALJ also stated that service was adequate and that the tenant/petitioner must prove that service was inadequate. Id. Counsel for the housing provider then moved to dismiss the case. Id. On January 24, 2007, the ALJ issued the OAH Final Order dismissing TP 28,720 with prejudice because the tenant failed to appear at the hearing after receiving proper notice (R. at 6). The ALJ made the following findings of fact and conclusions of law (R. at 3-8):

A. Findings of Fact

1. On July 20, 2006, Tenant/Petitioner Hamed M. Shamma filed TP 28,720 with the Rental Accommodations and Conversion Division, alleging that the rent ceiling filed with the Rental Accommodations and Conversion Division for his unit was improper and that the services and facilities provided in connection with the rental of his unit had been substantially reduced. On December 20, 2006, this administrative court issued a Case Management Order directing the parties to appear for a hearing on January 24, 2007, at 9:30 a.m. at the Office of Administrative Hearings, 941 North Capitol Street, N.E. The Case Management Order cautioned that "If you do not appear for the hearing, you may lose the case."
2. A copy of the Case Management Order was served on Tenant/Petitioner Hamed M. Shamma by priority mail with delivery confirmation at 2000 F Street, N.W., Unit 316, Washington, DC 20006, the address Petitioner listed on the tenant petition. Delivery of the Case Management Order to that

¹ The Delivery Confirmation Receipt # 0303 3430 0001 0666 6843 obtained at www.usps.com indicates that the order was delivered at 11:00 a.m. on December 23, 2006.

address at 11:00 a.m. on December 23, 2006, was confirmed on the web site of the United States Postal Service, receipt, No. 0303 3430 0001 0666 6843.

3. The case was called for hearing at 9:55 a.m. on January 24, 2007. Tenant/Petitioner Hamed M. Shamma did not appear. Respondent appeared through counsel and moved to dismiss the action for failure to prosecute.

B. Conclusions of Law

1. This matter is governed by the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.1 et seq., the District of Columbia Administrative Procedure Act (D.C. OFFICIAL CODE §§ 2-501 et seq.), (DCAPA), and the OAH Rules (1 DCMR 2800 et seq. and 1 DCMR 2920 et seq.).
2. Tenant/Petitioner was properly served by mail with the Case Management Order of December 20, 2006, which gave notice of the hearing on January 24, 2007. Because the Case Management Order setting the hearing date was mailed to the address Tenant/Petitioner listed on the tenant petition and delivery to that address was confirmed, Tenant/Petitioner received proper notice of the hearing date. *Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985). Proceeding in his absence was therefore appropriate.

3. OAH Rule 2818.3, 1 DCMR 2818.3, provides:

Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing. . . the presiding Administrative Law Judge may dismiss the case. . . Any order of dismissal . . . entered pursuant to this Section shall not take effect until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by the party within such fourteen (14) day period showing good cause why the case should not be dismissed. . . .

4. Because Tenant/Petitioner failed to appear at the hearing after receiving proper notice, this case will be dismissed for failure to prosecute. 1 DCMR 2818.3; *Mullin v. District of Columbia Rental Hous. Comm'n*, 844 A.2d 1138, 1141 (D.C. 2002) (upholding Rental Housing Commission's inherent authority to dismiss an appeal for failure [to] appear at hearing); and *DOH v.*

Agape Cabbage Patch/Le Mae Early Child Dev. Ctr., 2001 D.C. Off. Adj. Hear. LEXIS 36 at *5 (Final Order May 24, 2001) (dismissal for want of prosecution appropriate where Government failed to appear at hearing).

5. The Final Order will not take effect until fourteen days after the date of service. Within that time Tenant/Petitioner may file a motion to vacate this Final Order upon a showing of good cause why the case should not be dismissed., 1 DCMR 2818.3.

Shamma v. Cafritz Co., TP 28,720 (OAH Jan. 24, 2007) at 4-6. On February 7, 2007, Mr.

Shamma filed a timely notice of appeal in the RHC. In response, the Commission scheduled and conducted a hearing for the appeal on May 15, 2007 at 2:00 p.m. Both parties received a Notice of Scheduled Hearing and Notice of Certification of Record via USPS Priority Mail with Delivery Confirmation.²

II. PROCEDURAL ISSUE ON APPEAL

A. Whether a tenant/petitioner who failed to appear at a scheduled hearing has standing to appeal an administrative law judge's decision to enter a default judgment dismissing the petition with prejudice.

A party who fails to appear at a scheduled hearing does not have standing to appeal the ALJ's decision. Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000)(citing John's Props. v. Hilliard, TP 22,269 and TP 21,116 (RHC June 24, 1993)). A tenant/petitioner who fails to appear at a scheduled hearing does not have standing to appeal an ALJ's decision because (1) he received adequate notice of the hearing, See Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478, 481(D.C. 1996); Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000); (2) he did not present a "prima facie adequate defense" or "good cause" on appeal, See 1 DCMR § 2813.3 (2004); Radwan, 683 A.2d at 481; and (3) he did not attempt to reschedule the hearing or request a continuance in writing in accordance with 1 DCMR § 2812.5.

² Receipt # 0304 3490 0000 4327 9831 indicates that notice was delivered at 2:11 p.m. on April 13, 2007 to Hamed M. Shamma (Record at 1). Receipt # 0304 3490 0000 4327 9848 indicates that notice was delivered at 10:40 a.m. on April 13, 2007 to Robert Cooper, Esquire (R. at 2).

In Alexandra, TP 24,777 at 6, the Commission cited Firestone v. Harris, 414 A.2d 526 (D.C. 1980), to establish the right to an appeal, notwithstanding a “default judgment entered by the court below.” However, in Firestone, the court held that the appellant received notice of a motion for sanctions, denial of the motion and reconsideration of the denial (effectively imposing sanctions) despite affidavits submitted by the appellant’s attorney, secretary and law clerk stating that the motions were never received by anyone at the law firm. Firestone at 528. The court gave credence to opposing counsel’s testimony that the motions were served at the attorney’s correct address because the trial court is in the best position to determine the credibility of such testimony. Id.

In this case, Mr. Shamma states, “. . . I understand that I did not appear for the hearing, yet job commitments have limited me from appearing at the scheduled hearing.” Furthermore, the USPS Delivery Confirmation indicates that Mr. Shamma received proper notice of the hearing. Consequently, Mr. Shamma is ineligible to appeal the ALJ’s decision because he did receive proper notice.

In Radwan, the court articulated a four factor test that must be satisfied before it can set aside a default judgment and grant an appeal. First, the movant must have acted in good faith. Second, the movant must have acted promptly. Third, the movant must have presented a prima facie adequate defense. Finally, and most importantly, the movant must not have received actual notice of the hearing. If the movant has received proper notice of the hearing, he is not entitled to an appeal, notwithstanding the presence of the other factors. Radwan, 683 A.2d at 478.

In this case, Mr. Shamma satisfies the first two factors; but does not satisfy factors three and four. The record does not indicate that Mr. Shamma acted in bad faith. Also, Mr. Shamma’s appeal was prompt because the final order allowed an appeal to be filed up to thirteen (13) days

after the date stamped on the front of the order.³ Mr. Shamma's notice was filed on the ninth day of the filing period. However, Mr. Shamma failed to present a "prima facie adequate defense" at the May 15, 2007 appellate hearing. Mr. Shamma did not provide evidence that a "good cause" excused his failure to appear. Finally, Mr. Shamma did receive actual notice of the hearing. As a result, Mr. Shamma does not have standing to appeal the ALJ's decision to dismiss his petition.

The OAH Rules authorize an ALJ to dismiss a case whenever a party fails to appear at a scheduled hearing. The applicable rule reads as follows:

Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing [] the presiding Administrative Law Judge may dismiss the case. . . Any order of dismissal . . . entered pursuant to this Section shall not take effect until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by the party within such fourteen (14) day period showing good cause why the case should not be dismissed.

1 DCMR § 2818.3. In this case, Mr. Shamma did not appear for his scheduled hearing. At the appellate hearing, he stated that he is a teacher at George Washington University, and that he could not find a substitute for his class (R. at audio). On appeal, Commissioner Edwards asked Mr. Shamma if he tried to find a substitute in advance (when he first received the notice of the hearing). Id. He replied that this is usually not a problem but there was a faculty shortage on this day. Id. This is inconsistent with his Notice of Appeal which states the following: "Due to last minute commitments in work, I was not able to make it on January 24th at 9:30 a.m. I was told by my employer on January 22nd that I had to be available during the 24th of January and that

³ Parties are allowed ten (10) days after the date stamped on the first page of the order, plus three (3) extra days (if the order was mailed to the parties) to file an appeal with the District of Columbia Rental Housing Commission. Shamma v. Cafritz Co., (TP) 28,720 (OAH January 24, 2007) at 7 (citing D.C. OFFICIAL CODE §§ 2-1831.16(b) and 42-3502.16(h)).

not showing up on that day might have serious consequences on my employment status.” Notice of Appeal at 1-2. Mr. Shamma’s failure to appear at a hearing, after receiving notice of the hearing date and time, because he failed to secure a substitute is not a “good cause” sufficient to prevent the petition from being dismissed. Adequate notice, received by a party seeking to set aside a default judgment, outweighs a showing of “good cause” because there are alternative procedures available to reschedule a hearing.

Moreover, the Case Management Order that Mr. Shamma admittedly received provides specific instructions to petition the ALJ to change the date and time of a hearing. Specifically, OAH rules governing motions, 1 DCMR §§ 2812.4–6 are listed in their entirety. Although, § 2812.4 states that “dispositive” motions must be filed at least fourteen (14) days prior to the scheduled hearing, § 2812.5 addresses “non-dispositive” motions and does not indicate a time restriction. 1 DCMR § 2812.5 states:

Prior to filing any non-dispositive motion, the moving party shall first seek to obtain the consent of all other parties to the requested relief, and shall state on the first page of the motion the date, the approximate time and means used to communicate with each party, as well as whether all other parties consent to, oppose, or do not oppose the requested relief. Failure to comply with the requirements of this Section may result in the summary denial of the motion, or the motion being rejected for filing by the Clerk.

Mr. Shamma should have filed a motion to reschedule by attempting to obtain the consent of the Cafritz Company and the OAH. In addition, Mr. Shamma should have sent a representative in his place (R. at 15).⁴ In his Notice of Appeal, Mr. Shamma alleges that he was told that he, could not “postpone the date for the hearing, except with enough prior notice (2 weeks) and notifying both the Office of Administrative Hearings and the Housing Provider.

⁴ The Case Management Order issued by the District of Columbia Office of Administrative Hearings states the following: “[a] family member may represent an individual tenant.” An individual tenant may also be represented by a lawyer or tenant association officer, director or employee.

However, the Case Management Order plainly states the procedure for motions to continue a hearing (R. at 5-6). The rules permitted Mr. Shamma to file a motion in writing, after requesting consent of the Cafritz Company, listing three (3) alternate dates for a new hearing (mutually agreed upon by the parties). Id. The motion must include a written certificate of service and may be faxed or delivered in person to the OAH. Id. Mr. Shamma did not attempt to comply with this procedure. His alleged phone call is an insufficient substitute for the procedure discussed above. As a result, Mr. Shamma's request to "get another chance to hold a hearing related to [his] original file and case with the Cafritz Company" is denied.

III. CONCLUSION

The final order of the ALJ is affirmed. Mr. Shamma's appeal is DISMISSED for failure to present a "prima facie adequate defense" or "good cause" for the Commission to set aside the default judgment entered by the ALJ upon his failure to appear at a scheduled hearing pursuant to Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000); Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478, 481(D.C. 1996); and 1 DCMR §§ 2813.3-5 (2004).

SO ORDERED.


RONALD A. YOUNG, CHAIRMAN


DONATA L. EDWARDS, COMMISSIONER

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 may be contacted at the following address and telephone number:

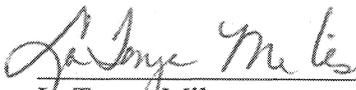
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Decision and Order** in TP 28,720 was mailed postage prepaid by priority mail, with delivery confirmation on this **1st day of June, 2007** to:

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