

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 3788

In re: 2480 16th Street, N.W.

Ward Three (3)

BENOIT BROOKENS, et al.
Tenants/Appellants/Cross-Appellees

v.

HAGNER MANAGEMENT CORPORATION
Housing Provider/Appellee /Cross-Appellant

**ORDER ON MOTION TO REISSUE COMMISSION'S
SEPTEMBER 28, 2001 DECISION**

July 2, 2002

YOUNG, COMMISSIONER: On May 10, 2002, the tenants filed their motion to reissue the Commission's September 28, 2001 decision. The motion stated, in part:

The tenants, via an April 29, 2002 decision from the D.C. Court of Appeals, have exhausted all its [sic] remedies before the D.C. Court of Appeals to perfect its [sic] appeal. The tenants, therefore, are requesting that the Commission re-issues [sic] its September 28, 2001 [decision]. The Commission's decision has [sic] apparently become lost in the U.S. Postal system, presumably due to anthrax related events. The Commission's decision was not returned to the Commission for re-issuing by the Commission upon the Commission's determination that service upon the tenants was not perfected, as required by certified mail.

Motion at 1.¹ The motion further states:

Commission records reflect that the Commission neither received a signed postal receipt from the US [sic] Postal Service reflecting delivery of the September 28, 2001 [decision] to the tenants nor did the postal service return the original copy of

¹ The tenants have failed to provide the Commission with any factual information concerning their allegation that the envelope containing the Commission's September 28, 2001 decision, "apparently become lost in the U.S. Postal system, presumably due to anthrax related events." Nor have the tenants provided any information to the Commission that the postal facility, where their tenant representative maintained his post office box, was closed or not delivering mail in the regular course of business during this period.

the decision to the Commission to put the Commission on notice of its non-delivery.

Id. at 2.

I. THE PROCEDURES

On September 28, 2001, the Commission issued a decision and order in TP 3788. The decision was mailed to the parties through the United States Postal Service (USPS) by certified mail, return receipt requested. On October 25, 2001, the decision addressed to the tenant representative, Benoit Brookens, at P.O. Box 2551, Washington, D.C. 20013-2551, was returned to the Commission, stamped "Unclaimed" by the USPS.² On February 7, 2002, the decision addressed to the tenant's counsel, Ronald G. Isaac, Esquire at P.O. Box 2551, Washington, D.C. 20013-2551, was returned to the Commission, stamped "Attempted-Not known" by the USPS, reflecting that the addressee, Ronald G. Isaac was not the holder of P.O. Box 2551, Washington, D.C. 20013-2551, and was therefore ineligible to receive mail at that address.

On October 25, 2001, the Commission's staff contacted Mr. Brookens and informed him of the return to the Commission of its September 28, 2001 decision and order. On October 25, 2001, Mr. Brookens presented himself in the Commission and

² The United States Domestic Mail Manual, D 042. 1.7, provides, in part:

The following specific conditions also apply to the delivery of Express Mail and accountable mail (registered, certified, insured for more than \$50, or COD, as well as mail for which a return receipt or a return receipt for merchandise is requested or for which the sender has specified restricted delivery):

...

f. A notice is left for a mailpiece that cannot be delivered. If the piece is not called for or redelivery is not requested, the piece is returned to the sender after 15 days (5 days for Express Mail, 30 days for COD) unless the sender specifies fewer days on the piece.

received the envelope containing the copy of the Commission's September 28, 2001 decision and order, which was handed to him by the Commission's staff person who holds the position of Contact Representative.

II. THE LAW

The Commission is required by the Act, D.C. OFFICIAL CODE § 42-3502.16(j)³ and the District of Columbia Court of Appeals (DCCA) decision in Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999), to mail its final decisions and orders to the parties through the USPS by certified mail, or other form of service which assures delivery. Accordingly, pursuant to the Commission's regulation, 14 DCMR § 3803.5 (1991)⁴ when the Commission mails a decision, which is properly addressed, to the parties, by certified mail, service is complete. In the instant case, the tenants request re-issuance of the Commission decision and order because they did not receive a copy of the decision in time to "perfect its appeal based upon actual notice of the decision rather than presumed notice based upon date of mailing." Motion at 2.

The Commission delivered its decision and order to the parties by certified mail, return receipt requested. The tenants do not claim that the Commission mailed the decision and order to an incorrect address, nor do they contend that the Commission failed to mail the September 28, 2001 decision and order in the manner specified by the Act or the court's decision in Joyce. The Commission complied with the Act, when it

³ D.C. OFFICIAL CODE § 42-3502.16(j), provides:

A copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by certified mail or other form of service which assures delivery of the decision to the parties.

⁴ The regulation, 14 DCMR § 3803.5 (1991), states, "[S]ervice by mail shall be complete upon mailing."

sent the decision and order to the last known address provided by the tenants' representative, Benoit Brookens, and the tenants' counsel, Ronald G. Isaac, Esquire, in the manner required by the Act. See Allen v. District of Columbia Dep't. of Employment Servs., 578 A.2d 687, 691 (1990). The record reflects that copies of the September 28, 2001 decision and order were delivered to the tenants' representative and the tenants' counsel at their addresses of record. The record further reflects that the tenants' representative and the tenants' counsel did not receive their copies of the decision because the decisions were returned to the Commission stamped "Unclaimed" by the USPS, in the case of the certified mail sent to the tenants' representative, Benoit Brookens and "Attempted-Not known" by the USPS in the case of the certified mail sent to the tenants' counsel, Ronald G. Isaac, Esquire.

The Commission notes that the tenants' desire to "perfect its [sic] appeal based upon actual notice of the decision rather than presumed notice based upon date of mailing," could have been accomplished had the tenants acted promptly when Mr. Brookens received the decision from the Commission's staff on September 28, 2001. D.C. Ct. App. R. 15(a) provides that a petition for review of a final agency decision must be filed "within thirty days after notice is given, in conformance with the rules or regulations of the agency....(unless an applicable statute provides otherwise)." Accordingly, the tenants had until November 2, 2001, to file a petition for review in the District of Columbia Court of Appeals in order to perfect its appeal. However, the tenants' petition for review was not filed until November 20, 2001. The Commission further notes that the tenants have failed to provide the Commission with any factual information concerning their allegation that the envelope containing the Commission's

September 28, 2001 decision, “apparently become lost in the U.S. Postal system, presumably due to anthrax related events.” Nor have the tenants provided any information to the Commission that the postal facility, where their tenant representative and presumably their attorney maintained their post office box, was closed or not delivering mail in the regular course of business during this period. Finally the Commission notes that counsel for the tenants, Ronald G. Isaac, Esquire, failed to provide the Commission with an address⁵ where he could receive the Commission’s mailing.⁶

III. CONCLUSION

The tenants failed to show that the Commission did not serve the September 28, 2001 decision and order in the manner specified by the Act or the court’s decision in Joyce.

In fact, the tenants’ representative failed to “claim” or pick up the Commission’s decision and order and the USPS returned the decision and order to the Commission as “Unclaimed.” The tenants failed to act promptly to file a timely petition for review of the Commission’s decision with the Court, as they could have done, when Mr. Brookens, the tenants’ representative, was in “actual” receipt of the Commission’s decision on October 25, 2001. The tenants failed to provide the Commission with factual information supporting their allegation that the Commission’s decision was lost or delayed “due to

⁵ In a document titled “Tenants’ Motion For Reconsideration Of Order Dismissing Petition For Review,” filed with the Court on December 26, 2001, counsel for the tenants, Ronald G. Isaac, Esquire, lists his address as 818 Malibu Drive, Silver Spring, Maryland, 20901. However, Mr. Isaac has not notified the Commission of a change of address. Mr. Isaac’s address of record in the Commission remains P.O. Box 2551, Washington, D.C., 20013.

⁶ See Tenants’ Response to Landlord’s Motion to Post Escrow and Withdraw Appeal, filed with the Commission on March 6, 2001, and Tenants’ Notice of Appeal filed with the Commission on March 9, 2001, evidencing the address used by Attorney Isaac was P.O. Box 2551, Washington, D.C., 20013.

anthrax related events.” Finally, counsel for the tenants, Ronald G. Isaac, Esquire, failed to provide the Commission with an address where he could receive the Commission’s mailing. Accordingly, for the foregoing reasons, the tenants’ motion to reissue the Commission’s September 28, 2001 decision in TP 3788 is denied.

SO ORDERED.


RONALD A. YOUNG, COMMISSIONER

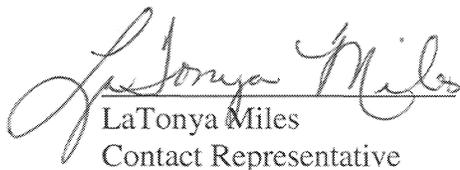
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order On Motion To Reissue Commission’s September 28, 2001 Decision was mailed postage prepaid by priority mail, with delivery confirmation, this **2nd day of July, 2002** to:

Ronald G. Isaac, Esquire
Counsel for Dorchester Tenants
818 Malibu Drive
Silver Spring, MD. 20901

Benoit Brookens
P.O. Box 2551
Washington, D.C. 20013-2551

Richard Luchs, Esquire
c/o Greenstein Delorme and Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036


LaTonya Miles
Contact Representative

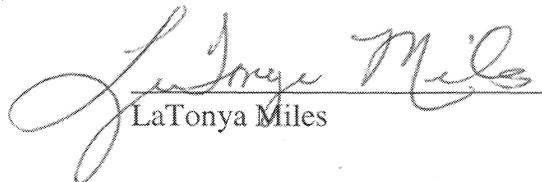
DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

AFFIDAVIT OF LaTONYA MILES

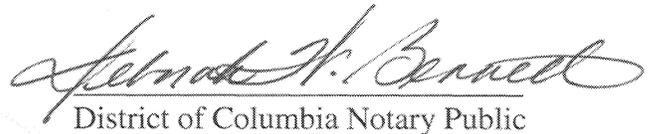
COMES NOW LaTonya Miles, under oath, to hereby depose, and state as follows:

1. That I am employed by the District of Columbia, Department of Consumer and Regulatory Affairs, the Rental Housing Commission, in the capacity of contact representative.
2. That on October 25, 2001, a certified mail envelope containing the Commission's decision in TP 3788 dated September 28, 2001 and addressed to the tenants' representative, Benoit Brookens, at P.O. Box 2551, Washington, D.C. 20013-2551, was returned to the Commission, stamped "Unclaimed" by the United States Postal Service.
3. That on October 25, 2001, I contacted Benoit Brookens by telephone to inform him that the certified mail envelope containing the Commission decision dated September 28, 2001 had been returned to the Commission by the United States Postal Service.
4. That on October 25, 2001, Benoit Brookens presented himself in the Commission and retrieved the certified mail envelope containing the Commission decision dated September 28, 2001.
5. That a receipt signed and dated by Benoit Brookens evidencing hand delivery of the certified mail envelope containing the Commission decision dated September 28, 2001 was executed and placed in the Commission's record in TP 3788 by me.*

FURTHER AFFIANT SAYETH NOT


LaTonya Miles

SUBSCRIBED AND SWORN TO BEFORE ME this 2nd day of July 2002, by
LaTonya Miles.


District of Columbia Notary Public

My Commission expires: 5/31/04

DEBORAH W. BENNETT
Notary Public, District of Columbia
My Commission Expires May 31, 2004

* See attached receipt.

Record for Commission File
October 25, 2001

This acknowledges that Mr. Benoit Brookens (TP 3788) came into the Commission to pick up a copy of the following:

Decision and Order dated ^{September} ~~October~~ 28, 2001 *LM*

Order on Motions to Establish Escrow Account and to Dismiss Appeal
Dated October 12, 2001

Motion for Reconsideration filed in the Commission from Mr. Luchs
Date stamp October 25, 2001

Benoit Brookens
Benoit Brookens

October 25, 2001
Date