

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE., Suite 9100
Washington, D.C. 20002
TEL: (202) 442-8167
FAX: (202) 442-9451

OFFICE OF
ADMINISTRATIVE HEARINGS

2009 MAR 16 P 3: 26

DAWN L. BYRNE,
Tenant/Petitioner,

v.

ARCHSTONE-SMITH COMMUNITIES,
4411 CONNECTICUT, LLC
SMITH PROPERTY HOLDINGS,
Housing Providers/Respondents.

Case No.: RH-TP-07-29400
In re 4411 Connecticut Ave, NW, Unit 213

FINAL ORDER

I. Introduction

In response to my December 17, 2008, Order to Show Cause why this case should not be dismissed with prejudice for failure to prosecute, Counsel for Tenant/Petitioner argues in essence that the sins of an attorney should not be visited upon his client.

The tenant petition at issue, TP 29,400, was filed on August 20, 2008, through Bernard A. Gray, Esquire. Weeks before, at Tenant's request, I had dismissed a similar case between the same parties *without prejudice* after several continuances and Tenant's failure to appear for the hearing, denying Respondent/Housing Provider's motion that the dismissal should have been with prejudice. OAH Final Order, Case No. RH-TP-07-29108 (Aug. 8, 2008).

The Case Management Order in the instant case was sent to the parties on October 1, 2008, scheduling a hearing for November 5, 2008. For administrative reasons, the hearing was

rescheduled for November 13, 2008. By consent of the parties, the matter was continued and a status conference was scheduled for December 1, 2008, at 1:30 p.m. I ordered the parties to appear for the status conference or, if personal appearance was not possible, to provide OAH with a telephone number for telephone participation.

Respondent/Housing Provider, Elizabeth Brookings, and Counsel for Housing Provider, Roger Luchs, Esquire, appeared for the status conference. Tenant did not appear and no one appeared on her behalf. Tenant's counsel had not requested telephone participation in the conference.

At the status conference, Housing Provider moved that this matter be dismissed with prejudice because of Tenant's failure to appear as ordered and because of the multiple continuances and failures to appear for the hearing in Case Number RH-TP-07-29108. The day after the conference, counsel for Tenant filed a Praecipe with an apology for his failure to appear the day before. In response to my December 17, 2008, Order to Show Cause, Counsel for Tenant filed a written argument on December 30, 2008, urging me not to dismiss the case because his client had done nothing wrong. On January 8, 2009, Housing Provider filed a Response, asking for dismissal with prejudice because responsibility for failures to appear fell on Tenant as well as her attorney and because this action harms Housing Provider whose action in superior court is under a Drayton stay at Tenant's request. Appended to Housing Provider's response is the Landlord and Tenant Branch of Superior Court docket sheet for Archstone-Smith Communities v. Dawn Byrne, LTB 038676. On January 13, 2009, Tenant filed a Reply to Housing Provider's response, urging this administrative court to hear the case on the merits.

II. Discussion

OAH Rule 2818.1 provides for dismissal with prejudice of a case for “failure of the Petitioner to prosecute or to comply with these Rules or *any order of this administrative court*” (Emphasis added). The Rule must be interpreted in light of the clear preference for adjudication on the merits of each case. *See, Thomas v. National Children’s Center, Inc.*, 2008 WL 5169353, 2 (D.C.2008); *Frausto v. United States Dep’t of Commerce*, 926 A.2d 151 (D.C. 2007); but *cf. Prime v. D.C. Dep’t of Public Works*, 955 A.2d 178 (D.C. 2008).

In considering Tenant’s argument, I apply the same standard used for a motion for reconsideration from a dismissal for failure to appear, pursuant to OAH Rule 2937(e), which provides that a motion for reconsideration “shall” be granted “if a party shows that there was good reason for not attending the hearing.” The District of Columbia Court of Appeals discussed the application of a closely related OAH rule on Relief from Final Orders, OAH Rule 2833, in cases where a party failed to appear for a hearing. *See Thomas v. National Children’s Center, Inc.*, 961 A.2d 1073 (D.C. 2008); *Burton v. NTT Consulting, LLC*, 957 A.2d 927 (D.C. 2008); *Frausto v. U.S. Dep’t of Commerce*, 926 A.2d 151 (D.C. 2007). These cases emphasize that the Administrative Law Judge must consider the following factors in determining whether to grant a moving party relief from a final order:

Whether the movant (1) had actual notice of the proceedings; (2) acted in good faith; (3) took prompt action; and (4) presented an adequate defense. Prejudice to the non-moving party is also relevant.

Frausto, 926 A.2d at 154 (quoting *Nuyen v. Luna*, 884 A.2d 650, 656 (D.C. 2005)).

In this case, notice to Counsel for Tenant is not disputed. Counsel acknowledged notice of the conference when he filed his motion the next day. That response was prompt. However, the defense to the non-appearance and failure to comply with the Order of participation, in person or by telephone, in essence, "I forgot," was not adequate. A client is bound by the actions of her attorney. *Goldschmidt v. Paley Rothman*, 935 A.2d 362, 369 (D.C. 2007). Tenant also failed to appear which further compounded the negligence. Finally, Housing Provider would be prejudiced by incurring the cost and expense attendant to preparing and appearing, yet another time, for an evidentiary hearing in this manner. The stay obtained by Tenant in Superior Court would continue to Housing Provider's detriment. Duplication of expense and effort could have been avoided had Counsel attended to its obligation to this administrative court to attend a conference or arrange for telephone participation. A pattern of conduct exhibited in this and the previous case with unreasonable delays must end.

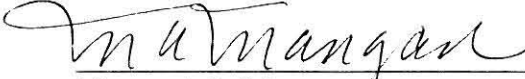
III. ORDER

Therefore, it is this 16th day of March, 2009:

ORDERED, that Housing Provider's motion to dismiss the tenant petition with prejudice is **GRANTED**; and it is further

ORDERED, that Case No. RH-TP-07-29400 is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final Order are set forth below.


Margaret A. Mangan
Administrative Law Judge

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the Final Order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.

Certificate of Service:

**By Priority Mail with Delivery Confirmation
(Postage Paid):**

Bernard A. Gray, Esquire
2009 18th Street, SE
Washington, DC 20020-4201

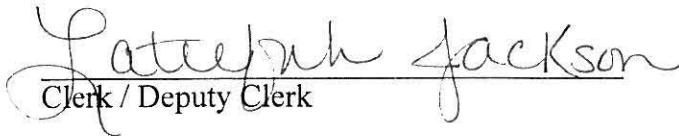
Roger D. Luchs, Esquire
Debra F. Leege, Esquire
1620 L Street, NW
Suite 900
Washington, DC 20036-5605

By Inter-Agency Mail:

District of Columbia Rental Housing Commission
941 North Capitol Street, NE, Suite 9200
Washington, DC 20002

Keith Anderson
Acting Rent Administrator
Rental Accommodations Division
Department of Housing and Community Development
1800 Martin Luther King Jr. Ave., SE
Washington, DC 20020

I hereby certify that on 3-16, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk