

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
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DISTRICT OF COLUMBIA  
OFFICE OF  
ADMINISTRATIVE HEARINGS  
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CLYDE THOMAS,  
Tenant/Petitioner,

v.

MR. FRANK ELIZONDO,  
Housing Provider/Respondent.

Case No.: RH-TP-08-29441

*In re:* 1425 4<sup>th</sup> Street, SW, Unit 7601

**FINAL ORDER**

**I. Introduction**

Two questions are at issue in this Order: 1) Should this matter be dismissed for Tenant/Petitioner's failure to appear at the hearing? 2) Should the motion to Remove Federal National Mortgage Association as a Party be granted?

Tenant/Petitioner, Clyde Thomas, failed to appear for a scheduled hearing on December 22, 2008, at 9:30 a.m. after receiving notice at the address he gave to this administrative court in the tenant petition filed on September 24, 2008. Because Petitioner failed to appear to prosecute his claims, the tenant petition is dismissed with prejudice in accord with the following Findings of Fact and Conclusions of Law.

## **II. Findings of Fact**

1. On September 24, 2008, Petitioner filed Tenant Petition 29,441 with the Rental Accommodations Division of the Department of Housing and Community Development asserting violations of the Rental Housing Act of 1985 against Frank Elizondo. The allegations included the claim that Respondent served on him an unlawful Notice to Vacate. Documents filed with the Tenant Petition indicate that the Federal National Mortgage Association, owner of the property after foreclosure, sent a notice to quit and vacate to Frank Elizondo and “all other occupants” of 1425 4<sup>th</sup> Street, SW.

2. The Case Management Order (CMO) issued on November 6, 2008, scheduled a hearing in this matter for December 22, 2008. The US Postal Service confirms delivery to Petitioner on November 7, 2008, with delivery confirmation receipt number 0303 2460 0001 2370 5390.

3. The CMO was served on the Federal National Mortgage Association with a copy to its counsel, Jonathan Schuman.

4. A hearing was convened on December 22, 2008 at 9:30 a.m. at which only Attorney Schuman appeared. Neither Petitioner nor Respondent Elizondo appeared nor did representatives appear on their behalf.

## II. Conclusions of Law

### A. Failure to Appear

This matter is governed by the Rental Housing Act of 1985 (the Act), D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. Since October 1, 2006, OAH has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

The DCAPA provides that “[i]n contested cases ... the proponent of a rule or order shall have the burden of proof. D.C. Official Code § 2-509(b). Petitioner is the proponent of an order and thus has the burden of proof in this case. To prosecute the tenant petition, Petitioner must appear at the scheduled hearing; yet he failed to appear.

OAH Rule 2818.1 provides that:

For failure of the Petitioner to prosecute or to comply with these Rules or any order of this administrative court, a Respondent may move for dismissal of an action or any of any claim against the Respondent, or the presiding Administrative Law Judge may order such dismissal on his or her own motion. Subject to the limitations of Section 2818.2, and unless otherwise specified, a dismissal under this Section, other than a dismissal for lack of jurisdiction, constitutes an adjudication on the merits.

Therefore, this matter is involuntarily dismissed with prejudice pursuant to OAH Rule 2818.1 for Petitioner’s failure to prosecute. This “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 Petitioner within such fourteen (14) day period showing good cause why the case should not be dismissed.” OAH Rule 2812.2.

B. Motion to Remove Federal Mortgage Association

Although the CMO was served on the Federal National Mortgage Association (FNMA or Fannie Mae), Petitioner never made a claim against Fannie Mae. FNMA was served as a courtesy because it could have been called upon to defend. That eventuality never occurred, rendering the motion moot.

**III. Order**

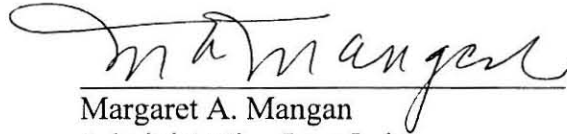
Accordingly, it is this 15th day of January, 2009:

**ORDERED**, that Case Number RH-TP-08-29441 is **DISMISSED WITH PREJUDICE**; and it is further

**ORDERED**, that this Order shall not take effect until 14 days after the date on which it is served, and shall be vacated only upon Petitioner filing a motion within that 14 day period, and showing good cause why the case should not be dismissed; and it is further

**ORDERED**, that the Motion to Remove Federal National Mortgage Association as a party is **MOOT**; 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, in accordance with the Commission's rule, 14 DCMR 3802. The ten (10) day limit shall begin to run when the order becomes final. 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.  
Suite 9200  
Washington, D.C. 20002  
(202) 442-8949

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

Clyde Thomas  
1425 4<sup>th</sup> Street, SW  
Unit A-601  
Washington, DC 20024  
*Tenant/Petitioner*

Mr. Frank Elizonda  
1425 4<sup>th</sup> Street, SW  
Unit A-601  
Washington, DC 20024  
*Housing Provider/Respondent*

Mr. Frank Elizonda  
P.O. Box 70901  
Washington, DC 20024  
*Housing Provider/Respondent*

Jonathan R. Schuman, Esquire  
Schuman & Felts, Chartered  
4804 Moorland Lane  
Bethesda, MD 20814  
*For Federal National Mortgage Association*

I hereby certify that on Jan. 15, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Benedetta Rhames  
Clerk / Deputy Clerk