

**DISTRICT OF COLUMBIA  
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA  
OFFICE OF  
ADMINISTRATIVE HEARINGS  
2009 MAR 18 A 10:17

ELISA TAVIANI AND  
SHAKISHA SHERARD,  
Tenants/Petitioners,

v.

YWUANA PEDEN, RUEBEN HERNDON  
AND RUEBEN JOHNSON,  
Housing Providers/Respondents.

Case No.: RH-TP-09-29500  
*In re* 27 Quincy Place, NW

**FINAL ORDER**

**I. Introduction**

On December 23, 2008, Elisa Taviani and Shakisha Sherard filed tenant petition (“TP”) 29,500 with the Rent Administrator. The Rent Administrator transmitted a copy of the petition to the Office of Administrative Hearings (“OAH”). The Tenant Petition alleges that 1) the building where Tenants rental unit is located is not properly registered with the Rental Accommodations Division of the Department of Housing and Community Development (“RAD”); 2) the services and facilities provided as part of the rent and/or tenancy have been substantially reduced; and 3) Housing Providers have taken retaliatory action against Tenants in violation of the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01, *et seq.*) (the “Act”). The housing accommodation at issue is located at 27 Quincy Place, NW.

On February 25, 2009, this administrative court issued a Case Management Order (“CMO”) scheduling a hearing for March 16, 2009. Neither party appeared at the hearing.

## **II. Findings of Fact**

1. The housing accommodation at issue is located at 27 Quincy Place, NW
2. On December 23, 2008, Elisa Taviani and Shakisha Sherard filed TP 29,500 with the Rent Administrator alleging that 1) the building where Tenants rental unit is located is not properly registered with the RAD; 2) the services and facilities provided as part of the rent and/or tenancy have been substantially reduced; and 3) Housing Providers have taken retaliatory action against Tenants in violation of the Act.
3. On February 25, 2009, this administrative court sent a CMO scheduling a hearing for March 16, 2009. This administrative court mailed the CMO to all of the parties by United States Priority Mail with delivery confirmation.
4. U.S. Postal Service records indicate that the CMO was delivered to Tenant Shakisha Sherard on February 26, 2009, at the address listed in the tenant petition with delivery confirmation receipt number 0303 2460 0001 2370 6724. U.S. Postal Service records indicate that the CMO was delivered to Tenant Elisa Taviani on February 26, 2009, at the address listed in the tenant petition with delivery confirmation receipt number 0307 3330 0000 8444 9398.
5. The tenant petition listed two addresses for Housing Providers Reuben Johnson, Reuben Herndon and Ywuana Peden. U.S. Postal Service records indicate that the CMO was delivered to the first address of Housing Providers on February 26, 2009 with delivery confirmation receipt number 0307 1790 0004 2496 8385. U.S. Postal Service records indicate the CMO was

delivered to the second address of Housing Providers on February 26, 2009 with delivery confirmation receipt number 0307 1790 0004 2496 8361.

6. None of the parties appeared at the scheduled date and time for the hearing.

### **III. Conclusions of Law**

This matter is governed by the Rental Housing Act of 1985, 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.

The Rental Housing Act of 1985 provides that “notice of time and the place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before commencement of the hearing.” D.C. Official Code § 42-3502.16(c). The CMO was sent to all of the parties by priority mail by the U.S. Postal Service which confirmed receipt on February 26, 2009 by all of the parties. Because the CMO was mailed to and received by Tenants at the address listed in the tenant petition, notice of the March 16, 2009 hearing was proper. *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).

In rental housing cases “the proponent of an order shall have the burden of establishing each fact essential to the order by a preponderance of the evidence.” OAH Rule 2932.1, 1

DCMR 2932.1. *Cf.* D.C. Official Code 2-509(b). Here, it was Tenants burden to prove the allegations in the tenant petition against Housing Providers.

OAH rule, 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 or enter an order of default in accordance with D.C. Superior Court Civil Rule 39-I.<sup>1</sup> Any order of dismissal or default 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 or defaulted.

Because Tenants failed to appear at the hearing after receiving proper notice, I will dismiss the tenant petition for failure to prosecute. 1 DCMR 2818.1; see also *Mellon Property Management Co. v. Thomas*, TP 23,466 (RHC March 31, 1997).

#### IV. ORDER

Therefore, it is, this 17<sup>th</sup> day of March, 2009:

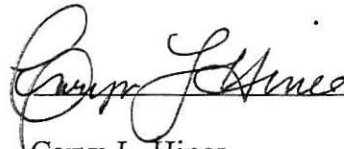
**ORDERED** that Case No. RH-TP-09-29,500 is **DISMISSED WITH PREJUDICE**; and it is further

**ORDERED** that if either party objects to this Order granting dismissal, the party may file a motion for reconsideration within fourteen (14) days of the date of service of this Order; and it is further

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<sup>1</sup> D.C. Super. Ct. Civ. R. 39-I(b) provides that, “[w]hen an action is called for trial and the party seeking affirmative relief fails to respond, an adversary may have the claim dismissed, with or without prejudice as the court may decide, or the court may, in a proper case, conduct a trial or other proceeding.

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

  
\_\_\_\_\_  
Caryn L. Hines  
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) to:**

Elisa Taviani  
27 Quincy Place NW  
Washington, DC 20001

Shakisha Sherard  
27 Quincy Place NW  
Washington, DC 20001

Ywuana Peden  
Reuben Johnson  
Reuben Herndon  
219 Dateleaf Avenue  
Capitol Heights, MD 20743

Reuben Johnson  
Reuben Herndon  
Ywuana Peden  
611 Pennsylvania Avenue SE  
Unit 299  
Washington, DC 20003

**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  
District of Columbia Department of Housing and Community Development  
Housing Regulation Administration  
1800 Martin Luther King Jr. Avenue SE  
Washington, DC 20020

I hereby certify that on 3-18, 2009,  
this document was caused to be served upon the  
above named parties at the addresses and by the means stated.

Gateepah Jackson  
Clerk / Deputy Clerk