

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

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 MAR 18 P 4:07

UNIQUE BUFFALOE,
Tenant/Petitioner,

v.

UPTOWN MANAGEMENT
INTERNATIONAL,
Housing Provider/Respondent.

Case No.: RH-TP-09-29515
In re: 4708 Quarles Street NE
Unit No. 1

FINAL ORDER

I. Introduction

Tenant/Petitioner, Unique Buffaloe, failed to appear at a hearing that was convened to adjudicate allegations in her tenant petition of violations of the Rental Housing Act by the Respondent/Housing Provider. Because Tenant failed to appear at the hearing after receiving proper notice, and failed to give any explanation for her non-appearance, I dismiss this case for failure to prosecute in accord with the following Findings of Fact and Conclusions of Law.

II. Findings of Fact

1. On January 12, 2009, Tenant/Petitioner Unique Buffaloe filed tenant petition (TP) 29,515 with the Rental Accommodations Division of the Department of Housing and Community Development alleging violations of the Rental Housing Act with respect to Tenant's housing accommodation at 4708 Quarles Street NE, Unit No. 1. The tenant petition charged that

the housing accommodation was not properly registered and that Housing Provider had taken retaliatory action against Tenant in violation of the Rental Housing Act.

2. On February 26, 2009, this administrative court issued a Case Management Order (CMO) directing the parties to appear for a hearing on March 18, 2009, at 9:30 a.m., at the Office of Administrative Hearings, 941 North Capitol Street, N.E. The CMO cautioned that **“If you do not appear for the hearing, you may lose the case.”**

3. A copy of the CMO was served on Tenant/Petitioner, Unique Buffaloe by priority mail with delivery confirmation at 4708 Quarles Street NE, Unit 1, Washington, D.C. 20019, the address Petitioner listed on the tenant petition. The United States Postal Service web site confirmed delivery of the CMO to that address on February 27, 2009, at 3:42 p.m., receipt no. 0307 1790 0004 2496 8347.

4. The case was called for hearing at 9:52 a.m. on March 18, 2009. Tenant/Petitioner Unique Buffaloe did not appear. Respondent/Housing Provider appeared and moved to dismiss.

5. Tenant submitted no explanation before or after the hearing for her failure to appear at the hearing.

III. Conclusions of Law

1. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 41-3501.01 – 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. As of October 1,

2006, the Office of Administrative Hearings has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03.

2. Tenant/Petitioner was properly served by mail with the CMO of February 26, 2009, which gave notice of the hearing on March 18, 2009, at 9:30 a.m. Because the CMO setting the hearing date was mailed to Tenant's last known address, the address Tenant/Petitioner listed on the tenant petition, Tenant/Petitioner received proper notice of the hearing date. D.C. Official Code § 42-3502.16(c); *Kidd Int'l Home Care, Inc. v. Prince*, 917 A.2d 1083, 1086 (D.C. 2007) (notice is proper if properly mailed and not returned to sender); *McCaskill v. D.C. Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990) (notice sent to the address provided by respondent is adequate to comply with due process); *Carroll v. D.C. Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985) (notice mailed to party at address provided by party and not returned as undeliverable was proper); *see also Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002) (upholding service by certified mail although notice was not actually received). Proceeding in her absence was therefore appropriate.

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

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, or a pretrial, settlement, or status conference, 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.¹

¹ Super. Ct. Civ. R. 39-I(c) provides: "When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages."

4. Because Tenant/Petitioner failed to appear at the hearing after receiving proper notice, and Tenant has not shown good cause for her non-appearance, this case will be dismissed with prejudice. *See DOH v. Agape Cabbage Patch/Le Mae Early Child Dev. Ctr.*, 2001 D.C. Off. Adj. Hear. LEXIS 36 at *4 (holding that a failure to appear at a hearing justifies dismissal of the case with prejudice by analogy to D.C. Super. Ct. Civ. R. 41(b)); *Cf. Stitt v. Outten*, TP 22,809 (RHC Aug. 8, 1996) at 11 (holding that hearing examiner should have dismissed with prejudice claims of petitioners who did not show at hearing); *Shannon & Luchs v. Kinney*, TP 11,086 (RHC May 8, 1984) at 1 (holding that where a party fails to appear at a hearing a motion to dismiss with prejudice should be granted in the absence of good cause); *Wayne Gardens Tenant Ass'n v. H & M Enterprises*, TP 11,845 (RHC Sept. 27, 1985) at 2 (same holding).

5. Under OAH Rule 2818.3, 1 DCMR 2818.3, this order shall not take effect until 14 days after the date on which it is served, and shall be vacated upon the granting of a motion filed by Petitioner within that 14 day period, showing good cause why the case should not be dismissed.

IV. Order

Accordingly, it is, this 18th day of **March, 2009**:

ORDERED, that this case 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 upon the granting of a motion filed by Petitioner within that 14 day period, showing good cause why the case should not be dismissed; and it is further

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



Nicholas H. Cobbs
Administrative Law Judge

Certificate of Service:

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

Unique Buffaloe
4708 Quarles Street NE, Unit No. 1
Washington, DC 20019

Uptown Management International
c/o Joshua and Alquieth Brown
8502 Bound Brook Lane
Alexandria, VA 22309

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.


Clerk / Deputy Clerk