

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,881

In re: 2400 16th Street, N.W., Unit 712

Ward One (1)

JOANNE HENSON
Tenant/Appellant

v.

ENVOY ASSOCIATES, L.P.
Housing Provider/Appellee

ORDER ON MOTION FOR RECONSIDERATION

September 3, 2002

YOUNG, COMMISSIONER. The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991) govern these proceedings.

I. PROCEDURAL HISTORY

On November 6, 2001 the tenant filed a notice of appeal with the Rental Housing Commission (Commission) of a September 19, 2001, decision and order issued by the Office of Adjudication (OAD) in TP 24,881. On January 3, 2002, the Commission issued the notice of scheduled hearing for February 14, 2002. The record reflects that based on a request from the tenant's former counsel, the Commission hearing, originally scheduled for February 12, 2002, was rescheduled for May 20, 2002. The record further reflects that on May 16, 2002 the Commission received the tenant's pro se motion for a

continuance to retain counsel. Pursuant to that request for continuance by the tenant, the Commission rescheduled the hearing to June 26, 2002, and stated that no further motions for continuances would be allowed the tenant. On June 26, 2002 the Commission held its hearing at 10:00 a.m. Present at the hearing was Joanne Sgro, attorney for the housing provider. Attorney Bernard A. Gray, Sr., appeared at the hearing and stated, for the record, that the tenant had contacted him but had not retained him to represent her at the hearing. The tenant did not appear at the hearing nor did she contact the Commission. At the Commission hearing, counsel for the housing provider noted the two continuances granted the tenant, noted that the Commission's May 20, 2002 order granting the tenant's motion for a continuance to retain counsel stated no further motions for continuances would be allowed the tenant, and requested on the record that the tenant's appeal be dismissed due to the tenant's failure to appear at the Commission's hearing.

After reviewing its records to determine whether the Notice of Hearing was transmitted to the tenant by a means that assured delivery¹ the Commission, citing Polinger Shannon & Luchs Co. v. Alpar, TP 24,417 (RHC Oct. 21, 1999), granted the housing provider's oral motion to dismiss the appeal for want of prosecution of the appeal. See Henson v. Envoy Assoc., L.P., TP 24,881 (RHC Aug. 1, 2001).

¹ The Commission reviewed its record and noted that the record contained proof of delivery of the hearing notice. The United States Postal Service website confirmed that the parcel containing the notice of rescheduled hearing was delivered to 2400 16th Street, N.W., Unit 712, Washington, D.C. 20009 at 10:09 a.m., on May 22, 2002. The delivery confirmation number for the parcel was 03001290000108050186.

II. MOTION FOR RECONSIDERATION

Counsel for the tenant² filed a timely motion for reconsideration of the Commission's August 1, 2001, order dismissing her appeal. In her motion for reconsideration, the tenant, through counsel, argues:

5. Appellant was at Camp when she had an accident requiring surgery. She was taken to Columbia Memorial Hospital in what appears to be Hudson, N.Y. See Attachment 'A' [.]
6. On June 25, 2002 the Appellant was in New York State having an MRI and failed to contact undersigned counsel.
- ...
8. The Appellant attempted to retain counsel but was unable to do so because of her camping accident.

Motion for Reconsideration at unnumbered page 1. Counsel for the tenant, citing the District of Columbia Court of Appeal's decisions in Solomon v. Fairfax Village Condominium IV Unit Owner's Ass'n., 621 A.2d 216, 219-220 (D.C. 1999) and Durham v. District of Columbia, 494 A.2d 1346, 1350 (D.C. 1985), argues:

Because dismissal is such an extreme sanction and because of the principle preferring trial on the merits, the trial court's exercise of discretion must be undertaken with care and consistent with well-established standards. In exercising its discretion under the rule, the trial court should consider first other lesser sanctions. The sanction must also be tailored to the circumstances it is designed to address. Among the factors which the trial court should consider are: (1) the nature of the party's conduct, including whether it was willful; (2) the length of any delay in complying with the court's order; (3) the reason for the delay; and (4) any prejudice to the opposing party.

...

Under these circumstances, because there is strong judicial presumption favoring adjudication on the merits, this Agency should reconsider its Order of August 1, 2002 and hear the case on the merits.

Id. at unnumbered pages 2-3.

² Attorney Bernard A. Gray, Sr., appears on behalf of the tenant in this motion for reconsideration. Henson v. Envoy Assoc., L.P., TP 24,881
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The Commission reviewed the reasons provided by the tenant in her motion for reconsideration of the August 1, 2002, order dismissing her appeal. The Commission notes that the record reflects that the tenant received notice of the Commission's decision to grant her motion for a continuance on May 22, 2002. Accordingly, the tenant had from May 22, through June 26, 2002, to retain counsel, but failed to do so. Further, the tenant failed to contact the Commission's staff to indicate a delayed arrival or to announce or explain her absence, and failed to request a continuance due to "extraordinary circumstances," prior to the hearing, as is provided for in the Commission's rules at 14 DCMR § 3815.1 (1991).

In her motion for reconsideration the tenant directs the Commission's attention to two decisions rendered by the DCCA, Solomon v. Fairfax Village Condominium IV Unit Owner's Ass'n., 621 A.2d 216, 219-220 (D.C. 1999) and Durham v. District of Columbia, 494 A.2d 1346, 1350 (D.C. 1985). The Commission notes that the Court's decisions set forth a standard for dismissal of cases applicable to trial, rather than appellate, courts. The Commission's rules³ provide when its rules are silent on procedural issues, the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals shall be used to decide the issue. In the instant case, the rules of the DCCA are applicable. D.C. App. R. 14, provides, "[t]his court, with or without notice, may dismiss an appeal for failure to comply with these rules or for any other lawful reason." Because the tenant failed to comply with the Commission's June 26, 2002 Notice of Hearing her appeal was dismissed based on a motion from opposing counsel due to her failure to appear. The tenant's motion for reconsideration does not present

³ See 14 DCMR § 3828.1 (Feb. 6, 1998), 45 D.C. Reg. 687.
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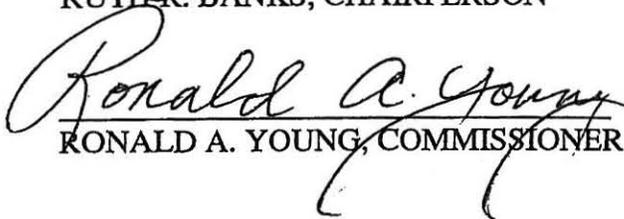
reasons for her failure to appear or her failure to contact the Commission's staff to indicate a delayed arrival or to announce or explain her absence, and to request a continuance due to "extraordinary circumstances," prior to the hearing, as is provided for in the Commission's rules.

Accordingly, for the reasons stated herein, the motion for reconsideration is denied.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



RONALD A. YOUNG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion for Reconsideration of Order to Dismiss Appeal in TP 24,881 was mailed by priority mail with delivery confirmation postage prepaid, this 3rd day of September to:

Joanne Sgro, Esquire
1750 K Street, N.W.
Suite 800
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