DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 26,123

In re: 1207 Q Street, N.W., Unit 6

Ward Two (2)

BEATRICE SYDNOR
Housing Provider/Appellant

v.

SHAUN L. JOHNSON
Tenant/Appellee

DECISION AND ORDER

November 1, 2002

LONG, COMMISSIONER. This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). The District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001) and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991), also govern the proceedings.

I. PROCEDURAL HISTORY

Shaun Johnson, who resided at 1207 Q Street, N.W., Unit 6, filed Tenant Petition (TP) 26,123 on October 24, 2000. In the petition, he alleged that the housing provider, Beatrice Sydnor of B. Sydnor Realty, failed to properly register the housing accommodation, substantially reduced his services and facilities, directed retaliatory action against him, and violated § 4216A [sic] of the Act. The Office of Adjudication scheduled the matter for a hearing on July 10, 2001 at 11:00 a.m. The tenant appeared

for the hearing; however, the housing provider failed to appear. On the morning of the hearing, at 10:31 a.m., the Office of Adjudication received a Certificate of Election of Adjustment of General Applicability and a Housing Deficiency Notice from B. Sydnor via facsimile. At 11:13 a.m., the Office of Adjudication received a request for an emergency continuance from Ms. Sydnor. Administrative Law Judge (ALJ) Henry McCoy convened the hearing and informed the tenant that the housing provider faxed a request for a continuance. The tenant objected to the continuance. Thereafter, the ALJ denied the housing provider's request for a continuance, and the tenant presented evidence on the claims raised in the petition.

On January 29, 2002, the ALJ issued the decision and order. At the beginning of the decision, the ALJ discussed the denial of the housing provider's request for a continuance. The ALJ determined that the housing provider received proper notice of the hearing. The ALJ rhetorically questioned the legitimacy of the emergency, because the housing provider had the capacity to fax two documents on the morning of the hearing. The ALJ found that the housing provider substantially reduced the tenant's services by failing to abate housing code violations. The ALJ also found that the housing provider acted in bad faith. Consequently, the ALJ ordered the housing provider to refund $12,069.00 to the tenant. This figure included a rent refund of $11,385.00, which consisted of a refund of $3795.00, trebled for bad faith, and interest in the amount of $684.00.

On February 13, 2002, the housing provider's attorney, Brian Lederer, filed a motion for reconsideration of the ALJ's decision. The tenant filed a motion to dismiss

the housing provider's motion for reconsideration. The ALJ did not respond to the motion for reconsideration, and it was denied by operation of law.[1]

The housing provider, through counsel, filed a notice of appeal with the Commission on March 14, 2002. In response, the tenant filed a reply and asked the Commission to dismiss the appeal. In an order dated April 19, 2002, the Commission denied the tenant's request to dismiss the appeal. Subsequently, the housing provider moved for summary reversal, and the Commission denied the request for summary reversal on June 20, 2002.

On June 27, 2002, the Commission held the hearing on the issues raised in the notice of appeal. The tenant and the housing provider's attorney appeared for oral argument. In response to questions from the bench, the housing provider requested leave to file a post-hearing submission, to which the tenant filed a response. On July 11, 2002, the Commission granted the housing provider's request to file the post-hearing submission.

II. ISSUES ON APPEAL

The housing provider, through counsel, raised the following issues in the notice of appeal.

1. Whether the ALJ committed plain error by finding improperly that the Respondent owned the property.

2. Whether the order is supported by substantial evidence of record on the issues of reduction in services, knowing violation, and treble damages.

3. Whether the ALJ's adjustment for reduction of service is supported by the substantial evidence of record and is completely unreasonable based on the actual evidence in the record regarding the nature of the violation, duration, and substantiality.

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[1] "Failure of a hearing examiner to act on a motion for reconsideration within the time limit prescribed by §4013.2 shall constitute a denial of the motion for reconsideration." 14 DCMR § 4013.5 (1991).

4. Whether the ALJ abused his discretion and acted unreasonably against the need to resolve petitions on the merits, by denying Respondent['s] emergency motion for continuance, based on the medical emergency of sudden high blood pressure.

III. OVERVIEW

When the ALJ held the evidentiary hearing, the housing provider did not appear, personally or through counsel. Consequently, the tenant presented his case, and the ALJ issued a default judgment. The housing provider challenged the merits of the ALJ's decision, when he filed the notice of appeal and presented oral argument to the Commission. During the hearing on appeal, the Commission questioned counsel concerning his client's standing to appeal the merits of the decision, when neither she nor her attorney appeared for the hearing below. In response, counsel asserted his client's unfettered right to challenge the merits of the hearing examiner's decision.

"It is well established that a party who fails to appear at an evidentiary hearing before the Rent Administrator[2] generally lacks standing to appeal from the decision which flows from that hearing." Wofford v. Willoughby Real Estate, HP 10,687 (RHC Apr. 1, 1987) at 2 (citing DeLevay v. District of Columbia Rental Hous. Comm'n, 411 A.2d 354 (D.C. 1980)). When a party who has not participated in the hearing below appeals the merits of the decision, the Commission is compelled to dismiss the appeal of the merits, because the party lacks standing. See Jenkins v. Cato, TP 24,487 (RHC Feb. 15, 2000); Turner v. Ellison, TP 21,160 (RHC Mar. 22, 1990); Keys v. Jones, TP 20,314 (RHC Feb. 8, 1990).

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[2] The ALJ held the hearing and issued the decision and order pursuant to a delegation of authority from the Rent Administrator. See D.C. OFFICIAL CODE § 42-3502.04 (2001).

During the hearing in the instant appeal, the Commission questioned counsel on the issue of standing and directed counsel to the Court's decision in Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478 (D.C. 1996). Following the Commission's hearing, counsel filed a post-hearing submission and argued, for the first time on appeal, the applicability of the Radwan factors.

The Commission's review is limited to the issues that are raised in the notice of appeal. 14 DCMR § 3807.4 (1991). A party must file the appeal within ten days after the Rent Administrator issues the decision. D.C. OFFICIAL CODE § 42-3502.16(h) (2001); 14 DCMR § 3802.2 (1991). The time for filing an appeal is jurisdictional. The Commission cannot enlarge the appeal period or review issues that a party raises after the appeal period ends. Lupica v.Balsham, HP 20,071 (RHC Feb. 12, 1988) (citing Smith v. District of Columbia Rental Accommodations Comm'n, 411 A.2d 612 (D.C. 1980); see also 14 DCMR § 3816.6 (1991).

Accordingly, the Commission will only review those competent issues that the housing provider had standing to raise in the notice of appeal. The Commission cannot review issues that the housing provider raised in the post-hearing submission, because the housing provider filed the submission after the appeal period ended.[3]

IV. DISCUSSION

A. Whether the ALJ committed plain error by finding improperly that the Respondent owned the property.

B. Whether the order is supported by substantial evidence of record on the issues of reduction in services, knowing violation, and treble damages.

C. Whether the ALJ's adjustment for reduction of service is supported by

[3] When a party raises issues post-hearing, the opposing party is denied the right to receive notice and an opportunity to respond to the appeal issues in pleadings, briefs, and oral argument. See 14 DCMR §§ 3802.6–3802.8 (1991).

the substantial evidence of record and is completely unreasonable based on the actual evidence in the record regarding the nature of the violation, duration, and substantiality.

The first three issues raised in the notice of appeal, Issues A–C, embody challenges to the merits of the ALJ's decision. The housing provider does not have standing to raise Issues A–C, because she failed to appear for the evidentiary hearing. The Commission has applied an exception to the general rule that a party who fails to appear for an evidentiary hearing does not have standing to challenge the results on appeal. "An exception to this general rule obtains when an appellant seeks relief on the grounds that he or she did not receive notice of the hearing." Wofford v. Willoughby Real Estate, HP 10,687 (RHC Apr. 1, 1987) at 2 (emphasis added). When assessing the issue of standing, the Commission's review is limited to the issues raised in the notice of appeal.[4]

The housing provider challenged the ALJ's findings on the merits of the tenant's claims. However, the housing provider did not seek relief on the grounds that she did not receive notice of the hearing. Issues A-C contain no reference to the housing provider's failure to appear at the OAD hearing or the resulting default judgment. Moreover, the housing provider did not raise or apply the Radwan factors in the notice of appeal.

The District of Columbia Court of Appeals identified four factors that a party must meet when the party asks an agency to set aside a default judgment. Those factors are the following: "(1) whether the movant had actual notice of the proceeding; (2) whether he acted in good faith; (3) whether the moving party acted promptly; and (4)

[4] "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error." 14 DCMR § 3807.4 (1991).

whether a prima facie adequate defense was presented. Radwan v. District of Columbia Rental Housing Comm'n, 683 A.2d 478, 481 (D.C. 1996).

In Radwan, the housing provider filed an appeal and asked the Commission to vacate the default judgment. When the housing provider, through counsel, raised Issues A-C in the instant case, the housing provider challenged the merits of the underlying decision. The housing provider did not challenge the entry of the default judgment or establish entitlement to relief by meeting the Radwan factors. When counsel appeared for the Commission's hearing, he candidly acknowledged that he was not aware of the Radwan opinion. The housing provider's attorney argued that his client had standing to challenge the merits of the ALJ's decision, notwithstanding the fact that the housing provider failed to appear for the evidentiary hearing.

After the Commission's hearing, the housing provider filed a post-hearing submission. In this submission, the housing provider belatedly raised issues related to the default judgment and the Radwan factors. The Commission permits parties to file legal memoranda and briefs post-hearing. However, the Commission only considers legal arguments concerning the issues that were properly raised on appeal. See Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66 (D.C. 1986).

As stated previously, the Commission and the Court have held that a party who fails to appear for an evidentiary hearing does not have standing to appeal the merits of the decision. The Commission has applied an exception to this general rule when a party files a notice of appeal and asks the Commission to vacate a default judgment, because the party did not receive notice of the hearing. John's Properties v. Hilliard, TPs 22,269 & 21,116 (RHC June 24, 1993). The exception to this rule was not triggered in the

instant case, because the housing provider did not allege that the agency failed to provide notice of the hearing.

When the ALJ issued the decision and order, he held that the housing provider received notice of the hearing. The record contains the United States Postal Service (USPS) tracking document, which shows that the USPS delivered the hearing notice to the housing provider. The housing provider did not challenge the ALJ's ruling on notice.

Assuming, arguendo, that the housing provider made a timely request to vacate the default judgment, she could not establish her entitlement to relief under Radwan because there was record evidence of notice. Confronted with an appellant who did not request the Commission to vacate the default judgment in C.I.H. Properties v. Torain, TP 24,817 (RHC July 17, 2000), the Commission held the following: "If CIH had raised the Radwan test, it did not meet the burden of the first element of the test, because the actual receipt of the OAD notice of the hearing, which is one of the four factors in the test, is not in dispute." Id. at 8-9. Similarly, notice is not in dispute in the instant case.

The housing provider failed to appear for the duly noticed evidentiary hearing. Since the housing provider failed to appear for the hearing, she did not have standing to challenge the merits of the decision. Accordingly, the Commission dismisses Issues A-C.

D. Whether the ALJ abused his discretion and acted unreasonably against the need to resolve petitions on the merits, by denying Respondent['s] emergency motion for continuance, based on the medical emergency of sudden high blood pressure.

On the morning of the hearing, the Office of Adjudication received two facsimiles from the housing provider. The first transmittal contained a handwritten cover sheet from the housing provider, B. Sydnor, a Certificate of Election of Adjustment of General

Applicability, and a Housing Deficiency Report. The second transmittal was a request for an emergency continuance. The request contained the following:

> Emergency to cont.
> Dr. Dribble Office
> Yesterday. 877 2200
> Pressure up this morn.
> B. Sydnor

When the ALJ convened the hearing, he advised the tenant that the housing provider requested a continuance. The tenant objected to the continuance. The tenant stated that "this had been going on for a while, and [he] had to take off work again to deal with Ms. Sydnor." OAD Hearing Transcript (July 10, 2001) (TR) at 4. In addition, the tenant stated that he was taking medication; however, he appeared for the hearing because he was required to attend. The ALJ noted the tenant's objection.

The ALJ denied the housing provider's request for a continuance and stated:

> My denial is based on the fact that appropriate notices were sent out. It appears that the … housing provider did receive her notice. Also, in light of the two faxed transmissions this morning, I call into question whether or not there is a true emergency. If she had the presence of mind to make a transmission to this office at 10:30 and then for some reason—if her pressure was up this morning, then her pressure was up at the time she made her initial transmission, and it was at that time that she could have expressed the need for a continuance, and then it could have been appropriately factored in.

Tr. at 4-5.

The housing provider, through counsel, argues that the hearing examiner abused his discretion when he denied the housing provider's request for a continuance. The Act empowers the Commission to reverse any decision of the Rent Administrator, which it finds to be an abuse of discretion. D.C. OFFICIAL CODE § 42-3502.16(h) (2001). When

the Commission reviewed the record in the instant case, the Commission found that the ALJ did not abuse his discretion.

On the face of the request for an emergency continuance, the housing provider stated that she visited Dr. Dribble on the day before the hearing, and she stated that her pressure was elevated on the morning of the hearing. However, the housing provider did not offer any supporting documentation to show that she actually visited a medical doctor on the day before the hearing. Additionally, the housing provider did not show that she was treated for high blood pressure or a similar ailment that would impact her ability to appear on the day of the hearing.

In John v. Harmony Properties Tenant Assoc., TP 20,948 (RHC Aug. 25, 1989), the Commission held that the hearing examiner abused his discretion when he denied the housing provider's request for a continuance that was based on a medical emergency. The Commission held that the hearing examiner abused his discretion, because the record contained, among other things, a statement from the housing provider's physician that the housing provider was medically disabled on the day of the hearing.

In the instant case, the housing provider presented no documentation to show that she was medically disabled on the day of the hearing. When the housing provider's attorney filed the motion for reconsideration, he presented documentation to show that the housing provider was hospitalized in January, March, and November 2001. However, the housing provider presented no documents to support her claim that she was medically disabled on July 10, 2001, the day of the evidentiary hearing. On the contrary, the housing provider faxed a certificate of election and a housing deficiency notice to the Office of Adjudication on the morning that she claimed to face a medical emergency.

The ALJ denied the continuance, stating that the housing provider's ability to transmit the documents caused him to question whether she was experiencing a legitimate medical emergency.

The ALJ did not abuse his discretion when he denied the housing provider's request for a continuance. The housing provider did not present documentation to support her claim that she was experiencing a medical emergency on the day of the hearing. Additionally, the housing provider's ability to transmit housing documents on the hearing day undermined the legitimacy of her claim that she was medically incapacitated.

Accordingly, the Commission denies Issue D.

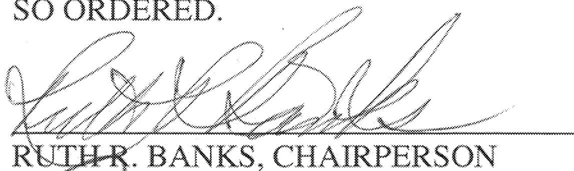
V. CONCLUSION

The Commission dismisses Issues A-C, because the housing provider did not have standing to challenge the merits of the hearing examiner's decision.

Further, the Commission denies Issue D, because the ALJ did not abuse his discretion when he denied the housing provider's request for a continuance.

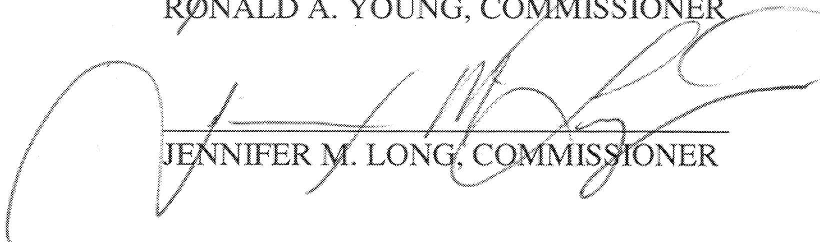
The Commission affirms the ALJ's decision and order.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER



JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 26,123 was sent by priority mail with delivery confirmation, postage prepaid, this 1st day of November 2002 to:

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