

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,158

In re: 3513 Thirteenth Street, N.W., Unit 10

Ward Four (4)

THOMAS and ANNA JOHN
Housing Providers/Appellants

v.

SHERREE BLOUNT
Tenant/Appellee

ORDER DISMISSING APPEAL

August 6, 2002

PER CURIAM. On March 11, 2002, Hearing Examiner James C. Harmon in the Office of Adjudication (OAD) issued a decision and order in Tenant Petition (TP) 27,158. Neither of the named housing providers, Thomas nor Anna John, appeared at the OAD hearing. However the tenant, Sherree Blount, and her attorney, Julie A. Feldman, appeared and presented evidence to support the allegations in her tenant petition. In his decision and order, the hearing examiner found that the tenant proved, by a preponderance of the evidence, that the housing providers violated D.C. OFFICIAL CODE § 42-3502.11 (2001) and 14 DCMR § 4211.6 (1991) by substantially reducing services provided in connection with her unit. Accordingly, the hearing examiner rendered a default judgment against the housing providers. The housing providers filed a motion for reconsideration on March 14, 2002. On April 11, 2002, the hearing examiner issued an order denying the housing providers' motion for reconsideration, citing their failure to set forth a basis for granting the motion under 14 DCMR § 4013.1 (1991). See Blount v.

John, TP 27,158 (OAD Mar. 11, 2002). Prior to the issuance of the hearing examiner's order denying the motion, the housing providers filed a notice of appeal on April 2, 2002.¹

In accordance with 14 DCMR § 3804.1 (1991), the Rental Housing Commission (Commission) requested the certified record from the OAD. When the Commission received the record, the Commission mailed a combined Notice of Scheduled Hearing and Notice of Certification of Record (Notice) to the parties. The Notice was sent by the United States Postal Service via Priority Mail with delivery confirmation on April 16, 2002, and was addressed to the parties at their respective addresses that were included in the parties' pleadings. The Notice advised the parties of their right to file briefs pursuant to 14 DCMR § 3802 (1991), and included the date of the hearing on appeal, which was scheduled for June 13, 2002 at 2:00 p.m.

On June 13, 2002, only the tenant, Sherree Blount appeared at the Commission's hearing, accompanied by a different attorney, Rebecca Lindhurst. Just prior to the commencement of the hearing, Ms. Lindhurst filed a written Motion for Special Appearance, which the Commission granted.² After allowing additional time for the

¹ When the hearing examiner issued the order denying the housing providers' motion for reconsideration on April 11, 2002, the motion, which was filed on March 14, 2002, had already been denied by operation of law pursuant to 14 DCMR § 4013.5 (1991). The regulation provides that when more than ten days has elapsed since the moving party filed a motion for reconsideration, the motion is deemed denied.

² At the OAD hearing, the tenant was represented by Julie Feldman of the non-profit organization, Bread for the City. At the Commission hearing on June 13, 2002, Rebecca Lindhurst, also a staff member with Bread for the City, appeared on the tenant's behalf. As a member in good standing with the New York Bar with a waiver application to the District of Columbia Bar pending, Ms. Lindhurst moved for a special appearance to represent the tenant at the Commission's hearing pursuant to D.C. APP. CT. R. 49 and 14 DCMR § 3812 (b) (1991). Because the written Motion for Special Appearance that Ms. Lindhurst presented at the hearing did not contain the required certificate of service, the Commission noted the mistake at the hearing, and issued an order to refile the motion attaching a certificate of service on June 14, 2002. On June 21, 2002, counsel for the tenant filed a second motion with a proper certificate of service. On July 11, 2002, the Commission issued an order granting the Motion for Special Appearance.

housing providers' arrival, the Commission convened the hearing at approximately 2:10 p.m. Chairperson Banks noted the housing providers failed to appear at the hearing.

Ordinarily, the Commission dismisses an appeal when an appellant fails to appear at the Commission's hearing to argue the issues in his or her appeal. See Polinger Shannon & Luchs Co. v. Alpar, TP 24,417 (RHC Nov. 10, 1999). Counsel for the tenant initially requested a dismissal for failure to appear. However, in spite of the housing providers' absence, counsel for the tenant withdrew her initial request, asking the Commission instead to render a decision on the merits of the housing providers' appeal. Counsel for the tenant then proceeded with arguments on the merits of the appeal.

Having considered the tenant's request to have the appeal decided on its merits, the Commission grants the tenant's request, but only with respect to the housing providers' challenge of the default judgment.

When a party fails to appear at the hearing before the Rent Administrator, the law precludes the Commission from reviewing the substantive issues raised in the appellant's notice of appeal, except where the appellant challenges a resulting default judgment. In DeLevay v. District of Columbia Rental Hous. Comm'n, 411 A.2d 354 (D.C. 1980), the District of Columbia Court of Appeals held that a party who fails to appear at a hearing before the Rent Administrator is not an "aggrieved party" within the meaning of D.C. OFFICIAL CODE § 42-3502.16 (h) (2001) and therefore lacks standing to challenge the results on appeal. See also Johnson v. Sollins, TP 23,498 (RHC Oct. 20, 1997); Mellon Property Mgmt. Co. v. Thomas, TP 23,466 (RHC Mar. 31, 1997). In addition, when a party fails to appear before the Rent Administrator, the Commission cannot review the merits of the appeal. See Turner v. Ellison, TP 21,160 (RHC Mar. 22, 1990).

However, in John's Properties v. Hilliard, TPs 22,269 & 21,116 (RHC June 24, 1993), the Commission held that it may review the issues raised in a party's notice of appeal when that party moves the Commission to vacate a default judgment based on a failure to appear, because the party did not receive notice of the hearing.

"When assessing the issue of standing, the Commission's review is limited to the issues raised in the notice of appeal." Jenkins v. Cato, TP 24,487 (RHC Feb. 15, 2000) at 4. In addition to raising two substantive issues, the housing providers' notice of appeal does challenge the default judgment that resulted from their absence from the OAD hearing. Notice of Appeal at 1. Therefore, although the housing providers in the instant case failed to appear at the hearing before the Commission, the Commission may still exercise its discretion and grant the tenant's request to review the merits on the default judgment issue, as the only reviewable issue on appeal under Johns Properties.

When a party petitions the Commission to set aside a default judgment based on a failure to appear at an OAD hearing, the Commission must determine whether the moving party satisfies the four factors as identified by the Court in Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478 (D.C. 1996). Those factors are: "(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) whether a prima facie adequate defense was presented. Against these factors, prejudice to the non-moving party must be considered." Radwan, 683 A.2d at 481 (quoting Dunn v. Profitt, 408 A.2d 991, 993 (D.C. 1979)). In the instant case, as in Radwan, the housing provider filed an appeal and asked the Commission to vacate a default judgment.

The first factor in Radwan is whether the Appellants received actual notice of the OAD hearing. There is sufficient record proof demonstrating that notice of the OAD hearing was properly served on the housing providers. On December 11, 2001, the OAD sent an Official Reschedule Notice of Hearing (OAD Notice) jointly to the Appellants, Thomas and Anna John, by Priority Mail with delivery confirmation, at P.O. Box 60661, Washington, D.C. 20039, which was the address included on the tenant petition and later indicated on the housing providers' notice of appeal. Using the same method of delivery, an additional copy of the OAD Notice was sent to Thomas and Anna John, at a second address: 4815 North Capitol Street, N.W., Washington, D.C. 20039. Indicated at the bottom of the OAD Notice is an executed Certificate of Service that indicates Stacey Washington, the official certifying party within the OAD, mailed the notice to Thomas and Anna John at the their addresses of record. The Delivery Confirmation Receipts for the mailing to the housing providers' post office box contains the delivery confirmation number, 0301-1120-0010-1556-7051. The second mailing to the street address has the delivery confirmation number, 0301-0120-0010-1556-7105.³ Using these tracking numbers, a search of the United States Postal Service's tracking website confirmed delivery of the Notice to the housing providers' addresses of record at 10:22 a.m., and 4:50 p.m. respectively on December 12, 2001. R. at 55-56. This tracking information

³ The Commission observes that the OAD and the Commission sent hearing notices to the housing provider at 4815 North Capitol Street, N.W., using an erroneous zip code, 20039. The correct zip code for that street address, according to the United States Postal Service (USPS), is 20011. Also, the address on the housing providers' stationery indicates the zip code is 20011. See Record at 50. The USPS apparently recognized the error and the delivery confirmation notice reflects delivery to zip code 20011, according to the USPS tracking website. Moreover, the Commission confirmed delivery of both the OAD and Commission Notices to P.O. Box 60661, Washington, D.C. 20039, which is the address that the housing providers supplied in their notice of appeal. Therefore, the record demonstrates that the housing providers were properly served with notice of the OAD and RHC hearings.

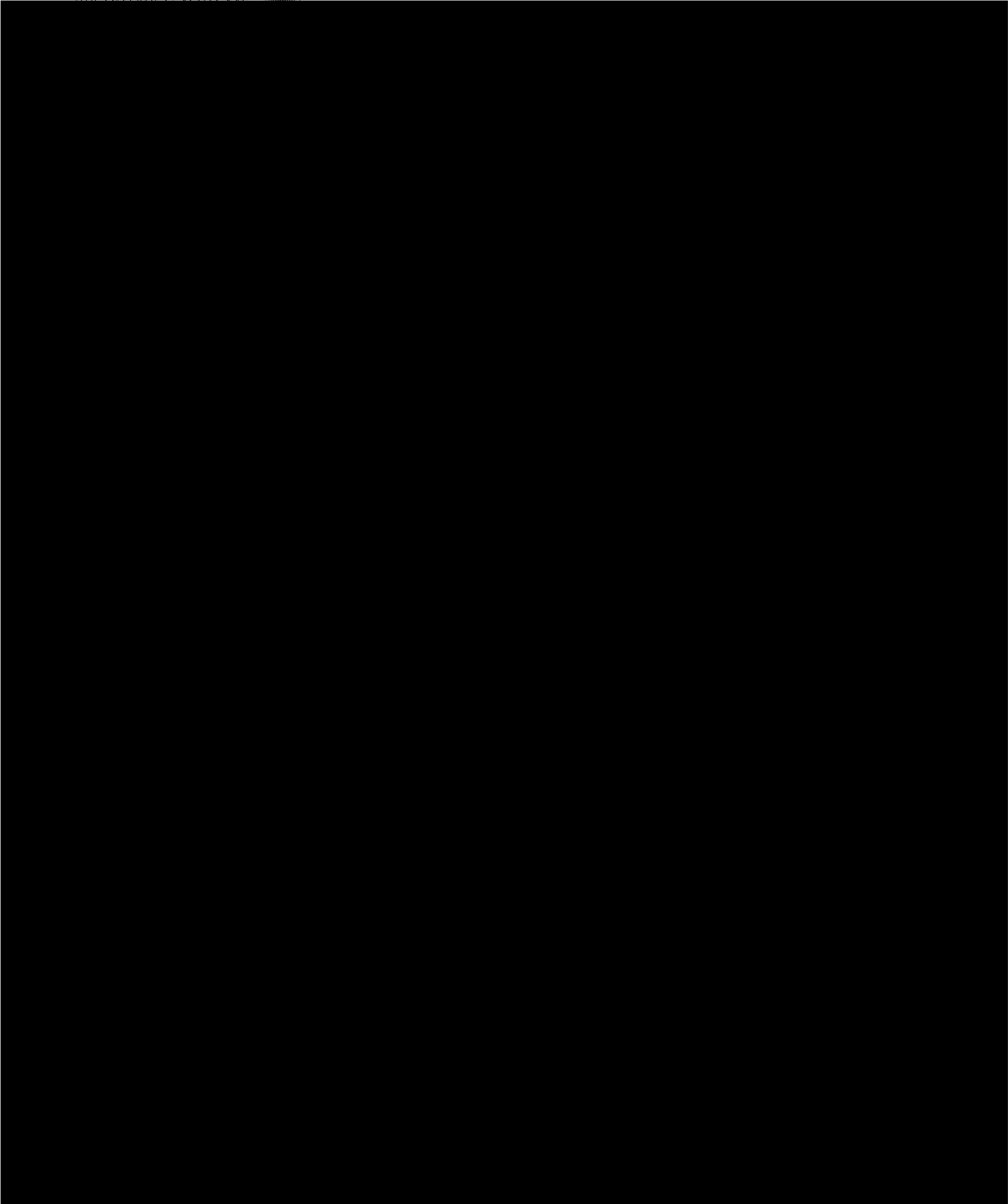
was printed from the Internet and placed in the OAD record. See R. at 55. The United States Postal Service Delivery Confirmation Receipts bearing the tracking numbers are affixed to the copies of the Official Reschedule Notice of Hearing that were sent to each party, and are currently in the OAD record. See R. at 54.

Accordingly, the record evinces proper service of the OAD Notice upon the housing providers. Consequently, since the housing providers had notice, the first factor in the Radwan test is satisfied, thereby disposing of any further inquiry as to the remaining three factors.

The housing providers in the instant case received notice and failed to appear for the OAD hearing. They then filed an appeal challenging the merits of the hearing examiner's decision and order and the entry of the default judgment. Since the housing providers did not appear at the OAD hearing, they lacked standing to challenge the results on appeal. The housing providers also failed to appear at the Commission hearing, which ordinarily serves as a basis for the Commission to dismiss the appeal. However, in response to the tenant's request to review the appeal on its merits, the Commission proceeded to review only the housing providers' challenge to the default judgment raised in their notice of appeal, as permitted by the decision in Johns Properties.

Applying the Radwan four-part test, the Commission concludes that the housing providers failed to satisfy the first prong of the test because record evidence demonstrates

that the housing providers' received notice of the OAD hearing. Therefore, in accordance with Radwan, the housing providers' request to vacate the default judgment is



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order Dismissing the Appeal in **TP 27,158** was delivered by first-class mail and priority mail with delivery confirmation, this **6th August 2002** to:

Rebecca Lindhurst, Esquire
Elizabeth R. Campbell, Esquire
Julie A. Feldman, Esquire
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LaTonya Miles
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