DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,312

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

Ward One (1)

ENVOY ASSOCIATES LIMITED PARTNERSHIP
Housing Provider/Appellant

v.

2400 TENANT ASSOCIATION
Tenant/Appellee

ORDER ON MOTION TO ENLARGE THE TIME TO FILE RESPONSIVE BRIEF

April 9, 2003

BANKS, CHAIRPERSON. On November 22, 2002, the Rent Administrator issued a decision and order in TP 27,312. On December 12, 2002, the Housing Provider filed a notice of appeal alleging that the decision and order should have dismissed the tenant petition with prejudice, rather than without prejudice. On February 25, 2003, the Commission issued the combined notice of its hearing scheduled for Friday, April 11, 2003, and notice of receipt of the certified record. The notice had attached to it some of the Commission's rules, specifically rules, 14 DCMR § § 3801-03 (1991). The rules require the filing of a brief within five (5) days of notification that the Commission received the certified record, 14 DCMR § 3802.7 (1991). On March

31, 2003, counsel for the tenant association filed a motion to enlarge the time to April 7, 2003 for filing a responsive brief to the Housing Provider's brief filed on February 28, 2003, which was three days after receipt of the Commission's notice. In addition, on March 31, 2003, counsel for the tenant association entered his appearance in the appeal.

A. The Law

The Commission's rules provide: "Parties may file briefs in support of their position within five (5) days of receipt of notification that the record in the matter has been certified," 14 DCMR § 3802.7 (1991). "Parties may file responsive briefs within ten (10) days of service of the pleading to which the response is being filed," 14 DCMR § 3802.8 (1991). "There shall be no reply to a responsive brief and the Commission shall not accept the brief if submitted," 14 DCMR § 3802.9 (1991). In addition:

> Any party may move to request a continuance of any scheduled hearing or for extension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Commission.

14 DCMR § 3815.1 (1991).

Motions shall set forth good cause for the relief requested.

14 DCMR § 3815.2 (1991), cited in MPM Mgmt. v. Perla, TP 27,190 (RHC Mar. 11, 2003).

B. DISCUSSION AND ORDER

Under the Commission's rules, the Housing Provider had five business days to file an opposition to the motion to enlarge time, that expired on April 7, 2003, 14 DCMR § 3814.3. In addition, three business days are added for a total of eight (8) business days, because the motion was served by mail, 14 DCMR § 3816.5 (1991). That time period expires on Thursday, April 10, 2003, the day before the hearing. However, the opposition was filed on Friday, April 4, 2003. That left four business days, Monday - Thursday, April 7-10, 2003, for the Commission to issue an order on the motion before the hearing scheduled for Friday, April 11, 2003.

In Metropolitan Baptist Church v. District of Columbia Dep't of Consumer and Regulatory Affairs, 718 A.2d 119 (D.C. 1998), the court stated the factors to be considered for a continuance are: 1) the reasons for the continuance (or extension of time, as in this case), 2) the prejudice resulting from the denial, 3) the party's diligence in seeking relief, 4) any lack of good faith, 5) and prejudice

to the opposing party. Daley v. United States, 739 A.2d 814 (D.C. 1999).

In this appeal, the reason for the continuance was the belated retention of counsel for the appeal by the Tenants who were pro se at the Rent Administrator's hearing. However, the Tenants did not appeal the dismissal of their petition, although the decision and order notified them of their right to appeal to the Commission no later than December 15, 2002.

The second factor to be considered is the prejudice resulting from the denial of the motion to enlarge the time to file the brief, as well as the prejudice to the opposing party. The denial of the motion will result in minimal prejudice to the Tenants, since they still have the opportunity to appear at the hearing on April 11, 2003, and make all arguments deemed appropriate. It is not mandatory under the Commission's rules that the Tenants file a brief. See 14 DCMR § 3802.7-.8 (1991), which states parties "may" file briefs and responsive briefs. On the reverse side, the Housing Provider would suffer the prejudice of arguments that were not timely filed before the hearing.

Third, the Tenants were not diligent in seeking the relief of the enlargement of time to file their brief. Their brief was due within ten days of service of the

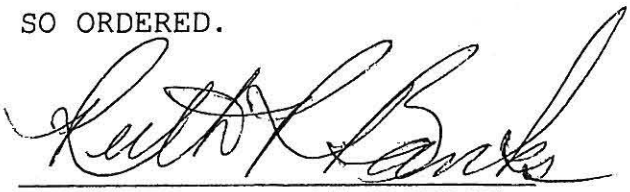
Housing Provider's brief, 14 DCMR § 3802.8 (1991). That period of time expired on March 14, 2003. They filed the motion to enlarge the time on March 31, 2003, which was two weeks later than the due date of the brief. Although there were two weeks before the Commission's hearing on April 11, 2003, under the Commission's rules, most of that time was allowed for the opposition to the motion to enlarge the time, which was timely filed on April 4, 2003. See 14 DCMR § 3814.3 (1991). Moreover, the motion to enlarge the time does not state when counsel was retained, and therefore no evaluation is possible on the diligence of counsel. Engagement of new counsel must be promptly stated after notice of the hearing, when seeking an enlargement of time. See 14 DCMR § 3815.3 (1991).

The Tenants lack good faith in their argument that the Commission did not present all rules to them. While that is true, there is no duty on the Commission to provide the parties with its rules, regardless of whether they are represented by counsel. However, in fact, the Tenants were provided with the rules related to the filing of their brief. The rules related to filing briefs were attached to the combined notice of hearing and notice of receipt of the certified record. Pro se litigants can expect no special or preferential treatment from the court. Abell v. Wang,

697 A.2d 796, 804 (D.C. 1997); MacLeod v. Georgetown Univ. Medical Center, 736 A.2d 977, 979-980 (D.C. 1999). Pro se litigants must comply with the rules, Solomon v. Fairfax Village Condominium IV Unit Owners Assoc., 621 A.2d 378 (D.C. 1993).

Based on the foregoing analysis of factors to be considered when considering the enlargement of time, the Tenants' motion to enlarge the time to file their brief is denied.

SO ORDERED.



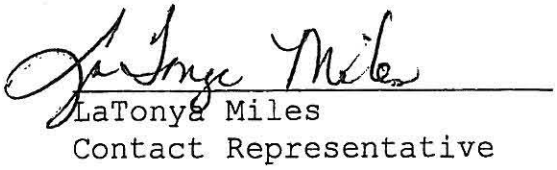
RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO ENLARGE THE TIME TO FILE RESPONSIVE BRIEF** in TP 27,312 was mailed by priority mail, with confirmation of delivery, postage prepaid this 9th day of April, 2003, to:

Dalton Howard, Esquire
Brooks and Howard
6701 16th Street, N.W.
Washington, D.C. 20012

Mark J. Policy, Esquire
Greenstein Delorme & Luchs, P. C.
1620 L Street, N.W.
Washington, D.C. 20036



LaTonya Miles
Contact Representative