

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,486

In re: 3500 14th Street, N.W., Unit

Ward One (1)

HERMAN GADSON
Tenant/Appellant

v.

DORA HALLMARK
Housing Provider/Appellee

ORDER ON REMAND

October 21, 2003

BANKS, CHAIRPERSON. On April 12, 2002, Herman Gadson, filed Tenant Petition (TP) 27,486, and on March 13, 2003, Hearing Examiner Gerald Roper issued the decision and order. On March 24, 2003, Gadson, Tenant, filed his notice of appeal in the Commission. On August 7, 2003, the hearing examiner certified to the Commission that the hearing record contained one hearing tape. However, when the Commission examined the certified record, there was no hearing tape in the certified file. Therefore, the Contact Representative for the Commission caused a search for the missing hearing tape. However, it was not found before the Commission's hearing scheduled for October 21, 2003, and the hearing was cancelled.

THE COMMISSION'S ORDER

The Act, D.C. OFFICIAL CODE § 42-3502.16 (2001), requires all hearings and appeals be in conformity with the District of Columbia Administrative Procedure Act (DCAPA), which requires decisions be based on "an official record in each contested

case, to include testimony and exhibits...[which] shall constitute the exclusive record for order or decision.” D.C. OFFICIAL CODE § 2-509(c) (2001). The Commission’s rules provide that hearing tapes are an essential part of the certified record. 14 DCMR § 3804.3(b) (1991). The Commission must have the hearing tapes for its review of the hearing record, and in the absence of hearing tapes, the appeal is disposed of by remand to the hearing examiner for a hearing, usually de novo. See Lustine Realty Co., Inc. v. Tenants of 2724 Woodley Pl., N.W., HP 20,781 (RHC Aug. 16, 2002) (where the Commission remanded the case to the hearing examiner because the hearing tape was not certified and transmitted to the Commission), Mellon Property Mgmt. v. Tenants of 111 Columbia Road, N.W., HP 20,745 (RHC May 19, 1997); Dorchester Hous. Assoc. v. Tenants of Dorchester Hous., CI 20,672 (RHC June 3, 1997); Holberg v. Davis, TP 23,529 (RHC Apr. 11, 1996); Joyce v. Webb, TP 20,720 (July 31, 2000) (where the Commission remanded because of partial transcripts due to inaudible tapes).

Accordingly, the Commission remands this appeal for a hearing de novo, because the hearing tapes are lost, and were never received by the Commission.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission’s rule, 14 DCMR § 3823.1 (1991), provides, “[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision.”

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON REMAND in TP 27,486 was mailed by priority mail, with confirmation of delivery, postage prepaid this 21st day of October, 2003, to:

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Washington, D.C. 20009

Dora Hallmark
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LaTonya Miles
Contact Representative