

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,600

In re: 329 Rhode Island Avenue, N.E.

Ward Five (5)

JON BLAKE
Tenant/Appellant

v.

JAI SHIN
Housing Provider/Appellee

ORDER DISMISSING APPEAL

October 30, 2003

BANKS, CHAIRPERSON. On April 28, 2003, Gerald Roper, Hearing Examiner, issued the final decision and order on behalf of the Rent Administrator. On July 7, 2003, Jon Blake, who represents himself to be the Tenant of Jai Shin, filed an appeal in the Commission. On October 23, 2003, the Commission held its hearing on the appeal. One of the preliminary issues at the Commission's hearing was whether the appeal was timely filed, since the ten day period for filing a notice of appeal is jurisdictional. A court may sua sponte raise a jurisdictional issue. See Brandywine v. District of Columbia Rental Hous. Comm'n, 631 A.2d 415 (D.C. 1993).

THE COMMISSION'S ORDER

For appeals, the Commission's rules state:

A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and if the decision is served by mail an additional three (3) days shall be allowed.

14 DCMR § 3802.2 (1991).

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by §4014.

14 DCMR § 3802.3 (1991).

The time limit for filing an appeal of agency actions is mandatory and jurisdictional and once the time prescribed by the rule has passed, the reviewing court is without power to hear the case. Totz v. District of Columbia Rental Hous. Comm'n, 474 A.2d 827, 829 (D.C. 1984). In Smith v. District of Columbia Rental Hous. Comm'n, 411 A.2d 612, 614 (D.C. 1980), the court vacated the Commission's action that occurred on an appeal that was filed late. See Camp v. Ghani, TP 27,533 (RHC Jan. 27, 2003) (where the appeal was dismissed because it was filed too late); Young v. Majeed & Independence Property Mgmt., TP 20,352 (RHC Feb. 12, 1988) (where the Commission dismissed an appeal filed one day too late).

At the Commission's hearing on the Blake appeal, it was indicated that the appeal appeared to be untimely filed, because the decision was issued on April 28, 2003, and the appeal was filed on July 7, 2003. Mr. Blake stated that he filed in the Rental Accommodations and Conversion Division (RACD) a motion for reconsideration of the hearing examiner's decision and order. The Chairperson inquired whether Mr. Blake had a copy of the motion for reconsideration with a file date stamp made with blue ink, not a copy of a file date stamp, to show when he filed the motion for reconsideration in RACD where the Rent Administrator is located. He answered in the affirmative, and stated he would bring the blue ink file date stamped copy of the motion for reconsideration to the

Commission for inspection by the Chairperson or other Commissioners. On Monday, October 27, 2003, Mr. Blake brought a copy of the motion for reconsideration, which *did not have a file date stamp on it, in blue ink or otherwise*. Instead, he submitted original United States Postal Service (USPS) receipts with the red ink date stamp of May 30, 2003 on the receipts, which showed the date of mailing.

The decision of the hearing examiner stated that motions for reconsideration and appeals should be filed no later than May 15, 2003. Mr. Blake wrote in his appeal that he did not receive the decision until May 19, 2003, which is four days beyond the date for a motion for reconsideration or appeal. However, the "Track & Confirm" report from the USPS web site in the record stated that the decision was delivered to Mr. Blake's address of record on April 29, 2003, but Mr. Blake asserted at the hearing that he did not receive the decision due to problems with his mailbox.

Under the circumstance that Mr. Blake cannot show a blue ink file date stamp from RACD on a copy of his motion for reconsideration, the Commission does not have record evidence that the motion was filed in RACD. At best, Mr. Blake has shown the date of mailing the motion to RACD, but not a date of filing the motion in RACD. Consequently, the notice of appeal was untimely filed beyond the date, May 15, 2003, which was stated on the decision.

Nevertheless, the Commission allowed Mr. Blake the opportunity to show that he timely filed a motion for reconsideration starting from the date, May 19, 2003, when he asserted that he received the decision. The Commission reviewed his assertions and determined he could not prove the motion for reconsideration was timely filed for the following reasons. Pursuant to RACD rule, 14 DCMR § 4013.1 (1991), the motion was

required to be filed within 10 days of receipt of the decision. The tenth business day, after May 19, 2003, was June 3, 2003, and three extra days for mailing the decision expired on June 6, 2003. Mr. Blake's position is that the May 30, 2003 date stamp on the USPS receipts showed the motion was filed that day, or before June 6, 2003. However, those dates only show mailing not receipt by RACD. Moreover, if the mailing occurred on that day, May 30, 2003, and three additional days were allowed for mailing, then the rule, § 3816.5, would allow the motion for reconsideration to be received in RACD no later than June 4, 2003. (There is no record of when the motion was received by RACD – no motion for reconsideration is in the RACD certified file.) Next, pursuant to § 4013.2, the hearing examiner had ten days to act on the motion, and the failure to act on the motion caused it to be deemed denied under § 4013.5. The ten days to act on the motion for reconsideration expired on June 18, 2003. Finally, Mr. Blake had ten more days to file an appeal in the Commission, under § 4013.6, and that period expired on July 2, 2003. Mr. Blake was untimely in his appeal to the Commission, because the appeal was filed on July 7, 2003, instead of July 2, 2003. Cf. C.I.H. Properties v. Torain, TP 24,817 (RHC July 17, 2000) (where the Commission held the appeal was untimely filed in the Commission, because the mailed motion for reconsideration was not timely received by RACD).

The Commission concludes that Mr. Blake in the first instance did not proffer proof, by a blue ink file date stamped copy, that he timely filed motion for reconsideration in RACD. Therefore, his appeal in the Commission was untimely filed beyond the May 15, 2003 date in the decision.

In the second instance, his view, he did not proffer evidence of filing the motion for reconsideration in RACD, only evidence of a date the motion was mailed to RACD. Using his asserted date of mailing, the Commission determined for the second time that his notice of appeal was untimely filed in the Commission. Parties who assert their documents were timely filed in RACD or in the Commission must use a blue ink file date stamped copy of the document asserted to be filed. See Kamerow v. Baccous, TP 24,470 (RHC Mar. 2, 2000) (where the Commission allowed a motion for reconsideration to be deemed timely filed because counsel had a blue ink file date stamped copy of the motion for reconsideration, which was inadvertently filed in another office.). See also Thorpe v. Lynch, TP 24,460 (RHC Nov. 24, 1998), (where a party presented to the Commission a “blue ink” OAD file date stamped copy of a motion for reconsideration, and thereafter, the Commission reconsidered the dismissal of the appeal by reinstating the appeal as timely filed).

The appeal filed by Mr. Blake is dismissed, because it was untimely filed in the Commission. The request by the Housing Provider’s attorney to late file a brief in the Commission is moot, based on the dismissal of the appeal.

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.”

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), “[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals.” Petitions for review of the Commission’s decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The Court’s Rule, D.C. App. R. 15(a), provides in part: “Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk.” The Court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

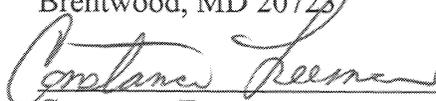
I certify that a copy of the foregoing Order DISMISSING APPEAL in TP 27,600 was mailed by priority mail, with confirmation of delivery, postage prepaid this 30th day of October, 2003, to:

Jon Blake
P.O. Box 70319
Washington, D.C. 20002

Jon Blake
329 Rhode Island Avenue, N.E.
Apartment 304
Washington, D.C. 20002

Clarissa Thomas, Esquire
463 8th Street, N.E.
Washington, D.C. 20002

Jai Shin
3434 Bladensburg Road
Brentwood, MD 20723


Constance Freeman
Commission Assistant