**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,789

In re: 455 M Street, N.W.

Ward Two (2)

**COREY THOMPSON**
Tenant/Appellant

v.

**DEBORAH ZISKA**
Housing Provider/Appellee

**ORDER ON MOTION TO EXPEDE DECISION**

**March 12, 2004**

**BANKS, CHAIRPERSON.** On May 7, 2003, Hearing Examiner Carl Bradford issued a decision and order on the tenant petition filed by Corey Thompson. On June 18, 2003, Corey Thompson filed pro se in the Rental Housing Commission a notice of appeal from the decision. On September 23, 2003, the Commission held the appellate hearing on the appeal. Deborah Ziska, Housing Provider, was represented by counsel, Robert Cooper, but did not personally appear, and the Tenant appeared pro se.

On February 23, 2004, the Commission received a letter from the Housing Provider, who requested "a speedier decision of the appeal of TP 27,789." The letter gave background information which was not related to the merits of the appeal, and gave excuses for the Housing Provider's actions related to the merits of the hearing examiner's decision. Copies of the letter were sent to nine (9) persons. Only two (2) of the nine (9) persons were properly involved in the appeal; they were the Tenant and counsel for the Housing Provider. The other seven were the Mayor, Deputy Mayor, Director of the

Office of Communications, Mayor's Chief of Staff, Director of the Department of Consumer and Regulatory Affairs, a member of the District of Columbia Council, and the President Elect of the Mount Vernon Square Neighborhood Association. None of the seven should have been served, because the Housing Provider is involved in a judicial process designed to be free of political influences. Only Councilmember Jack Evans responded to the letter by an e-mail to the Commission.

On February 23, 2004, the same day the Commission received the Housing Provider's letter, the Commission responded to the Housing Provider's letter, by letter stating it would treat the Housing Provider's letter as a motion to expedite the appeal. See 14 DCMR § 3814.5 (1991). On the next day, February 24, 2004, the Chairperson received an e-mail from the Office of Councilmember Jack Evans. The pertinent part of the e-mail stated:

> Ms. Ziska believe (sic) the appeal may take up to a year. I realize there are many, many cases before the RHC. However, I am writing to find out if the case may be expedited. It is unfortunate to see such a dispute drag on as it drains everyone's financial and emotional resources.
>
> I look forward to hearing from you – Councilmember Jack Evans

The Commission answered the e-mail as follows:

> The Commission's response to Ms. Ziska's letter is in the mail to her, you, and everyone for whom the Commission had an address, as of yesterday, Monday, February 23, 2004, the day her letter was received. The Commission's letter is attached. Pursuant to the Commission's regulations, 14 DCMR Sec. 3818 (1991), your e-mail is a prohibited ex parte communication, because you did not send a copy to the other party, the tenant, or Ms. Ziska's counsel, Robert Cooper. Since Ms. Ziska's case is pending before the Commission, it is improper for the Commission to engage in ex parte communications with you about this matter. A copy of this e-mail will be sent by first class mail to both parties, and Ms. Ziska's counsel. R. Banks, Chairperson

The Commission is an appellate agency which must follow its rules. Hanson v. District of Columbia Rental Hous. Comm'n, 584 A.2d 592 (D.C. 1991). First, the Housing Provider had an opportunity to file an answer to the notice of appeal within ten days of receipt of the notice of appeal. See 14 DCMR § 3802.6 (1991). She did not. The letter to the Commission was dated more than seven (7) months after the ten day period expired to file an answer to the notice of appeal. Therefore, the Housing Provider's comments related to the appeal are untimely. However, the information in the letter that the Superior Court stayed a second petition and a pending Landlord and Tenant action involving the same Tenant, to await the Commission's decision in the instant appeal, was relevant for the motion to expedite.

Second, and more important is the e-mail from Councilmember Evans, who directly stated, in pertinent part, "I am writing to find out if the case may be expedited." The e-mail was not sent to the two relevant parties, the Tenant and the Housing Provider's counsel, although the Commission itself did so to ensure fair proceedings. A superficial reading of Councilmember Evans' e-mail would lead the reader to believe that he merely repeated the Housing Provider's request for an expedited decision. However, as stated in the Commission's response to Councilmember Evans, the e-mail was an impermissible ex parte communication to a quasi-judicial administrative agency under the Office of Boards and Commissions in the Mayor's Office.[1] Neither the Mayor,

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[1] The Commission's rules on ex parte communications state:

3818.1 The following oral or written communications which are relevant to the merits of a proceeding and to which reasonable prior notice to all parties has not been given shall be considered *ex parte*:

(a) Communications between any party or individual representing a party and a Commissioner or any member of the Commission staff; and

nor the Office of Boards and Commissions, nor the Director of the Department of Consumer and Regulatory Affairs contacts the Commission to influence decisions in proceedings in pending cases. That ensures the fairness of an appeal process free from political influences and assists with the delivery of due process to each party in an appeal pending before the Commission.

The issue now before the Commission is how to proceed in a manner that is fair to both parties, and eliminate the appearance of undue influence by the Councilmember's ex parte communication. A key fact is that the Tenant has not filed any opposition to the

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(b) Communications described in §4002.

3818.2 The provisions of §3818.1 do not apply to any of the following oral or written communications:

(a) Those specifically authorized by law to be made on an *ex parte* basis;

(b) Those related to a matter of procedure; or

(c) Those made in the course of another proceeding of the Commission to which the communication primarily related, and which is on the public record.

3818.3 The prohibition against *ex parte* communications shall run during the entire time a case is on appeal before the Commission, on remand to the Rent Administrator, or before the District of Columbia Court of Appeals.

3818.4 Any communication made in violation of this section which comes to the attention of the Commission shall be made part of the record and an opportunity for rebuttal by other parties shall be offered by mailing to each party a copy of any such communication or memorandum regarding the communication.

3818.5 Any Commissioner, or member of the Commission's staff, who receives an ex parte communication prohibited by this section shall, within forty-eight (48) hours after first having reason to believe that the communication is prohibited, prepare and deliver to the Chairperson or the Chairperson's designee a written statement setting forth the substance of the communication if it is in oral form, or deliver to the Chairperson or the Chairperson's designee the actual communication, if it is in written form.

3818.6 If the Commission determines that a communication was knowingly made (or caused to be made) by a party acting in violation of this section, the Commission may, to the extent consistent with the interest of justice and the policy of applicable law, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

Housing Provider's or the Councilmember's request for expedited treatment of the appeal. Indeed, it is noteworthy that Councilmember Evans' request for expedited treatment did not involve the merits of the appeal.

The Commission contrasts this ex parte contact with the contacts of former Councilmembers James E. Nathanson and William Lightfoot as written in the Commission's opinions in In re 70% Agreement, VA 20,772 & VA 20,773 (RHC July 9, 1993); In re 70% Agreement, VA 20,772 & VA 20,773 (RHC July 21, 1993). In that appeal, the Councilmembers acted in a similar manner by sending faxed letters directly to the Commission's former Chairperson, Lorilyn Simkins, and did not send copies of their letters to the parties. The Commission stated in its opinion, "[t]he rules on ex parte communications were enacted to prohibit communications designed to influence decision-making without giving the opposing party an opportunity to respond." In re 70% Agreement, VA 20,772 & VA 20,773 (RHC July 9, 1993) at 7. Ultimately, after receiving a request by the Housing Provider to decline to consider the appeal further, the Commission declined to rule on motions pending before it, and deferred the appeal to the jurisdiction of the District of Columbia Court of Appeals (DCCA). In re 70% Agreement, VA 20,772 & VA 20,773 (RHC July 21 1993).

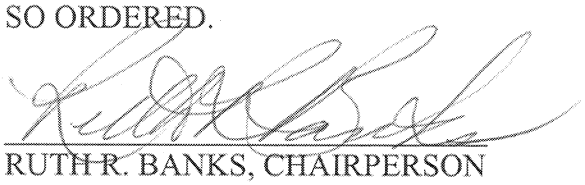
In the instant appeal, the Tenant has not opposed the Housing Provider's motion (letter) to expedite or commented on the Councilmember's e-mail, which contains the prohibited ex parte communication directed at decision-making in the Commission in this specific case, by requesting that the Commission make a decision to expedite the issuance of a decision in the appeal. When the Commission received the Councilmember's e-mail, it had decided on the preceeding day to treat the Housing Provider's letter as a motion to

expedite the appeal. However, no decision had been made on whether to grant or deny the motion. The e-mail improperly attempted to influence that decision.

The Commission strives to be fair to all parties and to keep the appearance of impropriety out of its proceedings. The circumstances of this appeal were created by the Housing Provider, when she involved seven political persons who have no decision-making duties in the Commission. The Commission could decline to rule on the requests to expedite the Commission's decision by both the Housing Provider and the Councilmember. The opinions in In re 70% Agreement would be precedent for this action designed to keep politics out of judicial type decision-making.

However, since the Tenant was informed of the Councilmember's ex parte e-mail by the Commission, did not comment on it, and did not oppose the motion to expedite the decision, the Commission GRANTS the motion. See Hampton House North Tenants Assoc. v. Shapiro, CI 20,669 (RHC June 15, 1995) (where the Commission granted a motion to expedite and commented there was no opposition). In addition, the appeal involves a small housing provider who informed the Commission that a second petition and a Landlord and Tenant action was pending in the Superior Court between these same parties. The Tenant did not refute these statements. See Schauer v. Assalaam, TP 27,084 (RHC Oct. 11, 2002) (motion to expedite granted based on Drayton Stay and case pending in Superior Court for three (3) years).

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON MOTION TO EXPEDITE DECISION in TP 27,789 was mailed by priority mail, with confirmation of delivery, postage prepaid this 12th day of March, 2004, to:

Robert Cooper, Esquire
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