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DISTRICT OF COLUMBIA  
OFFICE OF  
ADMINISTRATIVE HEARINGS  
2009 JUN 26 P 12: 21

NASSER DANESH,  
Housing Provider/Appellant,

v.

LAUREN BLADEN-WHITE, et al.,  
Tenants/Petitioners.

Case No.: RH-TP-09-28571

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## FINAL ORDER

### I. Introduction

The Rental Housing Commission (Commission) remanded this matter to this administrative court “for appropriate action.” In the order remanding this matter, the Commission dismissed the appeal, which was the basis for the Commission’s jurisdiction. The Commission stated that it dismissed the appeal because the Housing Provider/Appellant did not “allege an error or state an issue.” *See* 14 DCMR 3802.5. After dismissing the only issue on appeal the Commission concluded its decision with the following statement, which appears to be a non sequitur: “For the foregoing reasons, the Commission dismisses the appeal. Accordingly, this case is remanded to the Office of Administrative Hearings for further appropriate action.” *Danesh v. Bladen-White*, TP 28,571 (RHC Oct. 3, 2008) at 5. Unfortunately, the Commission did not specify the action that it believed was appropriate following its dismissal of the appeal.

In earlier Commission decisions, the Commission dismissed the petition when the appellant failed to allege an error or provide a clear and concise issue as required by 14 DCMR 3802.5. *See Gardiner v. Davis*, TP 24,955 (RHC May 11, 2001); *Jordan v. Spellios*, TP 24,696 (RHC Sept. 8, 1999). This court could find no guidance in the Commission's decisions for what action would be appropriate in OAH, in the face of the Commission's dismissal of the appeal.

In an effort to determine what action might be appropriate, this court combed the entire record transmitted by the Commission. The record provided little guidance. To the contrary, the record illustrated a convoluted procedural history and numerous actions by the Rent Administrator, after the housing provider filed the appeal removing this matter from the Rent Administrator's jurisdiction.

In light of the procedural posture of this case, the Commission's dismissal of the appeal, and the governing statutes and regulations, this court is without jurisdiction, power, or authority to take any action in this matter.

## **II. Discussion**

On March 21, 2006, Lauren Bladen-White, Bradley Gray, Dorn Holland, and John Nash, filed TP 28,571 with the Rent Administrator pursuant to the Rental Housing Act of 1985. At the time the tenants filed the petition, the Rental Housing Act vested the Rent Administrator with jurisdiction to conduct hearings and take other appropriate action. D.C. Official Code § 42-3502.04. In accordance with this authority, the Rent Administrator scheduled this matter for a hearing on May 25, 2006 before Hearing

Examiner Gloria Johnson.<sup>1</sup> On that date, the parties purportedly settled the case. On May 25, 2006, one tenant, John Nash, and the housing provider, Nasser Danesh, filed a Praecipe. In the Praecipe, those parties advised the Rent Administrator that they had settled the dispute and they asked the Rent Administrator to dismiss the action with prejudice. On July 13, 2006, Hearing Examiner Johnson dismissed TP 28,571 with prejudice based upon the parties' settlement. On July 28, 2006, Lauren Bladen-White, Bradley Gray, Dorn Holland, and John Nash filed a motion for reconsideration and requested a hearing on the merits.

Hearing Examiner Johnson issued an Order Granting Petitioner's [sic] Motion for Reconsideration on August 11, 2006. In that order, she vacated the July 13, 2006, order and granted Petitioner's request for a hearing on the merits. On August 22, 2006, Nasser Danesh, through counsel, filed a Notice of Appeal from the order issued by Hearing Examiner Johnson on August 11, 2006.

The Commission's regulation, 14 DCMR 3802, governs appeals of decisions issued by the Rent Administrator. Pursuant to 14 DCMR 3802.3, "the filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator." Accordingly, the housing provider's August 22, 2006 appeal should have suspended any further action by the Rent Administrator, since the filing of the notice of appeal removed jurisdiction from the Rent Administrator to the Commission. *See Miller v. Thompson,*

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<sup>1</sup> The Rental Housing Act of 1985 empowers the Rent Administrator to delegate his authority to employees, consultants, and hearing examiners within his office. D.C. Official Code § 42-3502.04(d)(2). Hearing Examiners Gloria Johnson and Mary Myers Nelson conducted hearings and issued orders in this case.

TP 2,139 (RHC Dec. 28, 1988) (holding the Rent Administrator does not have the power to act when an appeal removes the action from the Rent Administrator's jurisdiction).

In the face of the appeal that removed jurisdiction from the Rent Administrator, the Rent Administrator's designee, Hearing Examiner Mary Myers-Nelson, convened a hearing on August 31, 2006. The housing provider did not appear at the hearing. In what appears to be an absence of jurisdiction and the power to act, the hearing examiner conducted the hearing and rendered a default judgment on December 12, 2006. The tenants filed a Motion for Reconsideration/Appeal with the Rent Administrator's office. On January 9, 2007, the Acting Rent Administrator issued a Proposed Decision and Order, which would become effective on February 12, 2007 if the parties did not file exceptions and objections. The Acting Rent Administrator vacated the December 12, 2006 default judgment and determined that the housing provider's appeal to the Commission was moot, because the August 11, 2006 decision upon which it was based was vacated.<sup>2</sup> The Respondent, through counsel, filed an Opposition to Petitioner's Motion for Reconsideration on February 9, 2007.

On April 18, 2007, the Commission held a hearing on the housing provider's August 22, 2006 appeal. The Commission issued the decision and order on October 3, 2008. The Commission's decision contains most of the procedural history detailed above. After reviewing the sole issue in the appeal, the Commission determined that "[t]here was no issue raised or error alleged about the decision of Hearing Examiner

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<sup>2</sup> The Acting Rent Administrator also ruled that a *de novo* hearing would be scheduled and convened by this administrative court. This court, however, never received the record from the Rent Administrator. Arguably, this court should not have received the record or conducted a hearing since the Rent Administrator made these rulings while an appeal was pending before the Commission.

Gloria Johnson, in Bladen-White, et al. v. Danesh, TP 28,571 (RACD Aug. 11, 2006).” *Danesh v. Bladen-White*, TP 28,571 (RHC Oct. 3, 2008) at 4. The Commission dismissed the appeal because the housing provider failed to provide the Commission with a clear and concise statement of the alleged error in the Rent Administrator’s decision, as required by 14 DCMR 3802.5. The Commission also remanded the matter to OAH for “further appropriate action.” *Id.* at 5.

The Commission did not indicate what action would be appropriate in the face of the dismissed appeal or the myriad actions by the Rent Administrator after “the Rent Administrator w[as] deprived of jurisdiction to take further action that would affect the substance of the proceeding.” *Miller*, TP 2,139 (RHC Dec. 28, 1988) at 8.

The Office of Administrative Hearings Establishment Act transferred the Rent Administrator’s hearing functions to OAH on October 1, 2006. Consequently, this administrative court received the Rent Administrator’s jurisdiction to conduct hearings and issue final orders. D.C. Official Code § 2-1803.03(b-1)(1). However, the Rent Administrator retained jurisdiction to issue orders in cases where the Rent Administrator or his designees conducted the hearing before October 1, 2006.<sup>3</sup> The Council of the District of Columbia explicitly extended the Rent Administrator’s authority to receive

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<sup>3</sup> The Council of the District of Columbia has repeatedly extended the Rent Administrator’s authority to issue final orders in cases where the Rent Administrator conducted the hearing before October 1, 2006. *See* Rent Administrator Hearing Authority Temporary Amendment Act of 2009 (May 20, 2009), 56 D.C. Reg. 4264 (June 5, 2009); Rent Administrator Hearing Authority Congressional Review Emergency Amendment Act of 2008 (Jan. 23, 2008), 55 D.C. Reg. 1270 (Feb. 8, 2008); Rent Administrator Hearing Authority Temporary Amendment Act of 2007, D.C. Law 17-0098 (Nov. 27, 2007), 54 D.C. Reg. 12176 (Dec. 21, 2007); Rent Administrator Hearing Authority Temporary Amendment Act of 2006, D.C. Law 16-249 (Dec. 28, 2006), 54 D.C. Reg. 624 (Jan. 26, 2007).

remands from the Commission when a hearing is not required. For example, the Rent Administrator Hearing Authority Emergency Amendment Act of 2009, provides:

[T]he Rent Administrator, or any employee or other person to whom authority has been delegated by the Rent Administrator, may issue a final order in any case in which an evidentiary hearing was conducted before October 1, 2006, but in which no final order was issued before that date, and *in any case remanded by the Rental Housing Commission that does not require a new hearing to be conducted*. The Rent Administrator, or a delegatee, may also rule upon any post-hearing motion, including a motion for reconsideration.

The tenants filed the instant petition before this administrative court received jurisdiction to hear rental housing cases. And, the procedural journey recounted above preceded this court's jurisdiction to conduct hearings in rental housing cases. Consequently, if the Commission ordered a remand that required a decision on the record created when the Rent Administrator had jurisdiction, that remand would be performed by Rent Administrator, not this administrative court.

The OAH Establishment Act empowers OAH to conduct hearings in rental housing cases. D.C. Official Code § 2-1803.03(b-1)(1). OAH is not empowered, however, to rule upon an appeal that the Commission dismissed. Moreover, this court does not have authority to make rulings concerning the propriety of the Rent Administrator's decision to act after a party appealed the Rent Administrator's decision. That power rests with the Commission. D.C. Official Code § 42-3502.02.

If the Commission specified the appropriate action, and that action was within this court's jurisdiction, this court would follow the remand instructions and undertake the appropriate action. In the absence of a Commission ruling that the parties to this action

are now entitled to an evidentiary hearing in the face of the procedural posture of this case, OAH simply cannot act. Consequently, OAH must dismiss this action.

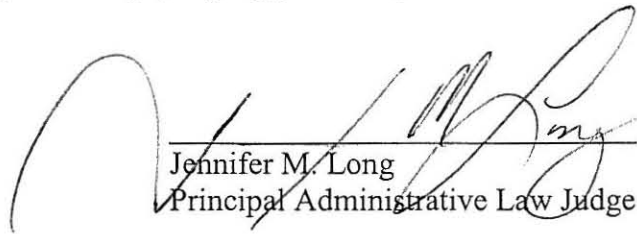
**III. Order**

Therefore, it is this 26th day of June, 2009:

**ORDERED**, that this administrative court **DOES NOT HAVE JURISDICTION** to take any action in RH-TP-09-28571; and it is further

**ORDERED**, that RH-TP-09-28571 is **DISMISSED**; and it is further

**ORDERED** that the appeal rights of any party aggrieved by this order are set forth below.



Jennifer M. Long  
Principal Administrative Law Judge

**MOTIONS FOR RECONSIDERATION**

Any party served with a final order may file a motion for reconsideration within ten (10) days of service of the final order in accordance with 1 DCMR 2937. When the final order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2811.5.

A motion for reconsideration shall be granted only if there has been an intervening change in the law; if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; if there is a clear error of law in the final order; if the final order contains typographical, numerical, or technical errors; or if a party shows that there was a good reason for not attending the hearing.

The Administrative Law Judge has thirty (30) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 30 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

## APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a final order issued by the Office of Administrative Hearings may appeal the final order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the final order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission  
941 North Capitol Street, N.E.  
Suite 9200  
Washington, D.C. 20002  
(202) 442-8949

### **Certificate of Service:**

#### **Sent By Priority Mail with Delivery Confirmation (Postage Paid) to:**

John R. Galloway, Esquire  
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John R. Galloway, Esquire  
P.O. Box 43201  
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Nasser Danesh  
1745 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dorn Holland  
247 8<sup>th</sup> Street, N.E.  
Unit 101  
Washington, D.C. 20002



John L. Nash  
245 8<sup>th</sup> Street, N.E.  
Unit 201  
Washington, D.C. 20002

Bradley Gray  
245 8<sup>th</sup> Street, N.E.  
Unit 202  
Washington, D.C. 20002


Lauren Bladen-White  
249 8<sup>th</sup> Street, N.E.  
Unit 101  
Washington, D.C. 20002

**By Inter-Agency Mail:**

District of Columbia Rental Housing Commission  
941 North Capitol Street, N.E., Suite 9200  
Washington, DC 20002

Keith Anderson  
Acting Rent Administrator  
Rental Accommodations Division  
Department of Housing and Community Development  
1800 Martin Luther King Jr. Avenue, S.E.  
Washington, DC 20020

I hereby certify that on 6-26, 2009 this document was caused to be served upon the above-named parties at the addresses and by the means stated.

  
Clerk / Deputy Clerk