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# DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-19-31,209 & RH-TP-22-31,512

In re: 1444 Corcoran Street, NW #4
Ward Two (2)

**PAUL A. STERMAN**
Tenant/Appellant

v.

**GEORGE FARRAH,**
Housing Provider/Appellee

## ORDER TO SHOW CAUSE

September 26, 2023

**CARMICHAEL, ADMINISTRATIVE JUDGE:** This case is on appeal to the Rental Housing Commission ("Commission") from a final order issued by the Office of Administrative Hearings ("OAH"), based on a petition filed in the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD").[1] The applicable provisions of the Rental Housing Act of 1985 ("Act"), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01 - 3509.07 (2012 Repl.), the District of Columbia Administrative Procedures Act ("DCAPA"), D.C. OFFICIAL CODE §§ 2-501 - 510 (2012 Repl.), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2016), 1 DCMR §§ 2920-2941 (2016) ("OAH Rules"), and 14 DCMR §§ 3800-4399 (2004 & 2021),[2] govern these proceedings.

[1] OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division ("RACD") of the Department of Consumer and Regulatory Affairs ("DCRA") pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03 - 1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD were transferred to DHCD by § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04B (2012 Repl.).

[2] On December 31, 2021, new rules took effect to amend the applicable chapters of Title 14 of the DCMR. Pursuant to 14 DCMR § 3800.10 (2021), the Commission applies the prior rules to the facts of this case and the amended rules to its procedures on appeal.

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## I. PROCEDURAL HISTORY

On April 22, 2019, tenant/appellant Paul Sterman ("Tenant") filed tenant petition 31,209, alleging unlawful rent demands, retaliation, and an unlawful notice to vacate. On May 19, 2022, the Tenant filed tenant petition 31,512, again alleging an illegal rent increase in December 2018 and retaliation by housing provider/respondent George Farrah ("Housing Provider"). We refer to these jointly as the "Tenant Petitions." In both Tenant Petitions, the rent increase was based on a May 2018, 30-day notice of rent increase and a subsequent October 2018 30-day notice that raised the Tenant's rent by $500.

### A. Prior Litigation

The Tenant first challenged the 2018 rent increase in two other petitions, 31,049 and 31,140 ("First Tenant Petitions"). Administrative Law Judge Ann Yahner issued a Final Order on those petitions on December 19, 2018 ("First Final Order"), awarding Petitioner $3,675 concluding that the rental unit became exempt from the rent stabilization provisions of the Act as of May 22, 2018. The Tenant appealed the First Final Order to the Commission, and moved to stay the OAH decision, which we granted on April 3, 2019 ("Commission Stay Order"). On November 23, 2021, after briefing and argument on the merits, the Commission affirmed the Final Order. Sterman v. Farrah, RH-TP-18-31,190 & RH-TP-18-31,049 (RHC Nov. 23, 2021) ("Commission Decision").

The Tenant then appealed the Commission Decision to the District of Columbia Court of Appeals ("DCCA"). *See* 21-AA-0823. The Tenant moved to stay our decision and the DCCA initially granted his motion on December 12, 2021, but vacated that stay by the Housing Provider's motion on February 9, 2022. The DCCA ultimately affirmed the Commission Decision by memorandum of judgment on April 20, 2023. Sterman v. D.C. Rental Hous. Comm'n, 21-AA-0823 (D.C. Apr. 20, 2023) ("DCCA MOJ"). The tenant sought reconsideration by the en banc

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court, which was denied. The mandate was issued on May 30, 2023, and the tenant sought to have the DCCA recall its mandate, which was also denied. On June 21, 2023, the Tenant moved for the Commission to reconsider its November 23, 2021, decision and to sanction opposing counsel, which we immediately denied as untimely and an attempt to re-litigate issues he had previously lost or abandoned. Our order denying the motion cautioned the Tenant against further frivolous filings.

**B. Current Litigation**

The Commission has recently received the certified record of this case from OAH. On our preliminary review, we primarily take the history of these Tenant Petitions, in relevant part, from the final order issued by Administrative Law Judge Vytas Vergeer ("ALJ") on July 21, 2023 ("Final Order"), which the Tenant now appeals.[3] After the Commission Decision and the DCCA initial stay was lifted, the Housing Provider sent a demand for back rent to the Tenant on February 21, 2022 for rent owed from December 2018 through February 2022. The ALJ issued several orders dismissing the Tenant's claim, including a May 22, 2023, order dismissing the claim that the December 2018 rent increase was illegal because OAH and the Commission, as affirmed by the DCCA, had definitively "established that the property was exempt from the District's rent stabilization program such that the rent increase he imposed effective December 2018 was valid." *See* Final Order at 3 (quoting DCCA MOJ at 1).

On April 3, 2023, the Tenant filed a motion for summary judgment, apparently seeking once again to have the December 2018 rent increased declared illegal. On the Housing Provider's motion, the ALJ, on June 27, 2023, determined that the Tenant's motion was frivolous and granted attorney's fees as a sanction.

[3] Before the ALJ consolidated the two current Tenant Petitions, Administrative Law Judge Ann Yahner held an evidentiary hearing on some of the claims in 31,209, where the Tenant alleged, inter alia, that he was served an unlawful notice to vacate for personal use and occupancy. ALJ Yahner found in the Tenant's favor on those claims, holding the others in abeyance, and that order does not appear to form any part of this appeal.

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On July 21, 2023, OAH Judge Vergeer held a status hearing regarding tenant's claims of retaliation and illegal rent increase notices. At that hearing, the Tenant voluntarily dismissed his claims of retaliation because he was not allowed to relitigate his claims regarding the December 2018 notice of rent increase that has been denied by OAH, this Commission, and the DCCA. On July 21, 2023, Judge Vergeer issued the Final Order concluding, in relevant part:

> Mr. Sterman's only argument against the allegedly impermissible notices is that the December 2018 rent increase was not valid, so the notices could not be valid. He made clear at the status hearing that he would attempt to relitigate the issue of the December 2018 rent increase at any evidentiary hearing. More than once, Mr. Sterman stated that he would only participate in an evidentiary hearing on the issue of the notices if he could once again argue that the December 2018 rent increase was illegal.
>
> . . . At this point, Tenant has no legitimate remaining claims. I hereby dismiss all remaining claims in TP 31,209 and TP 31,512 with prejudice.

Final Order at 4.

The Tenant filed his notice of appeal ("Notice of Appeal") with the Commission on August 2, 2023, and simultaneously filed a motion requesting the Commission remand this case for a "de novo statutory hearing" ("Motion for Remand"). For the reasons below, the Commission, on its own initiative, directs the Tenant to show cause why the Notice of Appeal should not be dismissed for lack of a good faith basis for the legal arguments raised therein and in the Motion for Remand.

## II. DISCUSSION

The current Tenant Petitions stem from the Tenant's original claims in the First Tenant Petitions, which have been adjudicated by the Office of Administrative Hearings, the Commission, and the District of Columbia Court of Appeals. The only new claim before the Commission is the retaliation claim in TP 31,512 which stems from various actions the Housing Provider has taken against the Tenant, including, but not limited to, bringing eviction proceedings in Landlord/Tenant Court, and filing notice of back rent legally owed. However, the Tenant appears to have abandoned those claims because he was denied the opportunity to relitigate the validity of the

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December 2018 rent increase.

Under the Commission's rules, every party filing pleadings with the Commission is required to:

> [C]ertify that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (a) The pleading, motion, or other document is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (b) Any factual assertions therein are true; and
>
> (c) The legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

14 DCMR § 3801.15 (2021); *see also* D.C. App. R. 38 (if a party "takes an appeal . . . that is frivolous or interposed for an improper purpose, such as to harass or cause unnecessary delay . . . the court may, on its own motion . . . impose appropriate sanctions . . . includ[ing] dismissal of the appeal"). The Commission is not satisfied that the Tenant's Notice of Appeal, as elaborated upon in the Motion for Remand, serves any purpose other than to harass the Housing Provider and delay final resolution of this matter or contains any warranted or non-frivolous legal argument. The Tenant asks the Commission: 1) to hold that the February 2022 demand for back rent violated the Commission's 2019 stay of the final order in the First Tenant Petitions (despite that order having been affirmed in November 2021); 2) to hold that OAH cannot dispose of any case without holding an evidentiary hearing under the DCAPA; 3) to reverse the ALJ's grant of attorney's fees as a sanction for the Tenant's filing of a frivolous motion for summary judgment in April 2023; and 4) to require the recusal of the ALJ from proceedings on remand.

As to the first issue, the Tenant appears to misunderstand or misrepresent the effect of the Commission's 2019 stay order, which we have previously stated "was effectively dissolved by our

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2021 [Commission] [D]ecision affirming the [First] Final Order." Order Denying Stay, Sterman v. Farrah, RH-TP-18,31-049 & RH-TP-18-31,190 (RHC March 29, 2022) at 4 n.2. Additionally, our reading of tenant's appeal seems on its face to be a resuscitation of arguments previously adjudicated, all stemming from the single rent increase that became effective in December 2018.

As to the second issue, we see no basis for the novel, indeed radical, position that the OAH Rule providing for summary adjudication violates the DCAPA. *See* OAH Rule 2819. Evidentiary hearings are not required under the DCAPA or any conception of due process where a complaining party fails to state a claim on which relief can be granted or one party is entitled to judgment as a matter of law on the material facts that are not in dispute. *Cf.* Carey v. Edgewood Mgmt. Corp., 754 A.2d 951, 954 (D.C. 2000) (explaining standards for dismissal or summary judgment in Superior Court). It is entirely unclear what disputed facts the Tenant seeks to prove at an evidentiary hearing that would change the legal result of the Final Order.

As to the third issue, in his Motion for Remand, the Tenant himself admits that he filed the 2023 motion for summary judgment to stall the Landlord/Tenant action housing provider filed against him in the Superior Court for the District of Columbia. Motion for Remand at 13 ("The Tenant would never have submitted the April 3 motion for summary if he had known it would forfeit any right to briefing and argument, but it was filed to rightfully prevent an unlawful eviction that instead almost happened with the assistance of this ALJ.").

As to the fourth issue, the Tenant, in his Motion for Remand, identifies no bias or prejudice on the part of the ALJ that would justify recusal. Recusal or reassignment of a case is not warranted simply for a judge disagreeing with a litigant's legal positions after they are presented. *See* Mayers v. Mayers, 908 A.2d 1182, 1191 (D.C. 2006) ("the alleged bias and prejudice must stem from an extrajudicial source . . . other than what the judge learned from his participation in the case" (citations omitted)).

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Accordingly, tenant is **ORDERED TO SHOW CAUSE** as to why the Notice of Appeal should not be dismissed and the claims therein are warranted by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. A response from the Tenants shall be filed no later than October 11, 2023, **10 business days from the issuance of this order**. In accordance with 14 DCMR § 3814.7 (2021), Housing Provider may file a response in no less than 10 business days from the service of the Tenant's response to this order.

**SO ORDERED.**

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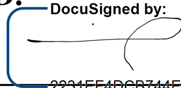

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TOYA S. CARMICHAEL, ADMINISTRATIVE JUDGE

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing **ORDER TO SHOW CAUSE** in RH-TP-22-31,209 & RH-TP-22-31,512 was served electronically on this **26th** day of **September, 2023,** to:

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