

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-28,989

In re: 1512 21st Street, NW, Unit #2

Ward Three (3)

THOMAS IVANCIE
Tenant/Appellant

v.

ESTATE OF LEWIS H. CURD, et al.
Housing Providers/Appellees

DECISION AND ORDER

March 25, 2016

SZEGEDY-MASZAK, CHAIRMAN. 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 Housing Regulation Administration (HRA) of the District of Columbia Department of Department of Consumer and Regulatory Affairs (DCRA).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 (2001), the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ OAH assumed jurisdiction over tenant petitions from the DCRA, Rental Accommodations and Conversion Division (RACD) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to Department of Housing and Community Development (DHCD) by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

I. PROCEDURAL HISTORY

On June 22, 2007, Tenant/Appellant Thomas Ivancie (Tenant), resident of 1512 21st St., NW, Unit #2 (Housing Accommodation) filed Tenant Petition RH-TP-07-28,989 (Tenant Petition) with DCRA, against the Estate of Lewis H. Curd (Estate), and Eleanor F. Curd, Personal Representative (Personal Representative) (collectively, Housing Provider).² See Tenant Petition at 1-2; Record for RH-TP-07-28,989 (R.) at 17-18. The Tenant Petition raised the following claims against the Housing Provider:

1. The rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Emergency Act of 1985.
2. A proper thirty (30) day notice of rent increase was not provided before the rent increase became effective.
3. The Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division.
4. The rent being charged exceeds the legally calculated rent ceiling for my/our unit(s).
5. The rent ceiling filed with the Rental Accommodations and Conversion Division for my/our unit(s) is improper.
6. The building in which my/our rental unit(s) is located is not properly registered with the Rental Accommodation and Conversion Division

Tenant Petition at 3; R. at 16.

The Housing Provider filed two motions to dismiss, the first on November 21, 2007, and the second on March 20, 2008. See R. at 42-44, 61-62. On June 28, 2014, the Tenant filed a Motion for Leave to Add Parties to the Petition, seeking to add Eleanor F. Curd, in her individual capacity, Lewis H. Curd, Jr., Richard F. Curd, and the Lewis H. Curd, Jr. Credit Shelter Trust as

² For ease of reference, the Commission identifies the respondents/appellees as the “Housing Provider,” but, as discussed *infra*, that designation should not be taken to imply a legal conclusion about those parties’ status under the Act.

parties to the Tenant Petition. R. at 129-30. On July 28, 2014, Administrative Law Judge Denise Wilson-Taylor (ALJ) entered an order amending the Tenant Petition to add the Lewis H. Curd Credit Shelter Trust, Eleanor F. Curd, as co-trustee, and Lewis H. Curd, Jr., as co-trustee, as housing providers in this case. Ivancie v. Estate of Lewis H. Curd, RH-TP-07-28,989 (OAH July 28, 2013); R. at 148-50.

Evidentiary hearings were held in this matter on November 3, 2010, June 5, 2013, May 14, 2014, July 30, 2014, and August 25, 2014. The ALJ issued a Final Order on November 24, 2014: Ivancie v. Estate of Lewis H. Curd, RH-TP-07-28,989 (OAH Nov. 24, 2014) (Final Order); R. at 180-99.

The ALJ made the following findings of fact in the Final Order:³

1. Under the terms of his lease, Thomas Ivancie was the sole tenant in unit 2 at 1512 21st Street NW, Washington, DC 20036, (the “Housing Accommodation”) from December 1, 2001 until June 20, 2007. PX 100.
2. The Housing Accommodation is a single building containing six apartments for rent. PX 101.
3. During his lifetime, Lewis H. Curd owned the Housing Accommodation.
4. Tenant signed his lease for the Housing Accommodation on October 13, 2001. *Id.*
5. Under the terms of his lease, Tenant paid rent to Lewis H. Curd, at 1510 21st Street NW, Washington, D.C. 20036. PX 100.
6. Lewis H. Curd died on June 23, 2006. At the time of his death, both he and his wife, Eleanor F. Curd, resided in the District of Columbia.
7. Eleanor F. Curd was named personal representative to the [e]state of her late husband, Lewis H. Curd. The [e]state was administered according to a will.
8. A Change of Ownership Certificate of Occupancy was issued for the Housing Accommodation on December 7, 2007 by the District of Columbia

³ The findings of fact are recited here using the language of the ALJ in the Final Order.

Department of Consumer and Regulatory Affairs identifying Eleanor F. Curd, Trustee, as the sole proprietor of the Housing Accommodation, on behalf of the Lewis H. Curd Credit Shelter Trust.

9. In June 2007, Tenant handwrote his notice to Housing Provider that he would vacate the Housing Accommodation and terminate his lease. RX 200. Tenant does not know when he actually vacated his unit.
10. On June 22, 2007, Tenant filed TP 28,989.
11. On January 10, 2008, Richard F. Curd filed a Notice of Change of Ownership, Management or Changes in Services and Facilities form with the RACD, commemorating the change in ownership of the Housing Accommodation to Eleanor F. Curd, as representative for the Lewis H. Curd Credit Shelter Trust. PX 101.
12. Eleanor F. Curd died in April 2012.
13. Lewis H. Curd, Jr., is a trustee of the Lewis H. Curd Credit Shelter Trust.

Final Order at 7-8; R. at 192-93. The ALJ made the following conclusions of law in the Final Order:⁴

A. Housing Provider's Motions to Dismiss Are Denied

1. Housing Provider filed two motions to dismiss this matter, both of which were taken under advisement. The first motion, dated November 21, 2007, requested dismissal for failure to prosecute, and is now denied for lack of good cause. OAH Rule 2813.7.
2. Housing Provider's second motion to dismiss was filed on March 20, 2008, and requested the matter be dismissed because Tenant failed to file his claim against the estate outside [sic] the timeframe dictated for claims against Housing Provider Lewis H. Curd's [e]state by the District of Columbia Superior Court Probate Division (the "Probate Court"). Housing Provider provided the Probate Court's applicable Notice of Appointment, Notice to Creditors, and Notice to Unknown Heirs, as well as the Letters of Administration, establishing that claims against the estate of Lewis H. Curd were barred after May 9, 2007. Housing Provider states that, because Tenant's claim against Lewis H. Curd's estate is untimely under the Probate Court, it is barred as a matter of law, and any resulting judgment against the estate of Lewis H. Curd is to no effect. I took this motion under advisement.

⁴ The ALJ's conclusions of law are recited here using the language of the ALJ in the Final Order, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

3. I do not find Housing Provider's arguments relating to the District Probate Court persuasive in this matter. The jurisdiction of the Office of Administrative Hearings derives from the authority that was given to the Rent Administrator under the Rental Housing Act of 1985 (the "Rental Housing Act"). D.C. Official Code § 2-1831.03(b-1)(1). As such, our jurisdiction is limited to "actions which are prohibited or regulated by the provisions of the Act." *Budd v. Haendel*, TP 27,598 (RHC Dec. 16, 2004) at 16 (citing *Newton Towers Ltd. P'ship v. Newton House Tenants Assoc.*, TP 20,005 (RHC Feb. 1, 1988)). It is well outside my purview to determine the adequacy of a pleading in another court, and I accordingly decline to make any such ruling. Moreover, OAH does not have injunctive power, and I therefore decline to make any statement regarding the possibility, or probability, of a supposed legal conclusion in an unopened case at the Probate Court. *Prince Constr. Co. v. D.C. Bd. of Contract Appeals*, 892 A.2d 380, 384 (D.C. 2006). I accordingly deny both of Housing Provider's motions to dismiss.

B. Tenant Failed to Properly Identify a Housing Provider in this Matter

4. A great deal of testimony in this case has been devoted to identifying the proper individuals to appear as Housing Provider/Respondent. I will therefore discuss the definition of "housing provider" under the Act, and how that definition does or does not apply to the parties named in the case caption. Based on the entire record in this matter, I find that Tenant has failed to properly name a housing provider, and therefore this case is dismissed.

1. Definition of Housing Provider Under the Act

5. Throughout the pendency of this case, Housing Provider's counsel has maintained that no party named in this case is an appropriate housing provider under the Act. I must therefore look to the Act itself in order to determine what parties are appropriately named in this action. The rules of statutory construction are well established in this jurisdiction. A court must first look to the plain meaning of the statute, construing words "according to their ordinary sense and with the meaning commonly attributed to them." *Davis v. United States*, 397 A.2d 951, 956 (D.C. 1979). The "primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used." *Peoples Drug Stores v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (*en banc*). "The literal words of (a) statute, however, are not the sole index to legislative intent, but rather are to be read in the light of the statute taken as a whole, and are to be given a sensible construction" *District of Columbia v. Gallager*, 734 A.2d 1087, 1091 (D.C. 1999), [(quoting *Metzler v. Edwards*, 53 A.2d 42, 44 (D.C. 1947))]. Each provision of a statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous. *1137 19th St. Assocs. Ltd. P'ship v. District of Columbia*, 769 A.2d 155, 161 (D.C. 2001).

6. A housing provider is defined as “a landlord, an owner, lessor, sublessor, assignee, or their agent, *or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation* within the District.” D.C. [Official] Code § 42-3501.03(15) (emphasis added). By this definition, there are seven synonyms for housing provider, five of which explicitly require active fiscal or other interest in the property, i.e., collecting rents or benefits for use of a housing accommodation. “Assignee” implies such activity. Only in “owner” does the Act appear to allow for passivity, in which a party might merely hold title to a property and be therefore liable in suit.
7. However, given the otherwise active nature of the role, the RHC has found that “housing provider” can be defined as much by a party’s actions in relation to a housing accommodation as it is by formal ownership or management of a property. This is because a housing provider is expected to take action regarding the rental property in question, be it filing notices of rent increase with the RAD or merely depositing tenants’ rent payments. Indeed, I may only impose damages for improper rent increases upon those who “demand or receive” rent payments. See generally 14 DCMR [§] 4200, et seq.
8. In addition to these definitions, Tenant argues that D.C. [Official] Code § 42-3230 applies to the named parties. This section of the Act protects assignee landlords’ “right of action *against the lessee*, his personal representatives, heirs, or assigns, for rent or for any forfeiture or breach of any covenant or condition in the lease which the grantor or assignor might have had.” D.C. [Official] Code § 42-3230 (emphasis added). There is a similar provision protecting *assignee* tenants. However, the matter before me is one of an original tenant bringing suit against devisee owners. This is not provided for under the Act, and I decline to expand the Act’s meaning by interpreting such a specific provision beyond the limitations of its structure.

2. Identifying Individuals and Entities as Housing Providers in this Matter

9. Originally, the Tenant Petition named only the Estate of Lewis H. Curd and Eleanor F. Curd, personal representative to the Estate, as housing providers. After seven years, Tenant moved to add the Trust, Eleanor F. Curd as trustee, and Lewis H. Curd [Jr.] as trustee, as housing providers. Under OAH Rules, I may “substitute or add a party under Subsection 2816.1 if: a party dies; a party entity is dissolved or reorganized; a party entity’s ownership or interest changes; or an amended registration statement for the housing accommodation is filed under 14 DCMR § 4103.” OAH Rule 2827.1. It is uncontested that the Housing Accommodation changed ownership during and after Tenant’s occupation of Unit 2. Therefore, on July 28, 2014, I permitted Tenant to add parties to the case caption. When the record closed, the named parties for Housing Provider encompassed the Estate of Lewis H. Curd, Eleanor F. Curd

as personal representative to the [e]state, the Lewis H. Curd Credit Shelter Trust (the “Trust”), and Lewis H. Curd, Jr., and Eleanor F. Curd as trustees.

10. Upon further deliberation, I hereby vacate the July 28, 2014 Order adding parties to the case. This Final Order supersedes any other Order issued in this matter, and specifically any Order pertaining to parties.
11. Tenant has proved the following: Lewis H. Curd was the Housing Accommodation’s landlord when Tenant entered into his lease; Mr. Curd died while Tenant was still living at the Housing Accommodation; Mr. Curd’s wife, Eleanor F. Curd, became Tenant’s landlord prior to vacating the Housing Accommodation in July 2007; in December 2007, the Trust became owner of the Housing Accommodation; and in April 2012, Ms. Curd passed away.
12. Housing Provider Eleanor F. Curd is named twice in specific roles, rather than as an individual. Tenant’s counsel stated that Ms. Curd also acted as a housing provider by collecting rent for the Housing Accommodation. Counsel’s statement has no bearing on my analysis of Ms. Curd’s role in this case. Tenant’s counsel’s statements are not testimony, and it is well established that an individual acting in the role of administrator, i.e., an estate’s personal representative, is not appearing as a person: “An administrator is an artificial, not a natural person; an office; a legal entity capable of suing and being sued. The artificial person whose powers are exercised by the natural person is recognized by the law as separate and distinct from said natural person.” *Behnke v. Geib*, 169 F. Supp. 647, 650 (D. Md. 1959). I will examine each role in turn.
13. Preliminarily, I find sufficient evidence to find that Lewis H. Curd was a housing provider under the Act, up until the date of his death. It is uncontested that he was Tenant’s primary landlord, owner of the Housing Accommodation, and received rent from Tenant. Lewis H. Curd named his wife, Eleanor F. Curd, as personal representative to his [e]state upon his passing. PX 100.
14. To determine if a personal representative is or can be a housing provider in this matter, I will look to law followed by the Probate Division of the District of Columbia Superior Court (the “Probate Court”). The Probate Court “has subject matter jurisdiction over the estate of any decedent who was domiciled in the District at the time of death.” *In re Estate of Delaney*, 819 A.2d 968, 987 (D.C. 2003) (internal citations omitted). The personal representative of such a decedent “has the same standing to sue and be sued in the courts of this and any other jurisdiction as the decedent had immediately prior to death.” D.C. [Official] Code § 20-701. Therefore, at the time the [T]enant [P]etition was filed, Eleanor F. Curd as personal representative was a housing provider, susceptible to suit, under the Act.

15. However, “the appointment of a personal representative shall be terminated in accordance with Chapter 13 of this title (Closing the Estate) or by the personal representative’s death.” D.C. [Official] Code § 20-522 (in relevant part). Therefore, Ms. Curd ceased to fill this role at the time of her death, and thus did not stand in the same position to be sued as she had as a personal representative. See *Behnke v. Geib*, 169 F. Supp. 647, 650-51 (D. Md. 1959). In such cases, “any interested person (including a person indicated in the decedent’s will as the successor personal representative to the personal representative who is deceased or has been determined to have a disability) may apply to the court for the appointment of a special administrator or successor personal representative.” D.C. [Official] Code § 20-524.
16. Ms. Curd’s role as personal representative ceased upon her death. There is no evidence on record of a successor personal representative, or a personal representative to Ms. Curd’s estate, who could take her place. I accordingly exclude Eleanor F. Curd, personal representative to the Estate, from appropriately named Housing Providers in this case.
17. Moreover, the Estate cannot be sued in and of itself. “The estate of a deceased person is not an entity known to the law, and is not a natural or artificial person, but is merely a name indicating the sum total of assets and liabilities of a decedent.” *Behnke v. Geib*, 169 F. Supp. 647, 650 (D. Md. 1959), [(quoting 33 C.J.S. Executors and Administrators 3 e., p. 881)]. As there is no other named personal representative to this Estate, I likewise will not consider the Estate to be a properly named housing provider in this matter.
18. To determine if Ms. Curd is appropriately named as a representative of the Trust, I must determine the Trust’s role in this matter. I do not find the Trust to be a housing provider under the Act. Preliminarily, it is worth noting that Tenant first motioned to add the Trust as a party in June 2014, upon suggestion from this court and six years after Tenant first filed the Certificate of Occupancy and Change of Ownership forms that identified the Trust as a possible Housing Provider. Yet even after six years['] notice of the Trust’s involvement, Tenant never provided this court any contact information or way to serve the Trust or trustee Lewis H. Curd, Jr. I will not dwell upon the fact that Tenant also requested, in June 2014, that I add Eleanor F. Curd in her capacity as trustee, some two years after Ms. Curd’s death. At this point in the proceedings, adding the Trust or trustee Mr. Curd, Jr., would result in a gross violation of due process, as these entities were never served notice of this hearing.
19. Tenant has failed to establish any privity between himself and the Trust. The Trust is not a personal representative of the Estate, vulnerable to suit on the deceased party’s behalf. Also, it does not fulfill any role listed under D.C. [Official] Code § 42-3501.03(15) during the period of Tenant’s lease. There is nothing on record suggesting that the Trust has ever taken an active role as

might define a housing provider, such as collecting rent on the Housing Accommodation, and Tenant testified that he never paid rent to the Trust. Although an owner, the Trust did not own the Housing Accommodation during Tenant's tenancy, and there is nothing to suggest it was entitled to use the Housing Accommodation during Tenant's tenancy. Pointedly, there is no relationship on record between the Trust and the Housing Accommodation during any point between June 2004 and June 2007, the applicable statute of limitations for this matter.

20. There is accordingly no reason the Trust should be held liable for any violations that might have been committed by the prior owner, Mr. Curd. As such, I decline to add the Trust as a housing provider in this case.
21. For the reasons articulated above, I furthermore decline to add Mr. Curd, Jr. or the deceased Eleanor F. Curd, trustees for the Trust, as housing providers. There is no legal theory under which I find it appropriate to do so. I specifically find the argument Tenant offered, that the trustees are liable under D.C. [Official] Code § 42-3230, to be without merit.
22. I am mindful in this analysis that the Act is intended to be remedial in nature, and that these findings will result in this matter's dismissal. As articulated in *Goodman v. District of Columbia Rental Housing Commission*, the Act is designed to address the needs of low- to moderate-income tenants who may not be able to afford private counsel. *Goodman*, 573 A.2d 1293, 1299 (D.C. 1990). Because "the Act relies largely on lay persons, operating without legal assistance, to initiate and litigate administrative and judicial proceedings . . . [procedural] technicalities are particularly inappropriate in [such] a statutory scheme." *Id.* (quoting *Love v. Pullman*, 404 U.S. 522, 527 (1972); *Coles v. Penny*, 174 U.S.App. D.C. 277, 282-83 (1976)). However, both parties were represented in this case. Tenant's counsel repeatedly referenced his professional experience with cases arising under the Act. Therefore, I find it appropriate to adjudicate this case with full observation of procedural technicalities, thereby preserving the Housing Provider parties' benefits under law.
23. Housing Providers' March 20, 2008 Motion to Dismiss notified Tenant that part of Housing Providers' strategy would be to oppose the legality of Tenant's suit against the Estate. In hearings throughout 2013 and 2014, the named parties were called into question, and Mr. Hessler, followed by Mr. Bianco, repeatedly made clear that they only represented the interests of the Estate, well after the death of the Estate's named personal representative. Tenant chose repeatedly to ignore the implications of these developments, did not chose to research or subpoena information regarding the Trust or the Estate, and relied heavily on a misreading of D.C. [Official] Code § 42-3230 to buoy its claim.

24. Because the named Housing Providers in this matter are not housing providers under the Act, and because Tenant has not named any other appropriate parties after ample opportunity to do so, I hereby dismiss this case.

Id. at 9-18; R. at 182-91 (emphasis original) (footnotes omitted).

On December 12, 2014 the Tenant filed a timely Notice of Appeal of the Final Order with the Commission (Notice of Appeal). *See* Notice of Appeal at 1. The Tenant raises the following issues on appeal:⁵

1. The ALJ erred when she found that the “Tenant has failed to properly name a housing provider.”
2. The ALJ erred by continuing the hearing after the Housing Provider failed to appear and its attorney was not prepared to go forward with the cross examination of the Tenant.
3. There is no evidence in the record to support the ALJ’s conclusion that the personal representative has [sic] deceased, nor the estate was closed at the time of the hearing on November 3, 2010.
4. The ALJ erred when she ruled on issue without allowing the parties an opportunity to discuss.

Notice of Appeal at 1-2. The Tenant filed a brief with the Commission on September 16, 2015 (Tenant’s Brief).⁶ The Housing Provider filed a reply brief with the Commission on September 28, 2015 (Housing Provider’s Brief). The Commission held its hearing in on September 29, 2015.

II. ISSUES ON APPEAL

- A. The ALJ erred when she found that the “Tenant has failed to properly name a housing provider.”

⁵ The Commission recites the issues in the language of the Tenant in the Notice of Appeal.

⁶ The Commission notes that the Tenant indicated in his brief that he would not be pursuing issue 4 raised in the Notice of Appeal. Tenant’s Brief at 2. Accordingly, the Commission will not address that issue herein.

- B. The ALJ erred by continuing the hearing after the Housing Provider failed to appear and its attorney was not prepared to go forward with the cross examination of the Tenant.
- C. There is no evidence in the record to support the ALJ's conclusion that the personal representative has [sic] deceased, nor the estate was closed at the time of the hearing on November 3, 2010.

III. DISCUSSION

A. **The ALJ erred when she found that the “Tenant has failed to properly name a housing provider.”**

The Tenant contends that the ALJ erred by determining that the Tenant had failed to properly name a housing provider, and subsequently dismissing the Tenant Petition. Notice of Appeal at 1. The Tenant asserts that there is no legal support for the ALJ's actions, based solely on the death of the Personal Representative.⁷ Tenant's Brief at 1.

In opposition, the Housing Provider asserts that the ALJ correctly dismissed the Tenant Petition. Housing Provider's Brief at 3. Although the Housing Provider concedes that the Estate was a “housing provider” under the Act at the time the Tenant Petition was filed, the Housing Provider asserts that once the Estate was closed no legal action could be maintained against it. *Id.* at 3-4. Additionally, the Housing Provider explains that the Tenant Petition cannot be further litigated because the Personal Representative passed away during the course of the OAH proceedings. *Id.* at 4.

In the Final Order, the ALJ determined that the Tenant had failed to name a housing provider, and thus dismissed the Tenant Petition. Final Order at 10; R. at 190. The ALJ found that Lewis H. Curd had been a housing provider up until the date of his death, and that after his death the Personal Representative became a housing provider under the Act. *Id.* at 14; R. at 186

⁷ The Commission notes that the Tenant has not cited a statutory or regulatory authority, or relevant case law precedent, in support of his contentions in Issue A on appeal. See Notice of Appeal at 1; Tenant's Brief at 1.

(citing D.C. OFFICIAL CODE § 20-701).⁸ The ALJ also determined that the Tenant had proven that the Estate and the Personal Representative were housing providers at the time the Tenant Petition was filed. *Id.* at 12-14; R. at 186-88.

However, after the death of the Personal Representative during the pendency of the OAH proceedings, the ALJ found that the Personal Representative's relationship to the Estate had ceased, and therefore the Personal Representative could not continue to be a housing provider for purposes of the Tenant Petition. *Id.* at 14-15; R. at 185-86. Next, the ALJ found that the Estate could not be sued in and of itself, and therefore could also no longer be a named housing provider on the Tenant Petition. *Id.* at 15; R. at 185 (citing Behnke v Geib, 169 F. Supp. 647, 650 (D. Md. 1959)). Finally, the ALJ determined that the Tenant had never added any additional parties as housing providers to the Tenant Petition, as the record did not contain evidence that additional parties were ever served with notice of the OAH proceedings.⁹ *Id.* at 15-16; R. at 184-85.

The Commission's standard of review of an ALJ's decision is contained at 14 DCMR § 3807.1 (2004), which provides the following:

The Commission shall reverse final decisions of the Rent Administrator [or ALJ] which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator [or ALJ].

⁸ D.C. OFFICIAL CODE § 20-701 provides in relevant part as follows: "(c) . . . a personal representative of a decedent domiciled in the District of Columbia at his death has the same standing to sue and be sued in the courts of this and any other jurisdiction as the decedent had immediately prior to death."

⁹ The Commission is satisfied, based on its review of the Notice of Appeal and the Tenant's Brief, that the Tenant's issue A, that the ALJ erred by finding that the Tenant did not properly name a housing provider, was limited to the contention that the Tenant had properly named the Estate as the Housing Provider, and that the death of the Personal Representative did not affect the standing of the Estate with respect to the Tenant Petition. *See* Notice of Appeal at 1; Tenant's Brief at 1-2. The Commission determines that the Tenant did not appeal or otherwise contest the ALJ's ruling in the Final Order vacating her July 28, 2014 Order adding the Lewis H. Curd Credit Shelter Trust, Lewis H. Curd, Jr., as trustee, and Eleanor F. Curd, as trustee, as parties to this case. *See* Notice of Appeal at 1; Tenant's Brief at 1-2. Accordingly, the Commission will not address this issue herein.

Under the Act, a “housing provider” is defined as “a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use and occupancy of any rental unit within a housing accommodation within the District.” D.C. OFFICIAL CODE § 42-3501.03(15) (2007 Supp.).

In the District of Columbia, legal title to a decedent’s property is vested in the personal representative of a decedent’s estate, not in the estate itself. D.C. OFFICIAL CODE § 20-105;¹⁰ *see, e.g., OneWest Bank, FSB v. Marshall*, 18 A.3d 715, 723 (D.C. 2011); *Douglas v. Lyles*, 841 A.2d 1, 3 (D.C. 2004). A personal representative “stands in the shoes” of a decedent, and has the same capacity to sue and be sued as the decedent had prior to death. D.C. OFFICIAL CODE § 20-701(c); *see In re Estate of Bernstein*, 3 A.3d 337, 340 n.2 (D.C. 2010); *Smith v. Wells Fargo Bank*, 991 A.2d 20, 25 (D.C. 2010); *Dennis v. Edwards*, 831 A.2d 1006, 1011 (D.C. 2003); *c.f. Behnke*, 169 F. Supp. at 650 (explaining that “estate” means the property that passes at death to the personal representative, and that an estate is not an “entity known to the law”). The personal representative’s appointment is terminated upon his or her death. D.C. OFFICIAL CODE § 20-522.¹¹

The Commission is satisfied that upon the death of Lewis H. Curd, legal title to the Housing Accommodation passed not to the Estate, but to the Personal Representative. D.C. OFFICIAL CODE § 20-105; *OneWest Bank, FSB*, 18 A.3d at 723; *Douglas*, 841 A.2d at 3. Therefore, the Personal Representative was a “housing provider,” as that term is defined under

¹⁰ D.C. OFFICIAL CODE § 20-105 provides the following: “. . . all property of a decedent shall be subject to this title and, upon the decedent’s death, shall pass directly to the personal representative, who shall hold the legal title for administrative and distribution of the estate.”

¹¹ D.C. OFFICIAL CODE § 20-522 provides the following: “The appointment of a personal representative shall be terminated in accordance with Chapter 13 of this title (Closing the Estate) or by the personal representative’s death, disability, resignation, or removal[.]”

the Act, at the time the Tenant Petition was filed. D.C. OFFICIAL CODE §§ 20-105 & 42-3501.03(15); OneWest Bank, FSB, 18 A.3d at 723; Douglas, 841 A.2d at 3. However, the Estate itself was not a “housing provider” under the Act, because it was not the owner of the Housing Accommodation.¹² D.C. OFFICIAL CODE § 42-3501.03(15).

At the time the Tenant Petition was filed, the Personal Representative was a housing provider, and properly named as a party to the Tenant Petition. D.C. OFFICIAL CODE §§ 20-701(c) & 42-3501.03(15); In re Estate of Bernstein, 3 A.3d at 340 n.2; Smith, 991 A.2d at 25; Dennis, 831 A.2d at 1011. However, upon the death of the Personal Representative, her appointment was terminated and she ceased to hold legal title to the Housing Accommodation, and therefore was no longer a “housing provider” under the Act. D.C. OFFICIAL CODE § 20-522.¹³ Therefore, after the death of the Personal Representative, no “housing provider” under the Act remained as a party to the Tenant Petition.¹⁴ D.C. OFFICIAL CODE §§ 20-522, 20-701(c) &

¹² The Commission’s review of the record reveals that neither party asserted that the Estate served in any capacity other than an owner, such as a landlord, lessor, sublessor, assignee, or that the Estate, on its own, was receiving or entitled to receive rents for the Housing Accommodation.

¹³ The Commission’s review of the record suggests, but does not clearly show, that the Personal Representative’s appointment and legal title to the Housing Accommodation may have terminated before her death due to the closing of the Estate. *See* D.C. OFFICIAL CODE § 20-522 (“appointment of a personal representative shall be terminated in accordance with Chapter 13 of this title (Closing the Estate)”); D.C. OFFICIAL CODE § 20-1301 *et seq.*

In any event, the Commission notes that the Tenant has not argued that his claims survive the closure of the Estate pursuant to D.C. OFFICIAL CODE § 20-1302, which provides, in relevant part:

After an estate has been closed, a claim not barred may be brought against one or more of the persons to whom property has been distributed. An heir or legatee shall not be liable to claimants for any amount in excess of the value of the property distributed to such heir or legatee, valued at the time of distribution or the time of filing suit, whichever is lower.

The Tenant has not named any person as a housing provider based on his or her status as an heir or legatee, or, as noted, *supra* at n.9, appealed the ALJ’s reversal of the July 28, 2014 Order to add the trust and its trustees as parties.

¹⁴ The Commission notes that although the Tenant filed a motion to add additional parties to the Tenant Petition, that motion was denied in the Final Order, a determination that the Tenant did not appeal. *See supra* at n.7.

42-3501.03(15); OneWest Bank, FSB, 18 A.3d at 723; In re Estate of Bernstein, 3 A.3d at 340 n.2; Smith, 991 A.2d at 25; Douglas, 841 A.2d at 3; Dennis, 831 A.2d at 1011.

Accordingly, where the Commission is satisfied that the death of the Personal Representative left no housing provider as a party to the Tenant Petition, the Commission determines that the ALJ's dismissal of the Tenant Petition was not arbitrary, capricious, or an abuse of discretion, and was in accordance with the relevant provisions of the Act. 14 DCMR § 3807.1; *see* D.C. OFFICIAL CODE §§ 20-105, 20-701 & 42-3501.03(15); OneWest Bank, FSB, 18 A.3d at 723; In re Estate of Bernstein, 3 A.3d at 340 n.2; Smith, 991 A.2d at 25; Douglas, 841 A.2d at 3; Dennis, 831 A.2d at 1011.¹⁵ The Commission affirms the ALJ on this issue.

B. The ALJ erred by continuing the hearing after the Housing Provider failed to appear and its attorney was not prepared to go forward with the cross examination of the Tenant.

¹⁵ The Commission's review of the record does not indicate that any party filed a motion for substitution following the death of the Personal Representative, pursuant to Super. Ct. R. Civ. Pro. 25(a)(1). In the absence of any OAH rule on substitution, the ALJ is authorized to rely upon the Superior Court Rules. 1 DCMR § 2801.2 (2007) ("Where a procedural issue coming before this administrative court is not specifically addressed in these Rules, this administrative court may rely upon the District of Columbia Rules of Civil procedure as persuasive authority.")

Super. Ct. R. Civ. Pro. 25(a)(1) states as follows:

If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

A formal suggestion of death must be made on the record, regardless of whether the parties have knowledge of a party's death. Daskalea v. Wash. Humane Soc'y, 275 F.R.D. 346, 369-70 (D.D.C. 2011); Lightfoot v. District of Columbia, 629 F. Supp. 2d 16, 18 (D.D.C. 2009); *see also*, McSurely v. McClellan, 753 F.2d 88, 98 (D.C. Cir. 1985). A representative or successor must be identified in the motion or pleading. McSurely, 753 F.2d at 98; Rende v. Kay, 415 F.2d 983, 986 (D.C. Cir. 1969). A "representative" of a deceased party may include an executor, administrator, personal representative, or successor (such as a distributee) of the deceased party, but does not include an attorney for the estate of the deceased party. Rende, 415 F.2d at 986.

The Tenant asserts that the ALJ erred by granting a continuance to the Housing Provider during the November 3, 2010 OAH hearing, for the purpose of obtaining a subpoena for the Tenant's tax records and subleases. Tenant's Brief at 2.

The District of Columbia Court of Appeals (DCCA) has consistently held that the grant or denial of a motion for a continuance is committed to the sound discretion of the trial judge. *See, e.g., Nursing Unlimited Servs., Inc. v. D.C. Dep't of Emp't Servs.*, 974 A.2d 218, 221 (D.C. 2009) (quoting *King v. D.C. Water & Sewer Auth.*, 803 A.2d 966, 970 (D.C. 2002)); *Wagley v. Evans*, 971 A.2d 205, 208 (D.C. 2009) (quoting *Fischer v. Estate of Flax*, 816 A.2d 1, 8 (D.C. 2003)); *Lyons v. Jordan*, 524 A.2d 1199, 1203 (D.C. 1987) (citing *Harris v. Akindulureni*, 342 A.2d 684, 686 (D.C. 1975)). Under the OAH rules, the ALJ may grant a continuance where "good cause" is shown. 1 DCMR § 2811.6.

In a case management order issued on February 8, 2013, the ALJ found good cause for a continuance of the November 3, 2010 evidentiary hearing because "this case presents a myriad of complex issues, in the best interests of justice and a complete record, the Housing Provider/Respondent's participation is warranted." *Ivancie v. Estate of Lewis H. Curd*, RH-TP-07-28,989 (OAH Feb. 8, 2013). Additionally, the Commission's review of the record indicates that at the close of the November 3, 2010 hearing, counsel for the Housing Provider indicated that he had not completed his cross-examination of the Tenant.

Based on its review of the record, the Commission is unable to determine that the ALJ's continuance of the November 3, 2010 hearing was an abuse of discretion, where the ALJ found good cause for the continuance based on the complexity of the case, and the fact that the Housing Provider had not completed its cross-examination of the Tenant. 14 DCMR § 3807.1; *see* 1

DCMR § 2811.6; Nursing Unlimited Servs., Inc., 974 A.2d at 221; Wagley, 971 A.2d at 208; Lyons, 524 A.2d at 1203. Accordingly, the Commission affirms the ALJ on this issue.

C. There is no evidence in the record to support the ALJ's conclusion that the personal representative has [sic] deceased, nor the estate was closed at the time of the hearing on November 3, 2010.

The Tenant contends on appeal that the ALJ erred by finding that the Personal Representative was deceased, where there is no record evidence to support such a finding. Tenant's Brief at 2.

The Commission has consistently held that it may not review issues that are raised for the first time on appeal. *See, e.g. Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n*, 642 A.2d 1282, 1286 (D.C. 1994); Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013) at n.13; Barac Co. v. Tenants of 809 Kennedy St., N.W., VA 02-107 (RHC Sept. 27, 2013). The Commission's review of the record in this case reveals that at the June 5, 2013 OAH hearing, counsel for the Housing Provider proffered that the Personal Representative had died in April of 2012. Hearing CD (OAH June 5, 2013) at 10:58. When the ALJ asked counsel for the Tenant whether he had any response to the proffer, counsel stated "I'm not so sure, your honor." *Id.* at 11:01. The ALJ next asked counsel to clarify whether he meant that he wasn't sure whether the Personal Representative had died, counsel responded that "no," that wasn't what he meant. *Id.* The Commission's review of the June 5, 2013 OAH hearing reveals that counsel for the Tenant did not object to the proffer that the Personal Representative had died. *Id.* The Personal Representative's death was mentioned again at the July 18, 2014 OAH hearing, and

again counsel for the Tenant did not object to the Housing Provider's statements that the Personal Representative had died.¹⁶ Hearing CD (OAH July 18, 2014) at 11:35.

Accordingly, where the Commission's review of the record reveals that the Tenant failed to raise this issue before the ALJ, the Commission may not review this issue for the first time on appeal. *See, e.g.* Lenkin Co. Mgmt., 642 A.2d at 1286; Morris, RH-TP-06-28,794; Barac Co., VA 02-107. The Commission dismisses this issue.

IV. CONCLUSION

For the foregoing reasons, the Commission affirms the ALJ on issues A and B, and dismisses issue C.

SO ORDERED



PETER B. SZEGEDY-MASZAK, CHAIRMAN



CLAUDIA L. MCKOIN, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), 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."

¹⁶ The Commission notes that it has previously accepted statements by counsel and non-parties as sufficient to demonstrate the death of a party, even where the statements were not "evidence" submitted under oath at an evidentiary hearing. *See, e.g.*, Hardy v. Jenkins, 2010-DHCD-TP-30,009 (RHC Mar. 29, 2012) (accepting the "Notation of Death" filed by counsel as sufficient for a suggestion of death); Killingham v. Marina View Trustee, LLC, VA 07-017 (RHC Mar. 1, 2011) (accepting opposing counsel's statement in a Motion to Dismiss Appeal that the tenant had died as sufficient to constitute a suggestion of death); Mersha v. Marina View Tower Apartments Town Ctr. Ltd. P'ship, TP 24,970 (RHC Mar. 25, 2003) (accepting "Notice" filed by tenant's neighbor, who was not a party to the case, as sufficient to constitute a suggestion of death).

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 may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, DC 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the **DECISION AND ORDER** in RH-TP-07-28,989 was served by first-class mail, postage prepaid, this **25th day of March, 2016**, to:

Copies to:

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