DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-13-30,343

In re: 2480 16th Street, N.W.
Unit 108

Ward One (1)

PETER PETROPOULOS
Tenant/Appellant

v.

BORGER MANAGEMENT, INC.
Housing Provider/Appellee

DECISION AND ORDER

July 10, 2019

RANGA PUTTAGUNTA, JUDGE: This case is on appeal to the Rental Housing Commission ("Commission") from a final order issued by the Office of Administrative Hearings ("OAH"),[1] based on a petition filed in the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD"). 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 Procedure 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), and 14 DCMR §§ 3800-4399 (2004), 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 § 2-1831.01 -1831.03(b-1)(1) (2007 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 (2010 Repl.).

I. PROCEDURAL HISTORY

On January 29, 2013, tenant/appellant Peter Petropoulos ("Tenant"), residing at 2480 16th Street, N.W., Unit 108 ("Housing Accommodation"), filed tenant petition 30,343 ("Tenant Petition") against housing provider/appellant Borger Management, Inc. ("Housing Provider"). Tenant Petition at 1-14; PX 101. In the Tenant Petition, the Tenant alleged that the Housing Provider violated the Act as follows:

1. The rent increase was larger than the increase allowed by any applicable provision of the Act.
2. The rent increase was made while my/our units were not in substantial compliance with DC Housing Regulations.
3. Services and/or facilities provided as part of rent and/or tenancy have been permanently eliminated.
4. Services and/or facilities provided as part of rent and/or tenancy have been substantially reduced.

Id. at 2. The Tenant provided complaint details listing four rent increases that were alleged to be unlawful, 11 alleged housing code violations, and 13 other alleged reductions or eliminations of related services or facilities. Tenant Petition at 12-13.

An evidentiary hearing was held on September 24, 2013 before Administrative Law Judge William L. England, Jr. ("ALJ"). The Tenant appeared, *pro se*, and called witnesses Benoit Brookens and Rudolph Douglas. Hearing CD (OAH Sept. 24, 2013). During the evidentiary hearing, a significant amount of the witnesses' testimony and questioning by the Tenant referred to two other tenant petitions, 11,552 and 12,085, which related to the same Housing Accommodation ("Related Petitions"). *Id.* During Mr. Douglas' testimony, the ALJ continued the evidentiary hearing until October 8, 2013, to allow the Tenant to obtain evidence that he was a party to the Related Petitions. *Id.* at Part 8 at 00:00-32:12, Part 9 at 00:00-9:27, Part 10 at 00:00-10:47, & Part 11 at 00:00-4:00.

On October 8, 2013, Mr. Brookens filed a motion to intervene in this Tenant Petition on behalf of himself, Mr. Douglas, and Eleanor Johnson (another tenant of the Housing Accommodation). *Id.* at Part 2 at 5:30-7:54; Tenant's Motion to Intervene at 1-2; PX 106. The ALJ continued the evidentiary hearing scheduled for that day to permit written arguments to be filed on the question of intervention. Hearing CD (OAH Oct. 8, 2013) at Part 4 at 30:00-40:00.

No further administrative action occurred in this case for nearly three years. On March 28, 2014, however, the District of Columbia Court of Appeals ("DCCA") dismissed Mr. Brookens' petition for judicial review of the Commission's decision in the Related Petitions, which affirmed OAH's dismissal of all his claims. *See* Brookens v. D.C. Rental Hous. Comm'n, 12-AA-289 (D.C. Mar. 28, 2014); Hago v. Gewirz, RH-TP-08-11,552 & RH-TP-08-12,085 (RHC Feb. 15, 2012).

On July 7, 2016, the ALJ issued an order finding that the Related Petitions had no bearing on the Tenant Petition, denying Mr. Brookens' and others' motion to intervene, and dismissing the Tenant Petition with prejudice: Petropoulos v. Borger Mgmt., 2013-DHCD-TP 30,343 (OAH July 7, 2016) ("Final Order"); R. at Tab 17. In relevant part, the ALJ made the following determinations:

> During the five-hour hearing on September 24, 2013, it became clear to me that all of Tenant's allegations in his tenant petition were premised on his assertion that challenges by tenants in the [Housing Accommodation] to illegal rent increases imposed by Housing Provider beginning on June 19, 1981, were still pending before the Court of Appeals [*i.e.* the Related Petitions].
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> At the beginning of the evidentiary hearing on September 24, 2013, Tenant Peter Petropoulos was unable to coherently articulate the remedy he was seeking in his tenant petition. He responded to my questions about the remedy he was seeking with a rambling, scattered and disjointed statement about illegal rent increases by Housing Provider since the 1980's, rent roll-backs due from capital improvement rent increases, damages for his health problems, and damages for his inconvenience and living expenses. During the hearing on September 24, 2013, Tenant called

> Benoit Brookens and Rudolph Douglas as witnesses. However, during this five-hour hearing Tenant was unable to elicit testimony from his witnesses that was not premised on Tenant's assertion of improper rent levels and illegal rent increases beginning in 1981 that were the subject of an appeal then pending before the Court of Appeals.
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> The rules of this administrative court provide as follows: "If a party has presented all of its evidence on an issue on which it has the burden of proof, and the presiding Administrative Law Judge concludes that the party has failed to meet its burden, the Administrative Law Judge may find against that party on that issue without awaiting the close of all of the evidence in the case." OAH Rule 2822.5. After considering Tenant's arguments and the testimony of the two witnesses he presented during a five-hour hearing, and after consideration of the above-described written submissions by the parties, I am convinced that Tenant cannot meet his burden on any issue presented in his tenant petition. Therefore, I will, *sua sponte*, dismiss his tenant petition.

Id. at 10-12.

On July 26, 2016, the Tenant, through attorney Claude W. Roxborough, Esq. (since deceased), filed a notice of appeal with the Commission ("Notice of Appeal"). In the Notice of Appeal, the Tenant asserted the following issues:

1. The Administrative Law Judge erred in concluding that Tenant failed to meet his burden of proof regarding the alleged reductions in services/facilities and housing code violations.

2. The Administrative Law Judge erred in not explaining to Tenant, a pro se party, in sufficient detail and with sufficient clarity the procedural requirements for prosecuting a tenant petition at an evidentiary hearing.

3. The Administrative Law Judge erred in issuing the decision before the close of evidence in Tenant's case; and

4. The Administrative Law Judge erred in denying Tenant Petitioner his choice of tenant representative.[2]

[2] At oral arguments before the Commission, the Tenant withdrew issue 4. Hearing CD (RHC May 8, 2019) at 11:16-11:17. The Commission also notes that the Notice of Appeal states that it is filed by Mr. Petropoulos, Mr. Douglas, and Ms. Johnson. However, neither Mr. Douglas nor Ms. Johnson filed anything in this appeal or appeared at the Commission's hearing, nor did anyone appear on their behalf, nor does the Notice of Appeal assert any error by the ALJ in denying their motion to intervene.

The Commission scheduled a hearing for May 8, 2019. The Tenant did not file a brief. On February 19, 2019, the Housing Provider filed a statement in lieu of brief adopting and incorporating the Final Order. The Commission held its hearing on May 8, 2019, at which the Tenant appeared, represented by attorney Marc Borbely, Esq., who entered his appearance the same day, and the Housing Provider appeared through attorney Richard W. Luchs, Esq. Hearing CD (RHC May 8, 2019) at 11:00.

II. PRELIMINARY ISSUE

At the beginning of the Commission's hearing, the Housing Provider made an oral motion to dismiss this appeal. Hearing CD (RHC May 8, 2019) at 11:05-11:08. The Housing Provider argued that Tenant's failure to file a brief deprived the Housing Provider of an adequate basis to respond to the claims of error. *Id.* The Commission's rules, however, do not require an appellant or appellee to file a brief. *See* 14 DCMR § 3802. The rules only require that a notice of appeal contain, substantively, "a clear and concise statement of the alleged error(s) in the decision" of the ALJ. 14 DCMR § 3802.5(b). The Commission is satisfied that the Notice of Appeal provides a sufficiently clear statement of error by the ALJ to put the Housing Provider on notice of the issues to be argued at the hearing and decided by the Commission.

In issue 1, the Tenant alleges that the ALJ erred in concluding that the Tenant failed to meet his burden of proof regarding the alleged reductions in services and housing code violations. For the reasons discussed *infra* at 7-11, this issue is subsumed by issue 3, where the Tenant alleges the ALJ erred by dismissing the Tenant Petition before the Tenant introduced all of his evidence. In issue 3, any person with a copy of the Final Order can easily identify the decision made by the ALJ of which the Tenant complains, *i.e.*, the dismissal of the Tenant Petition under OAH Rule 2822.5. *See* Final Order at 10-12. Furthermore, the audio recording of the evidentiary hearing is available as part of the certified record, and any party can access that

record to determine whether the ALJ's description of the testimony is accurate and whether the ALJ's legal reasoning is sound.

In issue 2, the Tenant alleges the ALJ erred in not explaining to Tenant, a *pro se* party, in sufficient detail and with sufficient clarity the procedural requirements for prosecuting a tenant petition at an evidentiary hearing. Even assuming for the sake of argument that this issue is properly raised and preserved, the Commission determines, *infra* at 11-16, that the Tenant has failed to demonstrate an abuse of discretion by the ALJ.

In issue 4, the Tenant alleges the ALJ erred in denying Tenant his choice of tenant representative. The Commission, however, need not address this issue as Tenant withdrew this assignment of error during oral argument. Hearing CD (RHC May 8, 2019) at 11:16-11:17.

Accordingly, the Housing Provider's oral motion to dismiss, raised as a preliminary issue at the start of the hearing before the Commission, is denied.

III. ISSUES ON APPEAL

1. Whether the ALJ erred in dismissing the Tenant Petition under OAH Rule 2822.5.

2. Whether the ALJ erred in failing to explain the procedural requirements for prosecuting a tenant petition at an evidentiary hearing in sufficient detail or with sufficient clarity.

IV. DISCUSSION

The Commission's standard of review is found at 14 DCMR § 3807.1 and provides as follows:

> The Commission shall reverse final decisions of the [OAH] 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 [OAH].[3]

"Guiding legal principles" commit the management and conduct of trials or other evidentiary proceedings to the sound discretion of the presiding judge. Bolton v. Crowley, Hoge & Fein, P.C., 110 A.3d 575, 587-89 (D.C. 2015); Bettis v. Horning Assocs., RH-TP-15-30,658 (RHC July 20, 2018) at 45-46. An error of law or the application of an incorrect legal standard by definition constitutes an abuse of discretion. In re K.C., 200 A.3d 1216, 1233 (D.C. 2019); Ford v. ChartOne, Inc., 908 A.2d 72, 84 (D.C. 2006). The Commission will review the ALJ's legal conclusions under the Act *de novo*. United Dominion Mgmt. Co. v. D.C. Rental Hous. Comm'n, 101 A.3d 426, 430-31 (D.C. 2014).

1. Whether the ALJ erred in dismissing the Tenant Petition under OAH Rule 2822.5.

OAH Rule 2822.5 provides as follows:

> If a party has presented all of its evidence on an issue on which it has the burden of proof, and the presiding Administrative Law Judge concludes that the party has failed to meet its burden, the Administrative Law Judge may find against that party on that issue without awaiting the close of all the evidence in that case.

14 DCMR § 2822.5 (Dec. 31, 2010). The Tenant asserts that the ALJ erred because the evidentiary hearing was continued during the presentation of his evidence and the ALJ subsequently dismissed the Tenant Petition based on a predictive judgment that the Tenant only intended to present evidence relevant to the Related Petitions, rather than allowing the Tenant to resume or rest his case. Hearing CD (RHC May 8, 2019) at 11:08-11:15; *see* Final Order at 12.

The Commission's review of the record shows that, when the evidentiary hearing was continued, the Tenant had not yet "presented all of [his] evidence on" the issues raised in the

[3] As noted *supra* at n.1, jurisdiction over hearings arising under the Act was transferred from the Rent Administrator to OAH.

Tenant Petition. Indeed, the ALJ had interrupted the Tenant's direct examination of the Tenant's second witness to continue the hearing to determine whether the Related Petitions had any bearing on the Tenant Petition. Hearing CD (Sept. 24, 2013) at Part 8 at 00:00-32:12, Part 9 at 00:00-9:27, Part 10 at 00:00-10:47, & Part 11 at 00:00-4:00. At no point prior to the continuance did the Tenant rest, close his case, indicate he was done presenting evidence or otherwise convey that he was abandoning his petition. The Tenant himself had yet to testify or indicate that he would not be testifying. In fact, when the ALJ continued the hearing, he expressly recognized that the evidentiary hearing was not done; he ordered the parties to be prepared to move forward with the evidentiary phase of the case immediately after he ruled on the issue of the Related Petitions. *Id.* at Part 11 at 2:10-2:37. The record clearly demonstrates that the Tenant had not presented all of his evidence when the ALJ continued the September 24, 2013 hearing.

When the parties returned to OAH on October 8, 2013, the ALJ did not conduct the continued evidentiary hearing. Final Order at 3; Hearing CD (OAH Oct. 8, 2013). Nor did the ALJ rule on whether the Related Petitions had any bearing on Tenant's Petition. *Id.* On the morning of the October 8, Mr. Brookens filed a Motion to Intervene on behalf of himself and two other individuals. *Id.* at Part 2 at 5:30-7:54; Tenant's Motion to Intervene at 1-2; PX 106. The ALJ continued the case in order to permit the parties to file pleadings in relation to the Motion to Intervene. Final Order at 3; Hearing CD (OAH Oct. 8, 2013) at Part 4 at 30:00-40:00.

At no point did the ALJ resume the evidentiary hearing. Three years later, the ALJ issued the Final Order *sua sponte* dismissing Tenant's Petition.[4] Final Order at 10-12. The ALJ was convinced that the "Tenant cannot meet his burden on any issue presented in his tenant

[4] In the Final Order, the ALJ also denied the Motion to Intervene and determined that the Related Petitions had no bearing on the Tenant Petition. Final Order at 4-12.

petition" based on Tenant's performance at the September 24th hearing and his written submissions. *Id.* at 12. This was error.

Even assuming that the Tenant had, by that point, not presented any relevant evidence, an ALJ cannot dismiss the Tenant Petition in the middle of a tenant's case-in-chief pursuant to OAH Rule 2822.5. Rule 2822.5 provides the power to dismiss an issue only where a party has presented all of its evidence on that issue and the ALJ concludes the party has not met its burden on that issue. It does not apply where, as here, the Tenant had not yet presented all his evidence on any issue raised in the Tenant Petition. *Id.* It does not permit an ALJ to issue a predictive judgement in the middle of the party's case based on that party's performance. *Id.* Although the Tenant's witnesses and questioning, up to that point, focused primarily on the Related Petitions, the Tenant or his witnesses could still have testified to housing conditions or rent increases that were properly before OAH. The ALJ therefore could not determine at that time whether Tenant could have prevailed. On this record, it is entirely possible that Tenant could have met his burden on some, if not all, of his claims.

Further, it is not apparent that, as the ALJ stated, "all of Tenant's allegations in his tenant petition were premised on" the issues in the Related Petitions. *See* Final Order at 10. The Tenant Petition itself lists four alleged rent increases between 2010 and 2012 (notably, two within less than six months of each other), 11 alleged housing code violations (albeit without dates), and 13 alleged reductions in other related services or facilities, several of which are specified as having been eliminated in 2010 or later. Tenant Petition at 9-10; PX 101. Although the Tenant had not yet testified, the Tenant proffered that Housing Provider raised Tenant's rent while housing code violations existed and made illegal rent increases. Hearing CD (OAH Sept. 24, 2013) at Part 6 at 26:54-27:21. At a later point in the hearing, Tenant specified that the

housing code violations existed from 2010-2013, that there were issues relating to construction that took place outside of his apartment, and that there were extreme noises. *Id.* at Part 6 at 31:00-31:27.

Moreover, the record demonstrates that the Tenant had successfully presented some evidence relevant to the Tenant Petition. Through his first witness, Mr. Brookens, the Tenant presented evidence relating to the loss of parking, common area, backyard, and patio space. *Id.* at Part 7 at 14:00-27:00. Mr. Brookens testified that noise from Housing Provider's construction activity impeded Tenant's use of quiet enjoyment of his apartment. *Id.* Mr. Brookens also testified about the reduction of other services such as the removal of a doorman and the loss of commercial entities in the apartment complex. *Id.*

This is not to say the Tenant is entitled to an unlimited amount of time to present his case; the ALJ certainly has discretion to manage his courtroom and to ensure the orderly administration of justice. *See, e.g.,* Bolton, 110 A.3d at 587-89 (no abuse of discretion where "trial judge became impatient with what he described as Ms. Bolton's 'long narratives' and 'nonresponsive answers'"); Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP, 68 A.3d 697, 708-09, 717 (D.C. 2013) (trial judge has broad discretion in managing the conduct of a trial including denying a *pro se* litigant permission to testify in a narrative form; trial judge was well within its discretionary powers to dismiss the case where plaintiff was contemptuous and refused to comply with court's order); Bandoni v. United States, 171 A.2d 748, 750 (D.C. 1961) (trial judge did not err in curtailing cross-examination of complaining witness where defense counsel was given ample opportunity to conduct extensive and thorough cross-examination on a range of relevant topics and counsel wished to continue exploring the same subject matters); Greenwood v. United States, 659 A.2d 825, 828 (D.C. 1955) ("The trial judge has the responsibility of

managing the conduct of a trial."); Williams v. United States, 228 A.2d 846, 848 (D.C. 1967) (trial judge has responsibility of moving a trial along in an orderly and efficient manner).

The record demonstrates that the Tenant spent a substantial amount of time trying to explore issues unrelated to the Tenant Petition despite the ALJ's repeated attempts to redirect Tenant's attention to germane matters. Hearing CD (OAH Sept. 24, 2013) at Part 6 at 4:50-6:10, 11:25-33:57, Part 7 at 00:00-6:45, & Part 8 at 5:30-15:00. The ALJ would have been well within his discretionary powers to curtail Tenant's direct examination if the Tenant continued to explore only irrelevant matters. Kaliku v. United States, 944 A.2d 765, 785 (D.C. 2010) (trial judge may curtail examination where interrogation is repetitive or only marginally relevant); Pietrangelo, 68 A.3d at 708-09, 717 (no error if trial judge were to have dismissed case where plaintiff was contemptuous and refused to comply with court's order). At no point, however, did the ALJ take such a step. To the contrary, the ALJ specifically instructed the Tenant was to be ready to resume the evidentiary hearing immediately after the ALJ determined whether the Related Petitions had any bearing on the Tenant Petition. Hearing CD (OAH Sept. 24, 2013 at Part 11 at 2:10-2:37. As discussed above, the ALJ's *sua sponte* dismissal over three years later – based on his prediction that the Tenant would not even attempt to meet his burden – is plainly not authorized by OAH Rule 2822.5.

Accordingly, the ALJ's decision on this issue is reversed. The Commission remands this case to the ALJ to conduct an evidentiary hearing on the allegations raised in the Tenant Petition.

2. Whether the ALJ erred in failing to explain the procedural requirements for prosecuting a tenant petition at an evidentiary hearing in sufficient detail or with sufficient clarity.

In his Notice of Appeal, Tenant contended that the ALJ erred in failing to explain the procedural requirements for prosecuting a tenant petition at an evidentiary hearing in sufficient detail or with sufficient clarity in light of Tenant's status as a *pro se* party. During oral argument

before the Commission, the Tenant cited to the 2012 District of Columbia Courts Code of Judicial Conduct Rule 2.6 ("Rule 2.6") and Padou v. District of Columbia, 998 A.2d 286, 292 (D.C. 2010), for legal support. In relevant part, Rule 2.6 provides: "[a] judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." Comment [1A] to Rule 2.6 states:[5]

> The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. Pursuant to Rule 2.2, the judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person; however, in the interest of ensuring fairness and access to justice, judges should make reasonable accommodations that help litigants who are not represented by counsel to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. In some circumstances, particular accommodations for self-represented litigants may be required by decisional or other law. Steps judges may consider in facilitating the right to be heard include, but are not limited to, (1) providing brief information about the proceeding and evidentiary and foundational requirements, (2) asking neutral questions to elicit or clarify information, (3) modifying the traditional order of taking evidence, (4) refraining from using legal jargon, (5) explaining the basis for a ruling, and (6) making referrals to any resources available to assist the litigant in the preparation of the case.

In Padou v. District of Columbia, 998 A.2d 286, 292 (D.C. 2010), the DCCA states:

> In cases where a party is a pro se litigant, "the general principle [is] that such a litigant can expect no special treatment from the court.'" *Macleod v. Georgetown Univ. Med. Ctr.*, 736 A.2d 977, 979 (D.C. 1999) (quoting *Abell v. Wang*, 697 A.2d 796, 804 (D.C. 1997)). A pro se litigant cannot "expect or seek concessions because of . . . inexperience and lack of trial knowledge and training and must, when acting

[5] The Commission notes that the DC Courts' Code of Judicial Conduct does not apply to proceedings before OAH. Section III (C) of the 2006 Code of Ethics for OAH Administrative Law Judges, however, is substantially identical to Rule 2.6 of Code of Judicial Conduct, and states "[a]n Administrative Law Judge shall accord to all persons who are legally interested in a proceeding, or their representatives, full right to be heard according to law." The Code of Ethics for OAH Administrative Law Judges does not include commentary but the Code of Judicial Conduct does. Because the language is substantially identical to DC Courts Judicial Code Rule 2.6, the Commission turns to the commentary to Rule 2.6 in construing Section III (C) of OAH Code of Ethics. *Cf.* Dorchester House Assocs., Ltd. P'shp v. D.C. Rental Hous. Comm'n, 913 A.2d 1260, 1264-65 (D.C. 2006) (where local rule is substantially identical to corresponding federal rule, D.C. Court of Appeals looks to federal jurisprudence in construing local rule); Lenkin v. D.C. Rental Hous. Comm'n, 677 A.2d 46, 49 (D.C. 1996) ("When a local rule and a federal rule are identical, or nearly so, we will construe the local rule in a manner consistent with the federal rule to the extent possible under binding precedent, and we will look to federal court decisions interpreting the federal rule as persuasive authority in interpreting the local rule." (citation omitted).

> as [his] [or her] own lawyer, be bound by and conform to the rules of court procedure . . . equally binding upon members of the bar." *Id.* (internal quotation marks and citations omitted; second brackets added). Nevertheless, we have followed the District of Columbia Circuit in requiring trial judges to exercise special care with a pro se litigant in special circumstances. Thus, in *Macleod*, we declared that "[i]n matters involving pleadings, service of process, and timeliness of filings, pro se litigants are not always held to the same standards as are applied to lawyers." *Id.* at 980 (referencing *Moore v. Agency for Int'l Dev.*, 301 U.S. App. D.C. 327, 329, 994 F.2d 874, 876 (1993)) (other citations omitted). Indeed, the trial court has a "responsibility to inform pro se litigants of procedural rules and the consequences of noncompliance," including "at least minimal notice . . . of pleading requirements." *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 756-57 n.12 (D.C. 2008) (referencing *Moore*, *supra*, 301 U.S. App. D.C. at 329, 994 F.2d at 876). And, as we recently stated, the court in *Moore* "opined that '[p]ro se litigants are allowed more latitude than litigants represented by counsel to correct defects in service of process and pleadings,' and [the court] emphasized the importance of providing pro se litigants with the necessary knowledge to participate effectively in the trial process.'" *Reade v. Saradji*, No. 09-CV-479, 994 A.2d 368, 2010 D.C. App. LEXIS 225, *14 (D.C. May 6, 2010) (quoting *Moore*, *supra*, 301 U.S. App. D.C. at 329, 994 F.2d at 876) (alteration in original).
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> [T]he trial court . . . could and should have discussed procedural matters relating to the alternative motion for summary judgment, including the fact that in rendering a decision on a summary judgment motion, the trial court examines "pleadings, depositions, answers to interrogatories, and admissions." Super. Ct. Civ. R. 56 (c). This may have elicited from the Padous what they tried to explain in their opposition and in Mr. Padou's declaration – that not only had no status conference taken place, but also more significantly, that the Padous had not had a chance to seek discovery from the District and to question the District's employees[.]

During oral argument, the Tenant's counsel argued that because he was *pro se* before OAH, the ALJ had an affirmative obligation to facilitate the Tenant's case and to not let the Tenant "dig his . . . own grave." Hearing CD (RHC May 8, 2019) at 11:15-11:16. The Tenant provided two examples in support of his contention that the ALJ erred. First, the Tenant argued that when the ALJ ordered all witnesses to leave the room after the Housing Provider invoked the rule on witnesses, the ALJ should have ensured the Tenant understood that he could testify even though he remained in the room to litigate his case. The Tenant argued that the ALJ should have explained what the rule on witnesses was, and what the ALJ was doing in directing the

witnesses to leave the room. The Tenant asserts that the ALJ should have asked the Tenant, "are you going to testify? Do you know you can testify?" *Id.* at 11:16-11:17. Second, the Tenant contends that the ALJ erred in failing to ask the Tenant about the exhibits he wished to move into evidence, despite there having been a fairly long discussion as to the 1- and 2-sided copies of exhibits both parties submitted prior to the hearing. The Tenant contends that the ALJ should have asked him, "Tell me about the exhibits. Are you going to talk to me about these exhibits?" *Id.* at 11:17-11:18.

The Commission is satisfied that the ALJ did not err in dealing with the Tenant as a *pro se* party. The Commission is mindful of the important role that *pro se* litigants play in enforcing the Act and of the difficulties they may face in litigation. *See* Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C. 2010); Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1299-1301 (D.C. 1990). However, as stated above, the Commission's review of an ALJ's management of an evidentiary hearing is only for an abuse of discretion, and an ALJ is afforded broad discretion in this matter. *See* Bolton, 110 A.3d at 587-89; Bettis, RH-TP-15-30,658 at 45-46. Although an error of law is inherently an abuse of discretion, In re K.C., 200 A.3d at 1233, neither Rule 2.6 nor Padou provide any specific mandate that the ALJ failed to follow.

To the contrary, the record demonstrates that the ALJ repeatedly explained his legal rulings and entertained extended discussions to help the Tenant understand the proceedings and the applicable law without "act[ing] as counsel for either litigant." Flax v. Schertler, 935 A.2d 1091, 1107 n.14 (D.C. 2007); Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d 977, 979 (D.C. 1999) ("While such a *pro se* litigant must of course be given fair and equal treatment, he cannot generally be permitted to shift the burden litigating [a] case to the courts, nor to avoid the risks of failure that attend [the] decision to forego expert assistance."). At the beginning of the hearing,

the ALJ explained the scope and purpose of the evidentiary hearing. Hearing CD (OAH Sep. 24, 2013) at Part 5 at 5:30-6:45. Throughout the hearing, the ALJ explained the various stages of the trial, such as what an opening statement is and its purpose, *id.* at Part 5 at 5:10-6:10, as well as what redirect entails, *id.* at Part 7 at 37:00-40:00. When the Housing Provider made objections, the ALJ explained the objection to the Tenant and asked the Tenant if he wanted to respond. *Id.* at Part 6 at 20:00-21:10 & Part 8 at 5:30-7:30. At another point, the ALJ explained the difference between a fact and an expert witness, informed the Tenant that he did not need to elicit expert testimony to prevail, and directed the Tenant to elicit facts. *Id.* at Part 6 at 2:15-3:35 & Part 7 at 6:45-8:00. When the Housing Provider objected to Tenant's leading questions, the ALJ permitted the Tenant to continue leading in light of his *pro se* status and the fact that the proceeding was before a judge as opposed to a jury. *Id.* at Part 7 at 9:00-10:00.

When the Housing Provider invoked the rule on witnesses, the ALJ explained his ruling – including the what and the why – to Tenant. *Id.* at Part 4 at 9:00-10:30 & Part 5 at 12:40-13:30. In fact, at the beginning of the Tenant's direct examination of his second witness, when the ALJ observed that the Tenant's first witness was still in the courtroom, the ALJ *sua sponte* informed the Tenant that if his first witness remained in the courtroom, then the Tenant would not be permitted to recall him in rebuttal under the rule on witnesses. *Id.* at Part 8 at 00:00-1:00. Furthermore, although the ALJ did not inform the Tenant he could testify when the Housing Provider first invoked the rule on witnesses (which the Tenant claims is error), at a later point in the hearing the ALJ did explicitly clarify for the Tenant that he could testify. *Id.* at Part 7 at 24:00-25:30. The ALJ even stated that he anticipated the Tenant would testify. *Id.*

On numerous occasions throughout the hearing, the ALJ addressed, explained, re-explained, and answered questions about the statute of limitations and the timeframe relevant to

the Tenant Petition. *Id.* at Part 6 at 11:25-33:57, Part 7 at 00:00-6:45, & Part 8 at 5:30-15:00. The ALJ repeatedly told the Tenant that because he filed his petition in January 2013, the relevant period of time under the Act's statute of limitations is from January 2010 to January 2013. *Id.* When the Tenant continued to ask questions about rent increases taken prior to the statute of limitations and about the Related Petitions, the ALJ tried to redirect the Tenant's questioning to issues relevant to the Tenant Petition and went as far as suggesting that the Tenant offer specific evidence referenced in the petition such as a purported rent increase taken on March 1, 2010, from $1,223 to $1,306. *Id.* at Part 6 at 4:50-6:10, 30:00-31:30, & Part 7 at 4:00-6:00. The record demonstrates that the ALJ was fully cognizant that one side of this litigation was *pro se* and exercised special care in facilitating the hearing and explaining the applicable procedural rules and law to the Tenant. The Commission therefore discerns no abuse of discretion by the ALJ in handling Tenant as a *pro se* party during the evidentiary hearing.

Accordingly, the ALJ is affirmed on this issue.

V. CONCLUSION

For the foregoing reasons, the ALJ's dismissal of the Tenant Petition is reversed. This case is remanded to OAH to provide the Tenant with the opportunity to complete his presentation of evidence in support of his allegations in the Tenant Petition.

SO ORDERED.

MICHAEL T. SPENCER, CHIEF ADMINISTRATIVE JUDGE

LISA M. GREGORY, ADMINISTRATIVE JUDGE

RUPA RANGA PUTTAGUNTA, ADMINISTRATIVE JUDGE

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."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2012 Repl.), "[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
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in RH-TP-13-30,343 was mailed, postage prepaid, by first class U.S. mail on this **10th day** of **July, 2019,** to:

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