

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
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HARRY GURAL,

*Tenant / Appellant,*

v.

EQUITY RESIDENTIAL MANAGEMENT  
and SMITH PROPERTY HOLDINGS VAN  
NESS, LP,

*Housing Providers / Appellees*

Case No.: 2016-DHCD-TP-30,855

In Re: 3003 Van Ness Street, NW  
Unit S 707

**HOUSING PROVIDER’S OPPOSED MOTION IN LIMINE**

COMES NOW Housing Provider and submits the instant Motion in Limine to exclude Petitioner’s Exhibits 129, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 193, 199, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, and 220 and in support thereof, states as follows.

**I. Relevant Background**

The instant case is a tenant petition dating back to 2016. For brevity, Housing Provider incorporates by reference the background section in its Opposition to Tenant’s Motion to Conduct Discovery, filed August 7, 2023, and limits its discussion to the pending claims in this matter and the order remanding this matter from the District of Columbia Rental Housing Commission. *See* Order of February 19, 2020, *Harry Gural v. Equity Residential Management et al.* In short, the Rental Housing Commission remanded the case “for further proceedings to provide the Tenant the opportunity to call Ms. Duvall as a witness regarding his retaliation claims arising from the demand

to sign a new term lease and the initiation of an action for possession against the Tenant” and to evaluate his rent increase claims. *See id.* at 26. In the Order, the Court addressed whether the ALJ erred by limiting the Tenant’s presentation of evidence related to his advocacy regarding “concession” leases. *See id.* at 17. The Court noted:

In the Final Order, the ALJ concluded that the Tenant had engaged in protected acts under D.C. OFFICIAL CODE § 42-3505.02(b) within six months of all of the allegedly retaliatory acts by the Housing Provider, triggering a presumption of retaliation." Final Order at 17-18. The Tenant therefore has not identified an issue on which he is aggrieved, even if additional evidence of his protected activities would have bolstered his argument, because he ultimately prevailed on the question of whether the statutory presumption should be applied. The Tenant does not identify any other claims of retaliation to which the statutory presumption was not applied. To the extent the burden of proof on rebuttal was allegedly not met, the Tenant's specific claims of error are addressed below.

Accordingly, this issue is dismissed.

*Id.* at 18. The Court further noted, in a footnote that “As the Commission has reversed the ALJ’s ruling on the scope of the Tenant’s questioning of Ms. Duvall, our dismissal of this issue on appeal should not be read to preclude the Tenant, on remand, from questioning Ms. Duvall and confronting her with any particular evidence, to the extent that it is relevant to live issues and not unnecessarily cumulative of other evidence that was already sufficient to trigger the presumption of retaliation.” *See id.* at 18.

On December 15, 2023, at 11:50 p.m., Mr. Gural filed his list of Witness and Exhibits.<sup>1</sup>

On January 12, 2024, Mr. Gural filed a Motion to Append additional documents received in

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<sup>1</sup> The filing was late. A paper is considered filed with OAH when the Clerk’s office receives it during business hours. *See* OAH R. 2809.3. Here, Mr. Gural’s witness and exhibit list was not received during business hours until December 18, 2023. This rule applies to email filing as well. *See* OAH R. 2841.10: “The filing date for an e-mail filing received between 9:00 a.m. and 5:00 p.m. on any OAH business day will be the date it is received in the correct OAH mailbox. The filing date for an e-mail filing received at other times will be the next day that the Clerk’s Office is open for business. The date and time recorded in the correct OAH electronic mailbox shall be conclusive proof of when it was received.”

discovery.<sup>2</sup> While Housing Provider reserves the right to contest the admissibility of Mr. Gural's exhibits at hearing, Housing Provider seeks to exclude the foregoing exhibits before the hearing to save time at the hearing and cut down on the issues for trial. Housing Provider seeks to exclude the following exhibits as labelled by Mr. Gural<sup>3</sup>:

(i) EXHIBIT 129. Housing Provider's Notice to Tenant of Adjustment in Rent Charged, falsified rents, 20 residents of 3003 (names redacted)

(ii) EXHIBIT 148. Email from David Wilson, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 22, 2017)

(iii) EXHIBIT 149. Email from Calvin Lee, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 17, 2017)

(iv) EXHIBIT 150. Email from Arai Monteforte, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 15, 2017)

(v) EXHIBIT 151. Email from Daisy Chung, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 15, 2017)

(vi) EXHIBIT 152. Email from Mary Jane Maxwell, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 16, 2017)

(vii) EXHIBIT 153. Email from Katie and Nick Pettet, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 23, 2017)

(viii) EXHIBIT 154. Email from Dee Fosherari, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 23, 2017)

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<sup>2</sup> Housing Provider disputes the characterizations in the Motion but does not oppose Mr. Gural seeking to append additional exhibits.

<sup>3</sup> Housing Provider does not concede that the titles and labels assigned by Mr. Gural to his exhibits are accurate, but uses the labels he has assigned for ease of reference.

(ix) EXHIBIT 155. Email from Sarah Pleznac, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 17, 2017)

(x) EXHIBIT 156. Email from Shirley Adelstein, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 16, 2017)

(xi) EXHIBIT 157. Email from Ben Serinsky, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 17, 2017)

(xii) EXHIBIT 158. Email from Amelia Finch, resident of 3003 Van Ness, expressing support for Harry Gural's work as tenant association president (May 17, 2017)

(xiii) EXHIBIT 193. Letter from Gabriel Fineman to Smith Property Holdings Van Ness LP, "RE: Notice to Tenants of Adjustment in Rent Charged unit W-1131," Respondent #001962.

(xiv) EXHIBIT 199. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Charlie Finch and Amelia Griffith, (April 20, 2016) Respondent #000892

(xv) EXHIBIT 207. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP to Benjamin Serinsky and Samantha Hassard, (Sept. 18, 2015) Respondent #003903

(xvi) EXHIBIT 208 Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to resident Monika Hinterman, Apt. W-621, (Dec. 17, 2015) Respondent #004560

(xvii) EXHIBIT 209. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to Edward Sair, Apt. W-931, (Dec 17, 2015) Respondent #004570<sup>4</sup>

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<sup>4</sup> Exhibit 209 appears to be missing the first page.

(xviii) EXHIBIT 210. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to Leon Lewis, Apt. S-409, (Jan. 1, 2015) Respondent #004664

(xix) EXHIBIT 211. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to Sarah Murran, Apt. S-810, (Jan. 1, 2016) Respondent #004682

(xx) EXHIBIT 212. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to Thomas McGinty, Apt. S-202, (Jan. 15, 2016) Respondent #004692

(xxi) EXHIBIT 213. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to Luzelenia Casanova, Apt. W-622, (Jan. 15, 2016) Respondent #004710

(xxii) EXHIBIT 214 Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to Neary Ung, Apt. S-0109, (Dec. 17, 2015) Respondent #000584

(xxiii) EXHIBIT 215. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to Mary Jane Maxwell, Apt. W-104, (Dec. 17, 2015) Respondent #00604

(xxiv) EXHIBIT 216. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to David Hendin, Apt. W-318, (Dec. 17, 2015) Respondent #00614

(xxv) EXHIBIT 217. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to Moshe Elmaleh, Apt. W-405, (Dec. 17, 2015) Respondent #00618

(xxvi) EXHIBIT 218. Housing Provider's Notice to Tenants of Adjustment in Rent Charged, Smith Property Holdings Van Ness LP rent increase notice to Marie Brodeur, Apt. W-604, (Jan. 15, 2015) Respondent #003050

(xxvii) EXHIBIT 219. Change in Rents Charged Worksheet, Equity Residential for 3003 Van Ness, (Apr. 1, 2016 to Apr. 30, 2016) Respondent #000640-000644

(xxviii) EXHIBIT 220. Change in Rents Charged Worksheet, Equity Residential for 3003 Van Ness, (Apr. 1, 2016 to Apr. 30, 2015) Respondent #003080-003084

## **II. Legal Standard**

The purpose of a motion in limine is to allow a party to obtain an order excluding inadmissible evidence before trial. *See Banks v. District of Columbia*, 551 A.2d 1304, 1310 (D.C. 1988). The Court has broad discretion to determine whether evidence is relevant and should be admitted. *See Presley v. Commercial Moving & Rigging, Inc.*, 25 A.3d 873, 891 (D.C. 2011). To be relevant, the proffered material (1) must be related logically to the fact it is offered to prove, (2) the fact sought to be established by the evidence must be material and (3) it must be adequately probative of the fact it tends to establish. *See Jones v. United States*, 739 A.2d 348, 350 (D.C. 1999). The trial court is vested with large discretion in the admission and exclusion of evidence and has discretion to exclude evidence when it involves a confusion of issues. *See Duk Hea Oh v. Nat'l Capital Revitalization Corp.*, 7 A.3d 997, 1000 (D.C. 2010). Moreover, this Court has ruled on several occasions that evidence may not be introduced for periods following the filing of a petition. *See, Parreco v. District of Columbia Rental Housing Commission*, 885 A.2d 327, 334 (D.C. 2005) ("A petition must give a defending party fair notice of the grounds upon which a claim

is based, so that the defending party has the opportunity to adequately prepare its defense and thus ensure that the claim is fully and fairly litigated.”).

In determining the admissibility and weight of evidence, an Administrative Law Judge may use the Federal Rules of Evidence for guidance, but they shall not be binding. OAH Rule 2821.13. An Administrative Law Judge may limit or exclude testimonial or documentary evidence to avoid surprise or prejudice to other parties, repetition, or delay. *See id.* R. 2821.14.

### **III. Analysis**

The evidence proffered by Mr. Gural in the aforementioned exhibits is irrelevant to the claims at issue here.

#### **A. Exhibit 129, 193, 199, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, and 220 —Rent Charged Notices and Documents pertaining to Tenants Other than Harry Gural—Should be Excluded.**

Mr. Gural seeks to introduce the redacted notices of adjustment in rent charged for thirty (30) tenants, none of which are parties to the instant petition. *See* Petitioner’s Exhibit 129. The date, tenant name, and unit number are redacted for each notice. *See id.* First, this document is irrelevant, as noted in the RHC’s order, whether the statutory presumption of retaliation applies to his advocacy regarding concession leases is not a live issue at this trial. RHC Order at 18. Second, this evidence would be cumulative of other evidence already introduced in the prior hearing. *See id.* Third, this document is hearsay, and lacks the traditional indicia of reliability. Namely, the affected tenants are redacted, the dates are redacted, and the units are redacted. Indeed, the documents themselves are incomplete, containing only pages one of each two-page document. Exhibit 129 should be excluded from evidence.

Second, Mr. Gural seeks to introduce notices of rent charged to numerous tenants besides himself. *See* Petitioner Ex. 199, 207-220. These forms are irrelevant to the instant proceeding. Mr. Gural represents only himself in the instant proceeding. To the extent the documents are offered

to demonstrate Mr. Gural’s advocacy on the issue of concession leases—they are duplicative. *See* RHC Order at 17-18. Mr. Gural seeks to introduce a letter from Gabriel Fineman. *See* Ex. 193. This letter is irrelevant to the instant proceedings for the same reasons.

**B. The Tenant “Support” Statements Should be Excluded.**

Mr. Gural seeks to introduce eleven statements of support from other tenants for whom he claims to have performed advocacy work for over the prior years. The statements range in date but all come from around mid-May of 2017, about nine months after the Tenant Petition was filed. For all of these emails, the contact email address is redacted. *See* Exhibits 148-58. These statements are inadmissible for the same reasons as set forth above in Section III.A. Namely, they are irrelevant to any live claim. Second, they are duplicative and cumulative of evidence already offered to establish the statutory presumption of retaliation. Third, they are hearsay and lack the indicia of reliability sufficient to allow the document into evidence.

**IV. Conclusion**

For the foregoing reasons, Exhibits 129, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 193, 199, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, and 220 should be excluded from evidence. A proposed Order is attached.

Dated: January 23, 2024

Respectfully submitted,  
GREENSTEIN DELORME & LUCHS, PC

/s/ Spencer B. Ritchie

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*Counsel for Housing Providers / Appellees*



**CERTIFICATE REGARDING CONSENT**

The undersigned sought consent from Petitioner by email on 1-22-2024. Petitioner has not yet responded, so this Motion should be treated as opposed.

\_\_\_\_\_  
/s/ Spencer Bruce Ritchie  
Spencer B. Ritchie

**CERTIFICATE OF SERVICE**

THE UNDERSIGNED COUNSEL HEREBY CERTIFY that a copy of the foregoing was served this 23rd day of January, 2024 by email, upon:

Harry Gural  
3003 Van Ness Street NW  
Apt. S-707  
Washington, D.C. 20008  
harrygural@gmail.com

\_\_\_\_\_  
/s/ Spencer Bruce Ritchie  
Spencer B. Ritchie

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**[PROPOSED] ORDER**

UPON CONSIDERATION of Housing Providers' Opposed Motion in Limine, and any opposition thereto, and for the reasons set forth in that Motion, it is this \_\_\_\_ day of \_\_\_\_\_, 2024, hereby

**ORDERED** that the Motion is **GRANTED**; and it is further;

**ORDERED** that Exhibits 129, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 193, 199, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, and 220 shall be excluded from evidence

**SO ORDERED.**

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ALJ Colleen Currie

Copies to all parties of record