

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 TO QUASH
SUBPOENA TO FRANCES NOLAN

Housing Provider/Respondent Smith Property Holdings Van Ness L.P. (“Housing Provider”), by undersigned counsel, submits this Motion to Quash Subpoena to Frances Nolan, and, in support thereof, states as follows:

I. Relevant Background

The instant case is a tenant petition dating back to 2016. By Order of February 19, 2020, *Harry Gural v. Equity Residential Management et al*, 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.” *See generally* RHC Order.¹

¹ Mr. Gural argues in his Opposition to Motion to Quash Subpoena as to Avis Duvall that “The Rental Housing Commission could not have envisioned that Avis Duvall would no longer work for Equity Residential, or that she would move just 14 miles outside a 25-mile radius of Judiciary Square.” Opp’n to Mot. to Quash Subpoena as to Avis Duvall at 5 (hereinafter, “Opp’n”). Notably, Mr. Gural cites nothing for this proposition and refers to no provision of the Order.

Since this case was remanded from the Rental Housing Commission, Mr. Gural has sought, and obtained, the following extensions:

(i) On July 26, 2021, Tenant filed a request to reschedule the evidentiary hearing in this matter to December 2021 or January 2022 because he “need[ed] more time to prepare due to much increased personal demands during COVID. I have been representing myself but I would like to hire an attorney, which is difficult for this issue.” *See* Order on Motion for Discovery at 1-3.

(ii) On October 7, 2021, Tenant filed a second request to reschedule the evidentiary hearing because he “need[ed] more time to find an attorney and to give the attorney time to catch up on the long case history. I have greatly increased family responsibilities due to COVID, which has slowed the process.” *See id.* at 3.

(iii) On January 28, 2022, Tenant filed a third request to reschedule the evidentiary hearing because he had “been out of town a lot due to COVID and have increases family responsibilities. I didn’t realize the deadline for documents is today. I have been working without an attorney so it will take longer to assemble my case. *See id.*

(iv) Tenant again missed the deadline to file his witness list or exhibits, so this honorable Court scheduled a pre-hearing conference on August 25, 2022. On August 10, 2022, Tenant filed a fourth request to reschedule the evidentiary hearing because he had “a heavy burden of family responsibilities caring for my elderly mother during COVID, including helping her move. I am working without an attorney, and must review hundreds of pages of documents as well as write legal filing (sic-filings) that compete against the filings of a corporate law firm.” *See id.* at 4.

(v) On November 10, 2022, Tenant filed a fifth request to reschedule the pre-hearing conference and evidentiary hearing due to a death in his immediate family. *See id.*

On December 19, 2023, Mr. Gural filed a Motion to Issue Subpoenas of Avis DuVall, Frances Nolan, Julia Jackson, and Stacey Aguiar. *See Generally Mot. to Issue Subpoenas.* On December 22, 2023, this Honorable Court granted that request and stamped the subpoenas and sent them to Mr. Gural. *See generally* Order of Dec. 22, 2023. On January 19, 2024, Housing Provider filed a Motion to Quash subpoena as to Avis DuVall. On January 21, 2024, Mr. Gural filed an opposition, in which he appeared to concede that he has not served Frances Nolan in accordance with applicable OAH Rules. *See Opp'n* at 6-7. In his opposition, Mr. Gural noted that Ms. Nolan “appears to have been relocated to the Chicago main office of Equity Residential.” *See id.* at 4-5.

II. Argument

A subpoena must be served at least four calendar days before a hearing in an OAH matter. *See* OAH Rule 2824.7. Service of a subpoena for a witness to appear at a hearing shall be made by personally delivering the subpoena to the witness. *See id.* A subpoena may be served at any place within the District of Columbia, or at any place outside the District of Columbia that is within twenty-five (25) miles of the place of the hearing. *See id.* 2824.11. Non-party witnesses cannot be compelled to appear in court if they are outside the subpoena power of the court in which the action is heard. *See Deutz Corp. v. City Light & Power, Inc.*, 2006 U.S. Dist. LEXIS 100599 at *9 (N.D. Ga. Aug. 15, 2006) (citing *Ramsey v. Fox News Network, LLC*, 323 F. Supp. 2d 1352, 1356 (N.D. Ga. 2004); *State Street Cap. Corp. v. Dente*, 855 F. Supp. 192, 198 (S.D. Tex. 1994)). To prove service of a subpoena, a party shall file a written statement, or shall provide in-court testimony describing the date and manner of service, and names of the persons served. *See id.* 2824.12. An

Administrative Law Judge may quash or modify a subpoena if it was improperly served. *See id.* 2814.13(b).

Mr. Gural has failed to serve Frances Nolan in accordance with applicable OAH rules. It is now two days before the hearing. The timeline to serve a subpoena to Ms. Nolan has lapsed. The time to issue a new subpoena has lapsed. The subpoena should be quashed for failure to serve. Ms. Nolan is outside of the subpoena power of this Court. To the extent that Mr. Gural argues that as a *pro se* individual, he should be granted leeway, this is without support. Although District of Columbia courts treat *pro se* filings with a measure of leniency, *pro se* parties cannot be permitted to shift the burden of litigating to the courts, nor to avoid the risks that attend their decision to forego expert assistance. *See Macleod v. Georgetown Univ. Med. Ctr.*, 736 A.2d 977, 979 (D.C. 1999). Mr. Gural has been litigating this case since 2016. Mr. Gural has sought, and obtained five continuances in this matter. *See Order on Mot. for Discovery at 1-3* (“On November 10, 2022, Tenant filed a fifth request to reschedule the pre-hearing conference.”). The relocation of staff is a consequence of the passage of time, which has been exacerbated by Mr. Gural’s multiple delays to this matter.²

Dated: January 22, 2024

Respectfully submitted,
GREENSTEIN DELORME & LUCHS, PC

/s/ Spencer B. Ritchie

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² To the extent Mr. Gural argues that “Housing Provider could agree to subpoena for and to guaranteeing the appearance of Frances Nolan,” Opp’n at 6-7, it is not Housing Provider’s obligation to litigate this case for Mr. Gural where he has failed to meet the procedural requirements to mandate Ms. Nolan’s appearance.

CERTIFICATE REGARDING CONSENT

The undersigned sought consent from Petitioner by email on 1-19-2024. Petitioner stated that he will not consent.

/s/ Spencer Bruce Ritchie
Spencer B. Ritchie

CERTIFICATE OF SERVICE

THE UNDERSIGNED COUNSEL HEREBY CERTIFY that a copy of the foregoing was served this 22nd 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 Provider's Motion To Quash Subpoena as to Frances Nolan, it is this ____ day of _____, 2024, hereby

ORDERED that the Motion is **GRANTED**.

SO ORDERED.

ALJ Colleen Currie

Copies to all parties of record