

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
One Judiciary Square
441 Fourth Street, N.W., Suite 450N
Washington, DC 20001-2714
TEL: (202) 442-9094 FAX: (202) 442-4789 EMAIL: oah.filing@dc.gov

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 JESSE JENNELL

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

I. Relevant Background

A. Mr. Gural Seeks and Obtains Six (6) Continuances in this Litigation since its Remand from the Rental Housing Commission (“RHC”).

(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.*

(vi) At the hearing in this matter on January 24, 2024, Mr. Gural had failed to properly serve Avis Duvall or Frances Nolan with a subpoena. Mr. Gural was granted additional time to file and serve subpoenas, and the matter was continued until February 28, 2024. This extension marked Mr. Gural’s sixth continuation in the matter and was granted over Housing Provider’s objection.

B. Mr. Gural Obtains Subpoenas for Avis Duvall, Frances Nolan, and Jesse Jennell, and Fails to Serve them Within the Requirements of the OAH Rules.

Mr. Gural failed to serve Avis Duvall within the confines of the OAH Rules, and, accordingly, on January 25, 2024, this Honorable Court issued an Order quashing the subpoena to Ms. Duvall. *See Order Granting Motion to Quash Subpoena Issued to Avis Duvall.* That same day, this Honorable Court quashed Mr. Gural’s subpoena to Frances Nolan and allowed Mr. Gural to submit for issuance a subpoena compelling Ms. Nolan’s attendance via videoconference at the hearing on February 28, 2024.

See Order Granting Motion to Quash Subpoena Issued to Frances Nolan. Subsequently, Mr. Gural filed a Motion to Issue Subpoenas to Frances Nolan and Jesse Jennell (Mr. Jennell was not listed on Mr. Gural's witness list, filed on December 15, 2023).

Mr. Gural served Mr. Jennell with a subpoena to testify on or about February 10, 2024. Mr. Jennell lives in the Los Angeles area. The subpoena is attached as Exhibit A.

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).

The subpoena should be quashed for improper service. OAH Rule 2824.13(b). Mr. Gural served Jesse Jennell in California. This is well outside the subpoena power of this Court. *See* OAH Rule 2824.11.

The subpoena providing that Mr. Jennell must testify by WebEx does not obviate the need to properly serve the subpoena. *See* OAH Rule 2824.11; 2824.13 (laying out improper service (sub-section "b") and undue burden and appearance by phone (subsection "d")) as *separate* bases by which to move

to quash or modify a subpoena). To the extent Mr. Gural contends that Jesse Jennell is an “officer of a party,” again, that does not obviate the need for proper service. *See Johnson v. Big Lots Stores, Inc.*, 251 F.R.D. 213, 216-17 (E.D. La. 2008) (“Nothing in the language of [Federal] Rule 45(b)(2) itself provides for service at any place other than those locations specified in the rule itself To read the ‘subject to Rule 45(c)(3)(A)(ii)’ clause as *expanding* the territorial reach of where a party or party officer may be served with a trial subpoena ignores the ordinary meaning of the phrase ‘subject to.’”) (emphasis in original); *see also Mazloun v. D.C. Metro Police Dep’t*, 248 F.R.D. 725, 728 (D.D.C. April 11, 2008) (noting that “there does not appear to be a basis in the text of Rule 45(c)(3)(A)(ii) to authorize valid service of a subpoena upon a party witness beyond the normal 100-mile range of a federal court’s subpoena power.”).

Moreover, Jesse Jennell is not an “officer of a party.” Mr. Jennell is not a corporate “officer” of the Housing Provider—he is an employee. Mr. Jennell is a senior regional manager for Equity Residential. *Compare Employee*, Black’s Law Dictionary, (10th ed. 2014) (“Someone who works in the service of another person (the employee) under an express or implied contract of hire, under which the employer has the right to control the details of the work performance”) *with id. Corporate Officer* “an officer of a corporation, such as a CEO, president, secretary, or treasurer.” Plainly, Mr. Jennell does not meet the definition of a corporate officer. *See also Select Portfolio Servicing, Inc. v. Evaluation Sols., L.L.C.*, 2006 U.S. Dist. LEXIS 67276 (M.D. Fla. Sept. 20, 2006) (citing *Bruce v. Travelers Ins., Co.*, 266 F.2d 781, 784-85 (5th Cir. 1957) (“No court . . . can ignore the common knowledge that a large oil company having thousands of employees and representatives has hundreds of employees and representatives in positions of great responsibility. But the tool pushers, ramrods, supervisors, drilling superintendent, area superintendents, or other employees having responsible duties are not officers”).

Mr. Gural may well argue that he should be granted leniency and additional time to serve Mr. Jennell due to Mr. Gural’s *pro se* status. 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 six continuances in this matter. Jesse Jennell *was not even listed on Mr. Gural's Witness List*. The natural turnover and relocation of staff is a risk that Mr. Gural took when he sought and obtained six continuances of this case. The subpoena should be quashed. A proposed Order is attached.

Dated: February 22, 2024

Respectfully submitted,
GREENSTEIN DELORME & LUCHS, PC

/s/ Spencer B. Ritchie

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Email: sbr@gdllaw.com
Counsel for Housing Providers / Appellees

CERTIFICATE REGARDING CONSENT

The undersigned sought consent from Petitioner by email on February 20, 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 February, 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 Jesse Jennell,

it is this _____ day of _____, 2024, hereby

ORDERED that the Motion is **GRANTED**.

SO ORDERED.

ALJ Colleen Currie

Copies to all parties of record

EXHIBIT A



**DISTRICT OF COLUMBIA
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441 4TH STREET, NW, SUITE 450 NORTH
WASHINGTON, DC 20001-2714



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Harry Gural
Petitioner(s),

v.
Equity Residential Management
Respondent(s)

Case No(s): 2016-DHCD-TP 30,855

SUBPOENA TO APPEAR AND TESTIFY AT A HEARING

TO: Jesse Jennell

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the above case.

LOCATION (if in-person hearing) or ACCESS INFORMATION (if remote hearing)	DATE	TIME
https://globalpage-prod.webex.com/join Access Code: 2308 214 0684 Password: 9VYbMP5wFD6 https://dcnet.webex.com/dcnet/j.php?MTID=ma5c7cc363f8921d9f96cf82c36185e1c	Feb. 28, 2024	10:00 am

YOU MUST ALSO bring with you the following documents, electronically stored information, or objects.
(Leave blank if not applicable)

DOCUMENTS OR OBJECTS

ISSUING PERSON'S SIGNATURE AND TITLE (indicate if attorney for Petitioner or Respondent)	DATE
	1/25/2024
ISSUING PERSON'S NAME, ADDRESS AND PHONE NUMBER	
Harry Gural, Tenant/Petitioner, pro se	

AUTHORIZING ADMINISTRATIVE LAW JUDGE	SIGNATURE	DATE

This subpoena is enforceable only when signed by an Administrative Law Judge.

PROOF OF SERVICE

SERVED ON (Print name) Jesse Jennell	TITLE Senior Regional Manager, Equity Resider	
PERSONAL DELIVERY LOCATION		
SERVED BY (Print name)	DATE	TIME

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the District of Columbia that I am at least 18 years of age and that the foregoing information contained in the Proof of Service is true and correct.

Executed on: _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Submission of a false statement is a crime, punishable under D.C. Code § 22-2514

OAH Rules pertaining to responding to a subpoena and protecting a person subject to a subpoena

2824.10 A person or entity ordered to produce documents at a hearing: (a) Need not appear in person at the hearing unless ordered by an Administrative Law Judge to do so; (b) Shall produce the documents as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena; and (c) Shall expressly make any claims of privilege or protection with a description of the documents not produced that is sufficient to enable the requesting party to contest the claim.

2824.11 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.

2824.12 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.

2824.13 An Administrative Law Judge may quash or modify a subpoena if it: (a) Was issued under Subsections 2824.5, 2934.1 or 2984.1, but does not meet the requirements of those subsections; (b) Was improperly served; (c) Fails to allow reasonable time for compliance; (d) Requires a person who is not a party or an officer of a party to travel to a hearing more than twenty-five (25) miles from where that person resides, is employed, or regularly transacts business, except that such a person may be ordered to appear by telephone; (e) Requires disclosure of a privileged or other protected information; or (f) Subjects a person or entity to undue burden or expense.

2824.14 If a person or entity disobeys a subpoena, an Administrative Law Judge may order compliance with the subpoena. If a person subject to the order fails to comply, the Administrative Law Judge may impose monetary sanctions. In addition, a party may apply to the Superior Court of the District of Columbia for an order to show cause why that person should not be held in civil contempt.

The OAH Rules also allow administrative law judges to be guided by the D.C. Superior Court Rules of Civil Procedure when the OAH Rules do not address a specific procedural issue. See OAH Rule 2801. Relevant D.C. Superior Court rules include the following:

SCR-CIV 45(d). Duties in Responding to Subpoena.

- (1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:
 - (A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
 - (B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
 - (C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.
 - (D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.
- (2) *Claiming Privilege or Protection.*
 - (A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation materials must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
 - (B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.