

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 STRIKE TENANT’S RESPONSE BRIEF

Housing Provider/Respondent Smith Property Holdings Van Ness L.P. (“Housing Provider”), by undersigned counsel, moves to strike Tenant’s Response To Housing Provider’s Opposition To Motion To Reconsider Exhibits Not Admitted As Evidence (the “Response Brief”). The Response Brief is Mr. Gural’s latest attempt to introduce evidence and argument that he failed to introduce at trial, the last two being his “Pre-Hearing Brief on the Time Frame for Calculating Damages” (filed February 24, 2024) and “Motion to Reconsider Exhibits Not Admitted as Evidence” (filed March 12, 2024). The pleading should be stricken.

I. RELEVANT BACKGROUND.

On March 12, 2024, Mr. Gural filed a Motion to Reconsider Exhibits Not Admitted as Evidence regarding the below exhibits, which were excluded at trial.

| Exhibit | Reason for Exclusion from Evidence |
|---------|------------------------------------|
| 656 | Foundation |
| 657 | Foundation |
| 651 | Foundation |

| | |
|------------------|------------|
| 652 | Foundation |
| 624 ¹ | Foundation |
| 637 | Foundation |

Housing Provider filed an Opposition the following day. *See generally* Opp’n. The Opposition flagged that Mr. Gural failed to establish foundation at trial, did not attempt establishing foundation in his motion to reconsider, and failed to articulate any reason for the court to reconsider its ruling at trial. That same day, Mr. Gural replied to the OAH email that he would submit an “opposition” to Housing Provider’s Opposition to his Motion.

II. LEGAL STANDARD.

Where the OAH Rules do not address a procedural issue, an Administrative Law Judge may be guided by the District of Columbia Superior Court Rules of Civil Procedure. The Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. *See* D.C. Superior Court Rule 12(f)(1)-(2). *See* OAH Rule 2801.1. Pretrial procedures are designed to remove cases from the realm of surprise. *See Malik Corp. v. Tenacity Grp, LLC*, 961 A.2d 1057, 1061 (D.C. 2008). All parties opposing a motion shall have eleven calendar days from the service of the motion to file and serve a response. *See* OAH Rule 2813.6. No further filings related to the motion are permitted unless ordered by an Administrative Law Judge. *See id.*

III. ARGUMENT.

A. The Response Brief Should be Stricken for Failure to Comply with OAH Rules.

Mr. Gural’s Response Brief was not permitted under the OAH Rules. *See id.* Mr. Gural did not seek leave of Court to make his filing. The Court did not order that a Response Brief be filed. *See id.* The pleading is not permitted under the OAH Rules and should be stricken. Moreover, the filing attaches

¹ Mr. Gural continues to rely heavily on *Fineman*, which an opinion was not issued for until 2018—well after the disputed increase. *See* Tenant Exhibit 102. This exhibit is irrelevant in addition to being inadmissible for lack of foundation.

additional exhibits without leave of Court—a tenant account statement and the court docket from Mr. Gural’s landlord/tenant matter. Mr. Gural previously attempted this with his Pre-Hearing Brief on Damages. In that Pre-Hearing Brief, Mr. Gural sought to introduce his tenant account statement (which he attempts to do so here as well). Mr. Gural also seeks to attach the updated docket from his landlord tenant case, which he already sought to do at trial through his Exhibit 115 (which was admitted over objection). These updated documents were not appended to Mr. Gural’s witness and exhibit lists and were not admitted at trial. This provides another basis for striking the Response Brief and its attachments.

B. The Response Brief Should be Stricken because it is Redundant and Immaterial.

Mr. Gural makes no new arguments in his Response Brief but merely rehashes the same arguments that have been considered and rejected by this Court. Mr. Gural makes the argument that exhibits 624, 637, 656, 651, and 657 bolster his argument regarding the presence of bad faith. This argument was made extensively at trial and in Mr. Gural’s Motion to Reconsider. *See* Mot. to Reconsider, *passim*.

Mr. Gural contends that Housing Provider “cannot question the authenticity of documents that it itself provided, unless it now claims that it provided false documents.” Response Brief at 2. Again, that is not the point. Mr. Gural has not established the foundation for these documents—which was his responsibility to do at trial as the proponent of the exhibits. *See, e.g., Erdmann v. Thomas*, 446 N.W. 2d 245, 246 (N.D. 1989) (“Foundation testimony is the testimony which identifies the evidence and connects it with the issue in question.”); *see also id.* (“It is axiomatic that a foundation must be laid establishing the competency, materiality, and relevance of all evidence.”). Mr. Gural does not make any attempt to do so here, nor did he do so in his Motion to Reconsider. The Court has told Mr. Gural that he must establish a foundation for his exhibits at numerous points in this litigation.

Finally, Mr. Gural mischaracterizes that the Housing Provider is trying to “suppress” evidence. Response Brief at 2. In short—Mr. Gural’s case in chief has closed. He has failed to introduce exhibits

624, 637, 656, 651, 652, and 657. Mr. Gural did not produce a witness to testify to the authenticity of the documents. It is not the Housing Provider's, nor this Court's, role to litigate Mr. Gural's case for him. The Response Brief should be stricken.

A proposed Order is attached.

Dated: March 15, 2024

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, PC

/s/ Spencer B. Ritchie

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Counsel for Housing Providers / Appellees

CERTIFICATE OF SERVICE

THE UNDERSIGNED COUNSEL HEREBY CERTIFY that a copy of the foregoing was served
this 15th day of March, 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

CERTIFICATE REGARDING CONSENT

THE UNDERSIGNED COUNSEL sought consent for the instant Motion via Email on March 13, 2024. Mr. Gural stated that he will not consent. So the Motion should be treated as opposed.

_____/s/ Spencer Bruce Ritchie_____
Spencer B. Ritchie

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[PROPOSED ORDER]

UPON CONSIDERATION of Housing Provider's Motion to Strike Tenant's Response To Housing Provider's Opposition To Motion To Reconsider Exhibits Not Admitted As Evidence, 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 Tenant's Response To Housing Provider's Opposition To Motion To Reconsider Exhibits Not Admitted As Evidence shall be **STRICKEN**.

SO ORDERED.

ALJ M. Colleen Currie