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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

OPPOSITION TO TENANT'S MOTION TO RECONSIDER EXHIBITS NOT ADMITTED AS EVIDENCE

COMES NOW Housing Provider and opposes the Tenant's Motion to Reconsider Exhibits Not Admitted As Evidence (the "Motion" or "Mot."). Mr. Gural, having failed to introduce numerous exhibits at trial, now seeks to admit those exhibits, based on the same arguments that he made at trial. Mr. Gural articulates no new information to disturb the Court's ruling on these matters and articulates no legal standard (or applicable OAH rule) for the Court's consideration. The Motion should be denied.

I. Relevant Background.

For brevity, Housing Provider incorporates by reference the background section in its Motion to Quash Subpoena to Jesse Jennell, filed February 22, 2024, which lists the six continuances that Mr. Gural has sought and obtained in this matter since its remand.

Trial was first held in this matter on January 25, 2024. Mr. Gural had failed to serve witnesses he wished to call within the rules of this Court, so the matter was continued to February

28, 2024, over a month later, to allow him additional time to do so. Mr. Gural sought subpoenas for Frances Nolan and Jesse Jennell, both of which he failed to serve within the requirements of the OAH Rules—and both of which were quashed by this Honorable Court. At the continued trial, Mr. Gural sought to introduce the following exhibits, which were excluded for the reasons set forth below (based on the undersigned's notes from trial). Housing Provider lists the exhibits in the same order that Mr. Gural uses in his motion.

Exhibit	Reason for Exclusion from Evidence
656	Foundation
657	Foundation
651	Foundation
652	Foundation
624[1]	Foundation
637	Foundation

In short, Mr. Gural failed to produce a witness to testify as to the documents that he sought to introduce. Accordingly, the Court excluded these exhibits on the basis that they lacked a foundation.

On March 12, 2024, in an apparent recognition of the weakness of his case, Mr. Gural sought again to introduce these exhibits. Mr. Gural did not articulate a rule he sought relief under, nor did he seek consent from the undersigned for his motion. See Mot. For each exhibit excluded, Mr. Gural articulates the same legal argument that he did at trial—that the exhibits are evidence of bad faith. *See id.* at 1-3.

[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.

II. Analysis

Mr. Gural has articulated no legal standard in his motion. The OAH Rules provide for reconsideration only of final orders. *See* OAH Rule 2938 (which incorporates OAH Section 2828). 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 to decide the issue. *Id.* R. 2801.1. Because the Court's ruling on the issue of the admissibility of exhibits does not adjudicate all the claims or the rights and liabilities of all the parties, it should be considered an interlocutory order. The standard for reconsideration of interlocutory orders under Rule 54(b) is whether reconsideration is consonant with justice. *See Marshall v. United States*, 145 A.3d 1014, 1019 (D.C. 2016). The burden is on the moving party to show that reconsideration is appropriate and that harm or injustice would result if reconsideration were denied. *See D.C. v. Town Sports Int'l*, 2021 D.C. Super. LEXIS 14 at *9 (D.C. Super Ct. Aug. 23, 2021).

Reconsideration is warranted if, for example, moving parties "present newly discovered evidence, show that there has been an intervening change in the law, or demonstrate that the original decision was based on a manifest error of law or was clearly unjust." *Bernal v. United States*, 162 A.3d 128, 133 (D.C. 2017). Reconsideration is not an appropriate forum for arguing matters that could have been heard during the pendency of the previous motion. *See Caisse Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996); *see also Ali v. Carnegie Inst. Of Wash.*, 309 F.R.D. 77, 81 (D.D.C. 2015) ("[I]t is well-established that motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advocated earlier.").

Mr. Gural failed to establish foundation for each of the above exhibits at trial. He makes no effort to establish foundation in the instant motion, instead repeating the same arguments he

made at trial. *See generally* Mot. This is not a basis for reconsideration. *See, e.g.*, *CBI Industries, Inc.*, 90 F.3d at 1270. Even if Mr. Gural had not already made these arguments that he advances for the introduction of these exhibits at trial, a motion to reconsider is not an opportunity to make arguments that he could have advanced earlier. *Carnegie Inst. of Wash.*, 309 F.R.D. at 81. Mr. Gural articulates no new facts or changes of law, either. *See generally* Mot. at 3 ("Collectively, these exhibits lend credence to the Tenant's argument that the $362 per month rent increase that Equity Residential demanded of him in the Spring of 2016 was *made in bad faith*.") (emphasis in original).

Mr. Gural's argument that the documents "were provided by the Housing Provider to the Tenant as part of the limited discovery granted by the Court in its Order of October 17, 2023" is irrelevant, and Mr. Gural has been told as much multiple times by this Court. It is the obligation of the proponent of a piece of evidence to establish foundation to establish the evidence's authenticity. *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 failed to do so at trial, and—although he should not be given a second chance to do so—fails to do so here. The Motion is a mere rehashing of arguments that were made or could have been made at trial. There is no basis to disturb the court's ruling. The Motion should be denied.

Finally, Mr. Gural may argue that he should be entitled to leniency based on his *pro se* status. This is without support. The parties' cases in chief have closed. Mr. Gural failed to introduce certain exhibits—which was a risk he assumed by undertaking his own representation in this matter. 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 chose to forego expert assistance and should not be permitted to shift his burden of litigating to the courts. Like Mr. Gural's "Pre-Hearing Brief on the Time Frame for Calculating Damages", the instant filing is another effort to shoehorn in additional arguments and evidence not presented at trial and should not be accepted by this court.

For the foregoing reasons, the Motion should be denied. A proposed Order is attached.

Dated: March 13, 2024

Respectfully submitted,
GREENSTEIN DELORME & LUCHS, PC

/s/ Spencer B. Ritchie

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CERTIFICATE OF SERVICE

THE UNDERSIGNED COUNSEL HEREBY CERTIFY that a copy of the foregoing was served this 13th day of March, 2024 by email upon:

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/s/ Spencer Bruce Ritchie
Spencer B. Ritchie

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PROPOSED ORDER

UPON CONSIDERATION, of Tenant's Motion To Reconsider Exhibits Not Admitted As Evidence, and Housing Provider's Opposition thereto, and for the reasons set forth in that Opposition, it is this _____ day of _____, 202_, hereby

ORDERED that the Motion is **DENIED**.

SO ORDERED.

ALJ Colleen Currie

Copies to all parties of record