

EXHIBIT G

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2015 JUL 1 PM 12:31

CASANDRA JOSEPH f/b/o
ADAMS MORGAN NEIGHBORS FOR
ACTION

Petitioner

v.

DCRA

and

DEPARTMENT OF THE ENVIRONMENT

Respondents

and

ADAMS MORGAN HOTEL OWNER, LLC

Intervenor.

Case No.: 2015-DCRA-00038

**ORDER DENYING
PETITIONER'S MOTION FOR RECONSIDERATION**

I. Introduction

By Final Order issued June 5, 2015, I dismissed this case with prejudice because the Petitioner, Cassandra Joseph, knowingly missed a June 3rd status conference after requesting a last-minute continuance for no specified reason. The status conference was scheduled three weeks in advance for the purpose of, among other things, affording Ms. Joseph an opportunity to explain why OAH had jurisdiction and authority over the substantive issues and request for relief in her Complaint. Ms. Joseph, who initiated this case, was the only party who missed the status conference, which was attended by four attorneys and three agency representatives for the organizations that Ms. Joseph implicated in her Complaint, namely the Respondents, DCRA and DDOE, and the Intervenor, Adams Morgan Hotel Owner, LLC.

On June 22, 2015, the Petitioner filed a motion to reconsider the Final Order and reopen the case.¹ The motion, if granted, would restart the litigation from scratch, with the extra costs falling on OAH and the parties who invested time and resources preparing for, and appearing for, the June 3rd status conference. The Petitioner once again identifies no compelling justification for missing the status conference, and her motion otherwise supplies no basis to reopen the case.

II. Discussion and Analysis

A motion to reconsider a final order and reopen a case is an extraordinary request for relief that should be granted only in limited circumstances where (i) the party who fails to attend a hearing has a good reason, (ii) the final order contains an error of law, (iii) the final order's findings of fact are not supported by the evidence, or (iv) new evidence has been discovered that previously was not reasonably available to the party filing the motion. OAH Rule 2828.5. In deciding whether to grant new hearings, the D.C. Court of Appeals has directed OAH to balance the same factors governing motions under D.C. Superior Court Rule 60(b), namely whether the moving party (1) had actual notice of the proceedings, (2) acted in good faith, (3) took prompt action, and (4) presented an adequate defense. *Frausto v. U.S. Dep't of Commerce*, 926 A.2d 151 (D.C. 2007). Prejudice to the non-moving party is also relevant, as well as whether the strong policy favoring adjudication on the merits outweighs the strong policy favoring the finality of judgments. *Id.*

¹ Because the June 5th Final Order was served electronically to the email address the Petitioner used in her own submissions to the court, the Petitioner was not entitled to five additional days to file a post-judgment motion pursuant to OAH Rule 2812.5, which affords extra time to respond to documents served by regular mail. And because the Petitioner's June 22nd post-judgment motion was not timely filed within ten days pursuant to OAH Rule 2828.3, the motion did not toll (meaning "stop" or suspend") the 30-day deadline for appealing the Final Order to the D.C. Court of Appeals. OAH Rule 2828.8.

The Petitioner argues that the case should be reopened because she supposedly specified two good reasons for a continuance before the June 3rd status conference, namely (i) she “was not feeling well coming out of the weekend” and (ii) she intended to seek legal counsel to address the issues slated for consideration at the status conference. The assertion about “not feeling well” is immaterial to reconsideration because the Petitioner made the assertion for the first time in her June 22nd motion, almost three weeks after she missed the status conference.² And the asserted need to find legal counsel does not support reconsideration because the Petitioner made the assertion to the parties’ attorneys—not to the court as part of a continuance request. Indeed, Exhibit A of the motion shows that less than 4 hours before the close of business on June 2, the Petitioner asked opposing counsel by email to consent to continue the June 3rd status conference based on the following statement about “personal issues” delaying her preparation and her “intent” to seek legal help:

Due to some personal issues that have delayed my preparation for tomorrow’s scheduled conference, and my intent to seek pro-bono legal help on this matter, we have realized we need more time.

The Petitioner’s emails to opposing counsel are noteworthy for several reasons, none of which support reopening the case. To begin with, the Petitioner never mentioned sickness as a basis for continuing the case—not to opposing counsel and not in a continuance motion directed to the court. If the Petitioner were really suffering an unforeseeable, debilitating illness that might justify a last minute continuance, she would have mentioned something about it before the status conference. But she did not. And her statement about personal reasons delaying her preparation, taken at face value, means she was unprepared for the status conference—not too ill

² Even if the Petitioner made a timely assertion about not feeling well, such general assertions about health problems, unaccompanied by details or corroborating documentation, are inadequate to justify continuances or to excuse failing to appear for scheduled court proceedings. *See Rymer v. Pool*, 799 A.2d 371, 373 (D.C. 1992) (holding that a general assertion of “disabling illness” fails to “show specific and sufficient reasons why the applicant cannot attend the trial as scheduled or cannot try the case on the date scheduled”).

to attend. Lack of preparation is not a good reason for a last-minute continuance. Nor does it justify knowingly missing a court proceeding. Nor does it support reopening this case.

The Petitioner's asserted "intent" to seek *pro bono* counsel does not weigh in her favor either. In that regard, it bears emphasis that the Petitioner initiated this case by filing a Complaint asserting novel air pollution and related environmental theories to stop, or at least curtail, an ongoing construction project. Even before filing the Complaint, the Petitioner was thus uniquely-situated to recognize the seriousness of her own allegations and anticipate the need for counsel to deal with the ramifications of her novel claims against parties who had obvious incentives to marshal resources to protect their interests. The Petitioner also had three weeks of advance notice to engage counsel before the status conference. But she did not. She instead waited until the last minute to disclose, for the first time, her "intent" to seek counsel, which suggests she made no effort to seek counsel earlier despite have ample opportunity to do so.

In any event, if the Petitioner had good reasons to postpone the case to seek counsel, she could have appeared at the status conference to explain her position. But she did not. Nor did she inform the court that the Respondents' attorneys both opposed her continuance request. And, as explained in the Final Order, she wrongly indicated the hotel owner's counsel did not oppose the continuance when, in fact, he informed her in writing that he could take no position on the issue because his client was not yet a party to the case. Such behavior raises serious questions about the Petitioner's good faith in conducting the litigation that she initiated.

To recap, the Petitioner's motion establishes, at most, that she asked for opposing counsels' consent to continue the status conference because she was unprepared due to personal issues and she intended to seek counsel. The Petitioner mentioned no illness or any other reason that might excuse her from appearing at the status conference, regardless of whether she was

prepared or represented. And, as explained in the Final Order, the Petitioner's only continuance submission directed to the court was an email requesting a continuance for no specified reason:

To Whom it may concern – The Adams Morgan Neighbors for Action have requested postponement for the scheduled STATUS CONFERENCE ORDER dated for WEDNESDAY, JUNE 3, 2015 @ 10:30 AM – we have contacted the office of the Intervener by email and have attempted to contact the Attorneys from the General Counsel's office with no success – we understand that the newly assigned personnel is [sic] Laura Maxwell and Runaka Allsopp – The Intervener – Philip Evans- has no contention to the postponement –

I have already explained in the Final Order why I had no basis to grant the Petitioner's last-minute request for a continuance for no specified reason, and why I dismissed the case with prejudice. I will not repeat that analysis here. The key facts remain that the Petitioner (i) knew about June 3rd proceeding and decided not to appear, (ii) never mentioned illness in court submissions until after she missed the status conference, (iii) raised "not feeling well" as an issue for the first time her pending motion, but only in general terms that do not justify reopening the case (*see* note 2, *infra*), and (iv) that the Respondents and Intervenor appeared for the status conference represented by counsel at considerable expense. Reopening the case under the circumstances would, contrary to OAH Rule 2828.5 and the principles enunciated by the D.C. Court of appeals in *Frausto*, 926 A.2d 151, unduly prejudice the parties who appeared for the status conference, and would reward the party who knowingly missed a court proceeding without articulating a prompt, good-faith basis for doing so. I will therefore deny the motion.

III. Order

Based upon the foregoing considerations, it is this 1st day of July 2015,

ORDERED, that the Petitioner's motion is **DENIED**, and this case remains **DISMISSED WITH PREJUDICE**.



Scott A. Harvey
Administrative Law Judge

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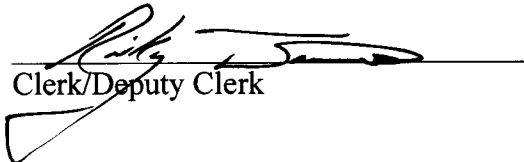
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I hereby certify that on 7-1,
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