

July 9, 2008

VIA FACSIMILE TRANSMISSION AND FIRST-CLASS MAIL

The Honorable John P. Dean  
Principal Administrative Law Judge  
Office of Administrative Hearings  
825 N. Capitol St., N.E.  
Washington, DC 20002

The Honorable Nicholas H. Cobbs  
Administrative Law Judge  
Office of Administrative Hearings  
901 N. Capitol St., N.E.  
Washington, DC 20002

**Re: Mediation: 3133 Connecticut Ave., N.W., Washington, D.C., 20008  
Response to Housing Provider Letter Dated July 3, 2008**

Dear Principal Administrative Law Judge Dean and Administrative Law Judge Cobbs:

We are writing to express our concern over Klingle Corporation, B.F. Saul Company and B.F. Saul Property Company (collectively, "Housing Provider")'s letter to the Mediators dated July 3, 2008 ("HP Letter to Mediators"). We note at the outset that we are as desirous of a positive outcome of this mediation and a subsequent resolution of all disputes regarding the Housing Accommodation as anyone. We also note that we fully support the Housing Provider entering into bilateral settlements with tenants that do not affect the rights of other tenants. However, Housing Provider is acting in a manner antithetical to mediation and is frustrating settlement of tenant petitions and capital improvement petitions by insisting on actions that are contrary to the Rental Housing Act of 1985, as amended (the "Act"). We are surprised by what can only be described as an attempt to hijack settlement negotiations by the Housing Provider.

Our concerns with the HP Letter to Mediators and an additional letter, circulated with the HP Letter to Mediators, to all tenants of the Housing Accommodation ("HP Letter to Tenants") are five-fold:

- (1) Housing Provider requests an action from the Mediators that is antithetical to mediation;
- (2) Housing Provider represent that Your Honors have approved the use of a voluntary agreement petition under section 215 of the Act as a settlement agreement, as a method to improperly encourage tenants of the Housing Accommodation into signing a voluntary agreement petition that Housing Provider has filed as VA No. 08,007;
- (3) Housing Provider misstates controlling law and appears calculated to circumvent the Rent Administrator's review of voluntary agreement petitions;

- (4) the content of the letters appears to represent bad faith on the part of the Housing Provider; and
- (5) VA No. 08,007 is not a lawful voluntary agreement capable of being approved.

In sum, almost every action Housing Provider has taken appears to be contrary to the representations that it made to the Office of Administrative Hearings (“OAH”) in consenting to mediation of the pending tenant petitions and capital improvement petitions before OAH.

We request that, in addition to refusing to impose a settlement process on the participating tenants, that the Mediators clarify to the tenants of the Housing Accommodation that they have not ruled, nor can they rule, on whether a “settlement agreement” is capable of being approved, much less that a section 215 voluntary agreement can be a settlement agreement, and specifically repudiate Housing Provider’s statement that “. . . based on our discussion with the mediating judges, we believe that, if the Revised Voluntary Agreement is approved by [tenants], OAH will approve it as a final settlement,” and demonstrate your neutrality by informing tenants that such assurances to Housing Provider would be contrary to your neutral role as mediators.

#### **I. The HP Letter to Mediators Requests Action by OAH that Is Inconsistent with Mediation**

Housing Provider appears to be intent to turn this mediation into more litigation. The HP Letter to Mediators requests that the mediators:

*. . . before mediation can be resumed, we need assurances that the position of the Office of Administrative Hearings is that a resolution may include approval of a settlement agreement which addresses not only the claims in the pending tenant petitions, but also all claims with respect to the Voluntary Agreement which was previously submitted to the Rent Administrator.*

HP Letter to Mediators at 2 (emphasis added). What Housing Provider means by the passage quoted from the HP Letter to Mediators is clarified by the HP Letter to Tenants, wherein Housing Provider states:

*We propose to determine, once and for all, whether there is the requisite 70% support for the Revised Voluntary Agreement and, if there is, present that to the OAH judges as a proposed settlement of this issue.*

HP Letter to Tenants at 3. In other words, Housing Provider is seeking a ruling from the Mediators that, as a matter of law, a voluntary agreement petition under section 215 of the Act can be imposed as a settlement agreement (thereby circumventing the review of the Rent Administrator and the statutory and regulatory requirements that a voluntary agreement petition must meet in order to be approved).