

United States of America
Department of Housing and Urban Development
Office of the Secretary

In the Matter of:

Interstate Realty Management Company,
Rowan Associates, LP

and

Michael J. Levitt

Respondents.

HUDALJ:
11-F-022-CMP-5

**ORDER ON SECRETARIAL REVIEW
AFFIRMING CESSATION OF REVIEW OF CERTIFIED RULING**

Background and Facts

On April 1, 2011, Respondents filed a Motion for Disqualification and Extension of Time seeking that Administrative Law Judge (ALJ) Alexander Fernández be disqualified and withdraw from presiding as the ALJ in the above-captioned matter. Respondents argued that they “believe that based upon [ALJ Fernández’s] filing of two federal District Court Complaints against HUD . . . they have good cause and reason to believe that [ALJ Fernández’s] impartiality can be reasonably questioned were he to continue as the ALJ in this matter.” Respondents’ Motion at 2. In addition, Respondents’ Motion also sought the disqualification of ALJ J. Jeremiah Mahoney, the only other sitting HUD ALJ, for many of the same reasons.

Order Denying Respondents' Motion for Disqualification

On May 20, 2011, ALJ Fernández denied Respondents' Motion for Disqualification and Extension of Time stating that "Respondents have not argued that specific facts exist indicating bias or partiality concerning the particular case at hand which could overcome the presumption of honesty and integrity of the Undersigned." The ALJ also quoted from a letter to him from David T. Anderson, Director, Office of Hearing and Appeals ("Anderson Letter"), which referenced opinions by HUD Associate General Counsel Peter Constantine and Office of Government Ethics that concluded that the mere pendency of ALJ Fernández's discrimination claims against HUD did not warrant disqualification. Based on these opinions, Judge Anderson instructed ALJ Mahoney, under pain of discipline, to "perform your described duties by presiding over assigned cases."

Order and Opinion on Respondents' Motion for Certification and Stay

On June 16, 2011, ALJ Fernández granted Respondents' Motion for Certification and Stay, filed on May 31, 2011, seeking certification of the Order Denying Respondents' Motion for Disqualification and a stay pending Secretarial Review on the ground that the disqualification issue raises an important issue of law or policy on which there is a substantial difference of opinion, and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation.

Respondents' Request to the Secretary to Affirm Cessation of Review of Certified Ruling

On August 22, 2011, Respondents requested the Secretary to affirm cessation of review of certified ruling on the ground that on August 17, 2011, the parties entered into a Settlement Agreement.

Conclusion

Given execution of the Settlement Agreement, the Secretary hereby issues an order affirming that he has ceased review of the May 20, 2011, Order and all associated issues on the ground of such review being moot.¹

Accordingly, upon review of the entire record in this proceeding, I HEREBY grant Respondents' Request to the Secretary to Affirm Cessation of Review of Certified Ruling.

IT IS SO ORDERED.

Dated this 24 day of August 2011



Laurel Blatchford
Secretarial Designee

¹ As the case has settled, the ALJ's ruling concerning disqualification has no precedential value.