Circuit Court for Prince George's County
Case No. CAL17-21512

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3452

September Term, 2018

MAHMOUD ELGIBALI, ET UX.
v.

CITY OF COLLEGE PARK
HOUSING AUTHORITY

Graeff,
Leahy,
Shaw Geter,

JJ.

Opinion by Leahy, J.

Filed: November 4, 2020

Appellants, Mahmoud Elgibali and Hanan Elmgdlawi, filed a petition for a writ of administrative mandamus in the Circuit Court for Prince George's County from a hearing officer's decision in a grievance filed by Appellants against their landlord, City of College Park Housing Authority ("CPHA" or "Appellee"). Appellants are married and since January 1, 2013, they have lived in Attick Towers, a public housing facility managed by CPHA.

Appellants elected to file a grievance under the College Park Housing Authority Grievance Procedure (October 2013) ("Grievance Procedure") after they received a "Notice of Termination of Lease for Fraud" from CPHA. Following a failed settlement conference, the parties appeared before a hearing officer for a formal grievance hearing. Thereafter, the hearing officer informed the parties in a letter that she was overturning CPHA's decision to terminate Appellants' lease and that Appellants would be required to pay CPHA $7,850.00 in back rent.

The circuit court denied the petition for the writ of administrative mandamus and rendered the case closed. Appellants timely appealed and present the following questions for our review,[1] which we have rephrased and consolidated as follows:

[1] The issues as presented in Appellants' brief are:

"1. Did the Hearing Officer exceed her authority in ruling that the Appellants owed $7,850 in back rent, in that the City of College Park Housing Authority confined the June 22 hearing on termination of the Appellants' lease for fraud−and the Hearing Officer ruled in favor of Appellants on that point−thus, did the Circuit Court err in not examining that flaw in the Hearing Officer's ruling (as was argued by Appellants at the Circuit Court's hearing)?

(1) Did the hearing officer exceed her authority in ruling that the Appellants owed $7,850.00 in back rent?

(2) Was the hearing officer's determination supported by substantial evidence in the record, or was it arbitrary and capricious?

(3) Was the hearing officer an "impartial person" as defined under the CPHA's Grievance Procedure in accordance with 42 U.S.C. § 1437d(k)?

(4) Did the Circuit Court for Prince George's County abuse its discretion by not delaying the hearing on the Petition for a Writ of Administrative Mandamus?

After considering, sua sponte, whether this Court has jurisdiction to consider this appeal, we resolve that it does and then proceed to hold that the hearing officer did not exceed her authority in determining that the Appellants owed $7,850.00 in back rent, and that the hearing officer's decision was not arbitrary or capricious. We conclude that

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2. If the Hearing Officer did not exceed her authority in finding that Appellants owed $7,850 in back rent, was there "substantial evidence" to support her ruling on that point, and did the Circuit Court err in so finding?

3. Was the Hearing Officer's finding that Appellants owed $7,850 in back rent arbitrary or capricious and did the Circuit Court err in not examining the Hearing Officer's finding under that standard?

4. If the issue is not waived, was the Hearing Officer an "impartial person" as defined in the tenants' grievance procedure listed in 24 Code of Federal Regulations Sec. 966.53(e)in accordance with the 42 United States Code Sec. 1437d(k), and if she was not, were Appellants offered a fair hearing?

5. Did the Circuit Court abuse its discretion in not delaying the hearing for a short while, or taking a short recess, so that Mr. Elgibali could attend as he was driving to the hearing location?"

Appellants waived their objection to the issue of the impartiality of the hearing officer and discern no possible abuse of discretion by the circuit court for failing to continue the hearing. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

The Lease Agreement

On January 1, 2013, Appellants moved into their apartment in Attick Towers,[2] after signing a "Dwelling Lease" with CPHA (the "Lease") on December 21, 2012. Attick Towers is a public housing facility serving elderly and/or disabled individuals. CPHA operates and manages Attick Towers in accordance with the regulations and procedures of the U.S. Department of Housing and Urban Development ("HUD").[3]

[2] Attick Towers is located at 9014 Rhode Island Avenue in College Park, Maryland.

[3] The College Park Housing Authority, Admissions and Continued Occupancy Policy states:

> **VI**. **<u>Authority</u>**
>
> Eligibility for admission to and occupancy of Low-Income Public Housing is governed by requirements of the Department of Housing and Urban Development. Local housing authorities must establish local policies for program interpretation and the Housing Authority's discretionary areas, to aid the staff in program procedures to ensure consistency and provide program information to applicants and/or families. This Admissions and Continued Occupancy Policy (ACOP) incorporates these requirements and is binding upon applicants, residents, and Housing Authority alike, the latter two through inclusion of the ACOP into the Dwelling Lease by reference. Notwithstanding the above, changes in applicable Federal law or regulations shall supersede this policy at any point in which they are in conflict.

College Park Housing Authority, Admissions and Continued Occupancy Policy (October 2013), A-4.

CPHA provides housing to low income families and is defined as a "public housing agency." CPHA offers tenants a "flat rent" option, which is market-based and represents the "actual market value of PHA's housing units,"[4] or an income-based rental option, pursuant to which their monthly rental payments are determined based on their reported income.

Appellants qualified as residents for an elderly unit at Attick Towers after Mr. Elgibali retired from his job at Zayed University.[5] When Appellants signed the Lease on December 12, 2012, they chose the income-based option. Because Appellants chose the income-based option, they were required to complete an annual reexamination of their finances pursuant to which Appellants were required, as stated in the Lease, to "provide current and accurate information regarding income, assets, allowances, deductions and family composition" to CPHA. As Mrs. Elmgdlawi had been and remained unemployed,

[4] Flat rents are outlined in the College Park Housing Authority, Admissions and Continued Occupancy Policy (October 2013), C-24. According to the policy, "[f]lat rents are market-based rents." In developing a tenant's flat rent schedule, CPHA takes into consideration various factors, including "Rents of non-assisted rental units in the immediate neighborhood" and "Age, type of unit and condition of [C]PHA's units compared to non-assisted rental units from the neighborhood." The policy requires "[f]amilies paying flat rents . . . to recertify income only every three years, rather than annually, although they are still required to participate in an Annual Reexamination in order to ensure that unit size is still appropriate and Community Service requirements (if applicable) are met."

[5] Appellants note in their brief that Mr. Elgilabi also worked "as a lecturer and has been a translator (Arabic) for some government agencies in the past, [Mrs. Elmgdlawi] is unemployed." Both Mr. Elgilabi and Mrs. Elmgdlawi are naturalized citizens of the United States.

Mr. Elgibali's income served as the sole source of income used in making rent determinations at the initial signing of the Lease and during annual reexaminations. At the time that the Lease was signed, Mr. Elgibali reported his sole source of income as $1,036.00 a month from Social Security.

Appellants' initial monthly rent under the income-based rental program was $314.00, based on information they provided to CPHA. The "ANNUAL REEXAMINATION" provision contained in the Lease warned that failure to furnish accurate income information was grounds for termination of the Lease:

> **3.** ANNUAL REEXAMINATION
>
> **(a)** If the Tenant has chosen an income-based rent, then at least once annually, the Tenant is required to provide current and accurate information regarding income, assets, allowances, deductions, and family composition to enable the [C]PHA to make determinations with respect to rent, eligibility, and the appropriateness of the size of the dwelling unit. **The Tenant's failure to attend the annual recertification meeting or to furnish the requested information and certifications in a timely manner, is grounds for termination of this Lease by the [CPHA].**
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> * * *
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> **(c)** If the [C]PHA determines that the Tenant has gained admission or remained in occupancy of a [C]PHA dwelling unit through the Tenant's misrepresentation of his or her income, assets, childcare responsibilities, or family composition, the [C]PHA **may terminate this Lease and collect any deficiencies in rent which result from such misrepresentations.**

(Emphasis added). Additionally, under Section 4(b) of the Lease, the tenant was required to reimburse CPHA if the requisite financial information was not timely submitted or false:

> 4. REDETERMINATION OF RENT, DWELLING SIZE AND ELIGIBILITY FOR CONTINUED OCCUPANCY

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> (b) Tenants that choose an income-based rent **shall** reimburse the [C]PHA for the difference between the rent that was paid and the rent that should have been charged if proper notice of the income change had been given and the Tenant either did not submit information in a timely manner or submitted false information.

(Emphasis added).

In 2013, CPHA determined that Appellants did not properly fulfill their income reporting obligations in accordance with the Lease. CPHA found that Mr. Elgibali had failed to include income from the University of Maryland and incorrectly reported Social Security payments as his sole source of income. As a result, CPHA used the "Retroactive Rent Worksheet" to determine that Appellants' incorrect reporting resulted in unpaid rent in the amount of $4,975.30. CPHA and Appellants entered into a Repayment Agreement, which allowed Appellants to make monthly payments of $414.61 until the debt was satisfied.

CPHA learned of a second reporting discrepancy for the 2015-2016 fiscal year in an income report provided by HUD. CPHA concluded that Mr. Elgibali had earned additional income that was not properly reported at the 2016 income recertification process. As a result, CPHA decided to terminate the lease rather than negotiate a repayment option.

Notice of Termination

CPHA issued a written "Notice of Termination of Lease for Fraud" to Appellants on March 13, 2017. The Notice informed Appellants that, after conducting an investigation, CPHA had determined that Mr. Elgibali failed to report his employment with the University of Maryland as a Lecturer for various periods of time starting in 2015. A

"Verification of Employment Income" form received by CPHA from the University verified that "Mr. Elgibali received a base pay, effective September 4, 2016, at Six Thousand Dollars, ($6,000.00), per year, and earnings as of the date of the form at Seven Thousand Ninety Dollars and Ninety Seven Cents, ($7,090.970)." The letter also specified that in addition to the income from the University of Maryland, a HUD income report showed that Mr. Elgibali earned at least $4,800.00 from Adecco, USA, Inc., a staffing agency, in 2015. CPHA asserted that Appellants inaccurately represented Social Security payments as their sole source of income and included a reference to the previous determination that Appellants underrepresented their income in 2013. The letter further stated:

> This misrepresentation of income and failure to properly report and disclose all of your annual income constitutes fraud under the terms and conditions of your Lease with CPHA and its Admission and Continued Occupancy Policy. . . . If the misrepresentation resulted in the tenant's paying a lower tenant rent that he/she should have paid, the tenant will be required to pay the difference between rent owed and the amount that should have been paid. **The amount shall be paid whether or not the tenant remains in occupancy**, and failure to pay under terms established by CPHA shall always result in immediate termination of the Lease. CPHA may demand full payment within seven days.
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> * * *
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> Per CPHA's Grievance Procedure, in the event you wish to request a grievance of this thirty (30) days written notice of termination of Lease, any grievance must be presented, in writing to CPHA's main office . . . within five (5) business days after the occurrence of the event giving rise to the grievance.

(Emphasis added).

Request for a Formal Grievance Hearing

On March 24, 2017, Appellants opted to attend an informal settlement conference with CPHA. The settlement conference was unsuccessful, and Appellants requested a formal grievance hearing on March 29, 2017. In a letter sent on Appellants' behalf by trial counsel, Appellants challenged the allegation that they failed to report $7,090.97 of their income from the University of Maryland, or $4,800.00 from Adecco, USA, Inc. Appellants claimed that Mr. Elgibali had submitted his tax returns at the time of his re-certification; therefore, "Mr. Elgibali voluntarily disclosed his income and thus has not committed fraud." The letter expounded:

> Mr. Elgibali, as explained to CPHA on numerous occasions, has and continues to have sporadic, at-will employment. His income fluctuates from month to month and from year to year. In an attempt to comply with CPHA regulations, Mr. Elgibali has submitted numerous income updates and during re-certification has submitted many documents verifying his income, including his Individual Tax Return Form 1040.

On April 21, 2017, CPHA sent Appellants a letter, supplementing the Notice of Termination letter dated March 13, 2017, that stated, in relevant part:

> . . . .In CPHA's March 28, 2017, correspondence, the Agency confirmed that it would provide your clients the amount of underpaid and/or unpaid rent due on their Lease as the result of the Tenants' failure to provide CPHA with all income information during their tenancy.
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> CPHA calculated the amount due for underpaid and/or unpaid rent at Seven Thousand Eight Hundred and Fifty Dollars, ($7,850.00)**.**

The letter instructed Appellants to place the amount due in escrow prior to the hearing as required by Section IX.A.3. of the Grievance Procedure.

Section IX.A.3. provides:

> If the matter involves the amount of rent which CPHA claims is due under the complainant's lease, the complainant shall have paid to CPHA an amount equal to the amount due and payable as of the first of the month preceding the month in which the complained of act or failure to act took place. And, in the case of situation in which hearings are, for any reason delayed, the complainant shall thereafter, deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer. Unless waived by CPHA in writing, no waiver shall be given by CPHA except in cases of extreme and undue hardship or complainant, determined in the absolute and sole discretion of CPHA.

In response, Appellants' trial counsel sent a letter to CPHA disputing the public housing authority's right to require his clients to either pay the $7,850.00 or to put the money into escrow prior to the hearing on May 5, 2017. Appellants' trial counsel specifically disputed CPHA's assertion that the payment into escrow was required under Section IX.A.3. of CPHA's Grievance Procedure and asserted that CPHA's interpretation "raise[d] serious due process concerns."

On June 8, 2017, CPHA sent a letter notifying Appellants that the grievance hearing would take place on June 22, 2017 and that Venus P. Bradford would preside as the hearing officer. At the time, Venus P. Bradford served as the Director of Public Housing in Annapolis. The letter also expressed that CPHA would raise the issue of placing the back rent into escrow at the hearing on June 22, 2017.

The Grievance Hearing

The grievance hearing took place on June 22, 2017. Both parties were represented by legal counsel and were given the opportunity to cross examine the witnesses presented and to present their own evidence related to the case. There were three witnesses called

during the grievance hearing: James Simpson, Executive Director of the CPHA; Betty Caesar-Gibbons, CPHA's Administrative Officer; and Mr. Elgibali.

James Simpson was the first witness to testify. He relayed that CPHA desired to terminate the lease because CPHA believed the misrepresentation at the Annual Reexamination was intentional and that CPHA had attempted to work with Appellants in the past. On cross examination, Appellants' trial counsel questioned Mr. Simpson about CPHA's desire to seek a repayment of back rent and inquired into the process for determining that $7,850.00 was the amount owed. Mr. Simpson stated that Ms. Ceaser-Gibbons would be able to explain the accounting.

Ms. Caesar-Gibbons testified that she served as the administrative officer for CPHA since January 2003. One of her primary roles was processing recertifications every month for the residents of Attick Towers. Ms. Gibbons explained that when Mr. Elgibali initially applied to become a resident at Attick Towers, he reported his sole source of income as $1,036.00 per month from Social Security. She then explained how the rent calculation worksheet was utilized in 2013 when the rent amount was first calculated and then how they calculated the retroactive back rent payments once the discrepancy was found. [6]

[6] During the grievance hearing, Ms. Gibbons explained in detail how she calculated the back rent due following CPHA's discovery of Appellants' initial under-reporting of income in 2013. She explained that when the rent calculation was initially determined the actual income amount used was $1,078.02 because the Social Security payment had increased at the time. She then explained that to determine the rent she multiplied $1,078.02 by twelve, the number of months in a year, which resulted in a total of $12,936.24. Then that amount received an automatic $400 deduction that was taken from the total because Attick Towers is a senior facility. This reduction brought Mr. Elgibali's total net income to $12,536.24. Ms. Ceaser-Gibbons divided his total net income of

Ms. Ceaser-Gibbons testified that she employed similar calculations in 2016 after CPHA learned of Appellants' additional income discrepancies through the HUD Income Report. Ms. Ceaser-Gibbons explained that she relied on the information provided by the University of Maryland to calculate the retroactive rent charges in 2016. She referred to the "Estimated Retro-Active Rent Charges" worksheet, which was introduced into evidence at the hearing. She explained that, after calculating the difference between the correct rental amounts and the original amounts charged, the total back rent owed was $7,850.00.

Lastly, Mr. Elgibali testified that he attempted to provide CPHA with all the proper documents needed to verify his income. Mr. Elgibali said that he believed providing CPHA with his W-2 tax income forms satisfied his reporting responsibilities. He also testified that his additional income from the University of Maryland was sporadic. Mr. Elgibali

$12,536.24 by twelve which equated to $1,044.69 a month. She then multiplied his monthly net income by thirty percent to yield Appellants' monthly rent. These calculations then resulted in the total rental payment per month equating to $313.41. Lastly, Ms. Ceaser-Gibbons testified they dropped off the 41 cents and rounded up to $314.00. Then CPHA discovered in 2013 that Mr. Elgibali had additional income outside of his Social Security payments initially reported. Elgibali's original yearly income should have been $30,539.00 instead of $12,936.00. Therefore, using $30,539.00 to retroactively determine rent for the 2012-2013 year, Ms. Ceaser-Gibbons deducted $400.00 and divided that amount by twelve which equated to $2,511.59 per month. Then she multiplied that number by 30 percent to determine the monthly rent to be $753.48. In order to work with Mr. Elgibali, CPHA charged him back rent of $744.00 per month, which was the flat rent amount at the time. Ms. Ceaser-Gibbons further testified that after she calculated the difference between the corrected rent amount and the $314.00 that was previously determined, they set up a payment plan for the repayment of back rent in 2013.

asserted that he and his wife have struggled financially, but it was not their intent to commit fraud.

Hearing Officer's Determination and Writ of Administrative Mandamus

On July 25, 2017, the hearing officer issued a written decision in the form of a letter. Under Section XI(B) of the Grievance Procedure, the hearing officer's decision became binding after ten business days because no contrary decision from CPHA's Board of Commissioners was issued during that time. In the letter, the hearing officer found that Appellants "failed to properly report [their] earnings at annual recertification and interim as required by CPHA. However, [they] provided a copy of [their] tax return that included wages from employment without W-2 forms." Even though, the hearing officer noted, "[i]t would have been difficult for the interviewer to know where this money came from," she decided that she was "overturning CPHA's decision to terminate [Appellants'] resident dwelling because [they] presented tax returns with wages." The hearing officer did require, however, that "[Appellants] must make payment arrangements to repay CPHA $7,850.00[7] immediately" because Appellants paid less rent than they would have paid had they reported the correct income. The hearing officer's ruling did not include a notice of appeal rights.

[7] During oral argument, when counsel for CPHA was asked how CPHA calculated the amount of back rent owed at $7,850.00, counsel referred the Court to the testimony of Betty Caesar-Gibbons. Counsel verified that CPHA only included income from the University of Maryland in the back rent calculations.

Following the hearing officer's ruling, Appellants filed a petition for a writ of administrative mandamus in the Circuit Court for Prince George's County. Appellants challenged the hearing officer's ruling, presenting the following questions in their Memorandum in Support of Petition for Writ of Mandamus:

1. Whether the Hearing Officer's decision that the Petitioner's owe CPHA $7,850 in unpaid back rent was made outside of the Hearing Officer's jurisdiction.

2. Whether the Hearing Officer's decision that Petitioners owe CPHA $7,850 in unpaid back rent is unsupported by competent, material, and substantial evidence in light of the entire record as submitted.

The circuit court held a hearing on the Writ of Mandamus on January 4, 2019. At the hearing, Appellants were represented by counsel, but Appellants were not present. Counsel for Appellants and counsel for CPHA presented their case before the circuit court, with no objection from either party or a request for a recess. On January 8, 2019, the judge issued an opinion and order holding that the request for the writ of mandamus was denied, and rendered the case closed. The circuit court's order read, in pertinent part:

> In the instant case, there was substantial evidence to support the hearing officer's findings. Petitioner did not show prejudice of a substantial right as per MD. Rule 7-403. Petitioner was advised of the specific grounds of any proposed adverse public housing agency action, had an opportunity for a hearing before an impartial party upon timely request within any period applicable under subsection [(l) of 42 U.S.C. § 1437d]; had an opportunity to examine any documents or records or regulations related to the proposed action; was represented by competent counsel; had the opportunity to ask questions of witnesses; and received, as required by federal law[.]

Appellants timely filed a notice of appeal on February 1, 2019.

JURISDICTION

As a threshold matter, we must address whether this Court has jurisdiction over this case, even though the parties have not raised the issue. *Gray v. Fenton*, 245 Md. App. 207 (2020); *see also Univ. Sys. of Maryland v. Mooney*, 407 Md. 390, 401 (2009); *Bd. of Educ. for Dorchester Cty. v. Hubbard*, 305 Md. 774, 787 (1986) ("[I]ssues of primary jurisdiction and exhaustion of administrative remedies will be addressed by this Court sua sponte even though not raised by any party").

The Grievance Procedure, which governs Appellants' remedies in the instant case, states, in pertinent part:[8]

[8] The language of the Grievance Procedure is identical to the enabling statute under the Code of Federal Regulations which states the following:

> a) The hearing officer must prepare a written decision, including the reasons for the PHA's decision within a reasonable time after the hearing. A copy of the decision must be sent to the complainant and the PHA. The PHA must retain a copy of the decision in the tenant's folder. The PHA must maintain a log of all hearing officer decisions and make that log available upon request of the hearing officer, a prospective complainant, or a prospective complainant's representative.
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> (b) The decision of the hearing officer will be binding on the PHA unless the PHA Board of Commissioners determines that:
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> > (1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affects the complainant's rights, duties, welfare or status; or
> > (2) The decision of the hearing officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

> **XI. Decision of the Hearing Officer**
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> . . .
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> (b) The written decision of the hearing officer shall be binding upon CPHA, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless CPHA's Board of Commissioners determines, within ten (10) business days, and properly notifies the complainant of its determination, that:
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> 1. the grievance does not concern CPHA action or failure to act in accordance or involving the complainant's lease, or CPHA's regulations, which adversely affect the complainant's rights, duties, welfare or status, or
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> 2. the decision of the hearing officer is contrary to applicable Federal, State, or local law, HUD regulations or requirements of the Annual Contributions Contact between HUD and CPHA.
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> *** * ***
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> (c) A decision by the hearing officer or Board of Commissioners in favor of CPHA or which denies the relief requested by the complainant, in whole or in part, shall not constitute a waiver of, nor affect in any way the rights of the complainant to a trial or judicial review in any judicial proceedings, which may thereafter be brought in this matter.

College Park Housing Authority Grievance Procedure, § XI(B) and (C).

In *Gray*, we recently reaffirmed that the right to appeal "is not a right required by due process of law, nor is it an inherent or inalienable right. Rather, '[a]n appellate right

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> (c) **A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part will not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter**.

24 C.F.R. § 966.57 (emphasis added).

is entirely statutory in origin and no person or agency may prosecute such an appeal unless the right is conferred by statute.'" 245 Md. App. 207, 211 (2020) (quoting *Reese v. Dep't of Health & Mental Hygiene*, 177 Md. App. 102, 144 (2007)). Ms. Gray filed a petition for judicial review in the Circuit Court for Montgomery County from a final administrative decision, as permitted under the local ordinance.[9] *Id.* at 211. Unhappy with the result, she filed an appeal to this Court. We dismissed the appeal for lack of jurisdiction because the local ordinance did not specify the right to appeal to the Maryland Court of Special Appeals. *Id.* We held that Ms. Gray had no further right of review in this Court from the circuit court's decision, although she retained the right to petition for writ of certiorari to the Court of Appeals, because it "was a final judgment made in the exercise of what, for these purposes, was 'appellate jurisdiction in reviewing the decision.'" *Id.* at 211 (quoting Maryland Code (1974, 2013 Repl. Vol., 2019 Supp.), Courts and Judicial Proceedings Article ("CJP"), §12-302(a)). Consequently, because "there [was] already a statutory path

[9] Ms. Gray relied on § 6.24.130(B) of the Takoma Park Municipal Code, to seek judicial review which provided,

> Appeals. Any person aggrieved by a final opinion and order of the Commission on a complaint or on objections to a decision regarding a fair return rent increase petition may file a petition for judicial review with the Clerk of the Circuit Court of Montgomery County. The procedures for an appeal from the opinion and order of the Commission shall be governed by Title 7, Chapter 200 ... of the Maryland Rules, as amended.

Gray, 245 Md. App. 207, 211 (2020).

for judicial review," administrative mandamus was not available. *Id.* at 212 (*quoting Hughes v. Moyer*, 452 Md. 77, 91 (2017)).

In the case before us, the determination letter issued by the hearing officer did not contain provisions addressing the right to judicial review or include any notice of a right to appeal.[10] Additionally, the Grievance Procedure acknowledges the potential for judicial review but does not expressly state the avenues that one can pursue in order to obtain judicial review. The Grievance Procedure states that a hearing officer's decision that denies the relief requested by a complainant, "shall not constitute a waiver of, nor affect in any way the rights of the complainant to a trial or judicial review in any judicial proceedings[.]" College Park Housing Authority Grievance Procedure, § XI(C). But the Grievance Procedure does not in any way identify such right to judicial review from a grievance filed with the College Park Housing Authority, nor could we find any other statute or ordinance that does.[11] We conclude that, unlike in *Gray*, in this case there was *not* "already a statutory path for judicial review." *Gray, 245 Md. App.* 207, 212 (2020).

A writ of administrative mandamus filed pursuant to Md. Rule 7-401 affords judicial review of a "quasi-judicial order or action of an administrative agency *where review is not*

[10] Typically, in a final determination letter from an administrative agency, the agency will notify the complainant of any right to appeal and the time within which to note an appeal, or else refer the complainant to the applicable statute or regulation that sets out appeal rights.

[11] We note that Section XI (C) of the Grievance Procedure is identical to the federal enabling regulation at 24 C.F.R. § 966.57, which we surmise, was drafted in general terms to permit local statutes to specify appeal and judicial review rights.

expressly authorized by law." Md. Rule 7-401(a) (emphasis added).[12] In turn, our decisional law confirms the right to appeal to this Court from a decision by a circuit court on a petition for administrative mandamus under Md. Rule 7–401(a). *See Matthews v. Hous. Auth. of Balt. City*, 216 Md. App. 572, 581 (2014). A writ of administrative mandamus review by a circuit court is distinguishable from statutory review cases, which are not reviewable by appellate courts "unless the right to appeal is expressly granted by law." CJP §12-302(a); *see also Madison Park N. Apartments, L.P. v. Comm'r of Hous. & Cmty. Dev.*, 211 Md. App. 676, 694 (2013) (holding that "[w]here 'the substance of the circuit court action was a common law mandamus action' and not a statutory action for judicial review, the decision is 'appealable to the Court of Special Appeals under § 12–301 of the Courts and Judicial Proceedings Article'"); *Rogers v. Eastport Yachting Ctr., LLC*, 408 Md. 722, 734 (2009) (affirming dismissal for lack of appellate jurisdiction where the circuit court proceeding was "a statutory judicial review action" and Petitioner did not seek "'mandamus' relief" from the circuit court); *Murrell v. Mayor of Balt.*, 376 Md. 170,

[12] There are two types of common law mandamus actions—administrative and traditional—that a party may pursue when there is no "statutorily-granted right to judicial review." *Matthews v. Hous. Auth. of Balt. City*, 216 Md. App. 572, 581 (2014) (citing Arnold Rochvarg, Principles and Practice of Maryland Administrative Law § 13.15 (2011)). "Administrative mandamus is limited to quasi-judicial agency actions." *Town of La Plata v. Faison-Rosewick LLC*, 434 Md. 496, 511 (2013); *see also Matthews*, 216 Md. App. at 581 (administrative mandamus, "is the proper mandamus action when the agency decision being challenged is ... from a contested case.").

185–86, (2003) (stating that this Court has no jurisdiction over "a statutory judicial review action" but can entertain "a common law mandamus action").

Because there was no statutory basis for judicial review, we conclude that the Appellants' petition for administrative mandamus was the proper form of common law mandamus to challenge whether the hearing officer's decision was supported by substantial evidence and was not arbitrary or capricious. Correspondingly, we resolve that we have jurisdiction to hear this appeal.

STANDARD OF REVIEW

Our role in reviewing the agency's decision is narrow and "limited to determining if there is substantial evidence in the record as a whole to support the agency's finding and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Serv., Inc. v. People's Counsel for Balt. County*, 336 Md. 569, 577 (1994). Our role is "*not* to 'substitute [our] judgment for the expertise of those persons who constitute the administrative agency.'" *Id.* (quoting *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 513 (1978). "Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency." *Bd. of Physician Quality Assur. v. Banks*, 354 Md. 59, 69 (1999). Indeed, a "great deal of deference is owed to an administrative agency's interpretation of its own regulation." *Md. Transp. Auth. v. King* 369 Md. 274, 288 (2002). However, we owe no deference to an agency decision based upon an error of law. *See Talbot County v. Miles Point Prop., LLC,*

415 Md. 372, 384 (2010) (citing *Belvoir Farms Homeowners Ass'n v. North,* 355 Md. 259, 267 (1999)).

The "proper approach for determining whether there is substantial evidence is if a reasoning mind could reasonably have come to the factual conclusion that the agency reached." *Md. Dep't of the Env't,* 136 Md. App. at 585. In considering the factual evidence, the reviewing court "must review the agency's decision in the light most favorable to it; . . . the agency's decision is *prima facie* correct and presumed valid . . . it is the agency's province to resolve conflicting evidence and to draw inferences from that evidence." *Emps.' Ret. Sys. of Balt. v. Dorsey,* 430 Md. 100, 110 (2013) (quoting *Md. Aviation Admin. v. Noland,* 386 Md. 556, 571 (2005)).

DISCUSSION

I.

Exceeding Authority

Appellants assert, "once the Grievance Hearing was restricted to whether Appellants' lease should be terminated for fraud, *and the Hearing Officer found for Appellants on that sole issue,* the Hearing Officer had no jurisdiction or exceeded her authority in ruling that Appellants must pay CPHA any amount of money." (Emphasis in original.) Appellants offer two arguments in support of this contention. First, they argue that the hearing officer exceeded her authority in requiring Appellants to pay $7,850.00 in back rent because CPHA waived the issue. Appellants claim that CPHA waived the issue

of unpaid back rent throughout the hearing by seeking termination of the lease for fraud, rather than seeking a repayment option.

Second, Appellants assert that the issue of back rent was outside the scope of the hearing officer's authority because they were not advised of the specific grounds for the back rent owed. They contend the termination letter "does *not* state any back rent that Appellants were required to pay to CPHA. That letter concludes with only a description of the grievance procedure." Appellants refer us to 42 U.S.C.A. §1437d(k) and aver that the statute establishes that each public housing agency receiving assistance under this chapter must establish and implement an administrative grievance procedure under which tenants will "be advised of the specific grounds of any proposed adverse public housing agency action." 42 U.S.C.A. §1437d(k)(1). Appellants argue that this requirement was not satisfied by CPHA regarding the payment of back rent.

CPHA responds that, although the hearing officer did not find that Appellants' misrepresentation of income was intentional, she correctly held that Appellants owed back rent in the amount of $7,850.00. CPHA points to the testimony presented at the hearing, under oath, by CPHA's administrative officer, Ms. Betty Gibbons, that the amount owned was $7,850.00. In support of her testimony, CPHA introduced into evidence the "Retro-Active Rent Charges" calculation sheet, prepared by Ms. Gibbons.

CPHA avers that the hearing officer had jurisdiction over the back rent under the City of College Park Admission and Continued Occupancy Policy, pursuant to which tenants are required to pay back rent under such circumstances, regardless of whether they

remain in occupancy of the Lease dwelling. CPHA asserts Appellants were informed of this requirement in the Notice of Termination letter. According to CPHA, Appellants were further advised of the exact amount owed of the under-paid rent in the April 21, 2017 supplemental Notice of Termination of Lease for Fraud.

The Court of Appeals examined whether or not an administrative agency acted outside of the scope of its authority in *Maryland Transportation Authority v. King*, 369 Md. 274 (2002). There, a former employee of a State agency challenged an administrative judge's decision, on charges brought by the agency, to terminate his employment rather than impose a lesser sanction. *Id.* at 276. The employee claimed that "termination of his employment instead of a lesser sanction was inconsistent with the agency's progressive discipline regulation" and was, therefore, in violation of the *Accardi* doctrine.[13] *Id.* at 281. The Court of Appeals upheld the administrative judge's decision, under the standards of review articulated in the State Administrative Procedure Act,[14] and instructed:

> As long as an administrative sanction or decision does not exceed the agency's authority, is not unlawful, and is supported by competent, material and substantial evidence, there can be no judicial reversal or modification of the decision based on disproportionality or abuse of discretion unless, under the facts of a particular case, the disproportionality or abuse of discretion was

[13] *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The *Accardi* doctrine provides that "an agency of the government generally must observe rules, regulations or procedures which it has established and under certain circumstances when it fails to do so, its actions will be vacated and the matter remanded." *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 503 (2003). In *King*, the Court of Appeals determined that it was not necessary to explore whether the *Accardi* doctrine applied because of its holding that the agency did not violate any of its regulations. *King*, 369 Md. at 287.

[14] The Maryland Administrative Procedure Act is codified at Maryland Code (1984, 2014 Repl. Vol, 2018 Supp.) State Government Article, §§10-101-305.

> so extreme and egregious that the reviewing court can properly deem the decision to be "arbitrary or capricious."

King, 369 Md. at 291.

Appellants are correct that they were entitled to notice of the specific grounds of the adverse action against them—here, termination of their lease and obligation to pay back rent. *See Md. Real Estate Comm'n v. Garceau*, 234 Md. App. 324, 352 (2017) ("Notice, even in the administrative context, must be 'reasonably calculated' to inform the party of the 'pendency of the action' against it." (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, (1950))). In administrative proceedings, "reasonable notice of the nature of the allegations must be given to the party so that it can prepare a suitable defense." *Regan v. Bd. of Chiropractic Examiners*, 120 Md. App. 494, 519 (1998), *aff'd sub nom. Regan v. State Bd. of Chiropractic Examiners*, 355 Md. 397, 735 A.2d 991 (1999) (citations omitted). The applicable federal statute, invoked by Appellants, requires, in pertinent part:

> **(k) Administrative grievance procedure regulations: grounds of adverse action, hearing, examination of documents, representation, evidence, decision; judicial hearing; eviction and termination procedures.**
> The Secretary shall by regulation require each public housing agency receiving assistance under this chapter to establish and implement an administrative grievance procedure under which tenants will--
> (1) be advised of the specific grounds of any proposed adverse public housing agency action;
> (2) have an opportunity for a hearing before an impartial party upon timely request within any period applicable under subsection (l);
> (3) have an opportunity to examine any documents or records or regulations related to the proposed action;
> (4) be entitled to be represented by another person of their choice at any hearing;
> (5) be entitled to ask questions of witnesses and have others make statements on their behalf; and

> (6) be entitled to receive a written decision by the public housing agency on the proposed action.

42 U.S.C.A. § 1437d(k) (emphasis added).

The record in this case establishes that Appellants "were advised of the specific grounds" of the adverse action. Appellants were made aware of CPHA's authority to collect back rent if they failed to make full and accurate income disclosures under Section 3 of the Lease, which provided:

> (b) [t]enants that choose an income-based rent **shall reimburse the [C]PHA for the difference between the rent that was paid and the rent that should have been charged if proper notice of the income change had been given and the Tenant either did not submit information in a timely manner or submitted false information.**

(Emphasis added). Appellants were then notified of the specific grounds upon which CPHA claimed Appellants owed back rent in the Notice of Termination:

> An investigation conducted by CPHA disclosed that Mr. Elgibali has been employed continuously by the University of Maryland as a "Lecturer" from July 2015, through at least December 27, 2016, the date of a Verification of Employment Income form received by CPHA from his employer. The form verifies . . . earnings as of the date of the form at Seven Thousand Ninety Dollars and Ninety Seven Cents, ($7090.97). In addition, information disclosed to CPHA on a HUD income report verified that Mr. Elgibali also earned income of, at lease, Four Thousand Eight Hundred Dollars ($4,800.00), in 2015, through Adecco, USA, Inc.
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> ***
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> If the misrepresentation resulted in the tenant's paying a lower tenant rent that [sic] he/she should have paid, **the tenant will be required to pay the difference between rent owed and the amount that should have been paid. That amount shall be paid whether or not the tenant remains in occupancy**, and failure to pay under the terms established by CPHA shall always result in termination of the Lease.

(Emphasis added). Furthermore, the supplement to the Notice of Termination, sent to Appellants two months prior to the hearing on April 21, 2017, notified them that CPHA calculated the amount of back rent due to be $7,850.00.

We reject Appellants' claim that CPHA waived the issue of unpaid back rent. Although CPHA asserted that they were seeking termination of the Lease during the grievance hearing, the well-documented requirement to pay back rent was never withdrawn. Furthermore, as related above, Ms. Ceaser-Gibbons testified to the amount of unpaid back rent Appellants owed, and CPHA introduced into evidence the "Retro-Active Rent Charges" worksheet that Ms. Gibbons used to calculate the amount owed.

The hearing officer found that Appellants "failed to properly report [their] earnings at annual recertification and interim as required by CPHA." Accordingly, the hearing officer required Appellants to "make payment arrangements to repay CPHA $7,850.00 immediately" because they paid less rent than they would have paid had they reported the correct income. We hold that the hearing officer did not exceed her authority by requiring the Appellants to the pay back rent after she found that Appellants failed to properly report their earnings.

II.

Arbitrary or Capricious

Appellants argue that the hearing officer did not have substantial evidence to support her finding that Appellants owed $7,850 to CPHA. Appellants assert that the testimony of Ms. Ceaser-Gibbons, the employee of CPHA who calculated the back rent,

did not rise to the level of "substantial evidence" under the law. As a result, Appellants contend that the hearing officer's ruling was unreasonable and therefore arbitrary or capricious as a matter of law.

CPHA responds that Ms. Gibbons' testimony provided a detailed account regarding how the back rent was calculated. Furthermore, CPHA contends that the Estimated Retro-Active Rent Charges calculation sheet was provided to Appellants which included specific dates and amounts of Appellants' wages used to calculate the amount in controversy.

When an agency decision is being reviewed as a mixed question of law and fact, the court will apply the substantial evidence test. *Para v. 1691 Ltd. P'ship*, 211 Md. App. 335, 356 (2013). If substantial evidence exists, "the courts may not substitute their judgment for that of the [agency] which is presumed to exercise a degree of expertise" in making a determination regarding the issues presented before it. *Id.* (*citing Boehm v. Anne Arundel County*, 54 Md. App. 497, 514 (1983)).

In *People's Counsel v. Public Service Commission*, this Court held that substantial evidence supported a decision of the Public Service Commission ("Commission") setting taxicab rates. 52 Md. App. 715, 725 (1982). There, a number of taxicab companies operating in Baltimore City petitioned for a rate increase to the Commission due to an increase in gasoline prices. *Id*. at 716. People's Counsel appealed from the Commission's decision to grant the rate increase and argued that "in deciding to grant the increase, the Commission looked at only one item of expense—the cost of gasoline—and did not consider the overall financial condition of the taxicab companies." *Id.* Therefore, People's

Counsel argued that the decision of the Commission was not based on substantial evidence and was arbitrary and capricious. *Id.* at 717. In analyzing the record, this Court affirmed the decision of the Commission because "the record *does* contain evidence regarding the overall financial condition of the [companies]." *Id.* at 725. Specifically, "[a]t least two witnesses . . . testified that since 1979 their overall costs had increased and, because of reduced shifts, their revenues had declined." *Id.* at 726. Because a "reviewing court may not substitute its judgment for that of the Commission" and "should not examine the facts in any case further than to determine whether there was substantial evidence to sustain the order," this Court concluded that "[t]he weight to be accorded the kind of evidence presented . . . was for the Commission to determine." *Id.* at 722, 727.

In the instant case, CPHA sent Appellants the Notice of Termination of Lease for Fraud in which CPHA detailed the results of its investigation and the income amounts from the University of Maryland and Adecco that had not been applied to Appellants' rental determinations since 2015. Following the Notice of Termination, on April 21, 2017—approximately one month before the grievance hearing took place—CPHA sent a supplemental notice advising that, "CPHA calculated the amount due for underpaid and/or unpaid rent at . . . $7,850.00."

At the hearing, Ms. Ceaser-Gibbons testified to the method that she used to calculate the rent owed. The transcript reflects as follows:

> [Counsel for CPHA]: All right. Now, in any event, Ms. Gibbons did you do a calculation of what the rent payments should have been had he disclosed the income of the University of Maryland?

> [Ms. Ceaser-Gibbons]: Yes.
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> [Counsel for CPHA]: And I want to show you another document, this will be City 10.
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> *** * ***
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> [Counsel for CPHA]: And can you explain what this retroactive rent charges document reflects?
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> [Ms. Ceaser-Gibbons]: Yes, I went back through all the rent changes that have been processed, whether it was annual or interim, and I had to come up with what the charge should have been if the income had actually been reported to us. And because of that, page two shows you that $7,850 is the amount that I came up with that would be due of unpaid rent.

As the hearing proceeded, Appellants' counsel and the hearing officer both enquired of Ms. Ceaser-Gibbons how the income determinations for the Appellants were considered.

The Court of Appeals has determined that for an agency's ruling to be considered "capricious or arbitrary" the agency's decision must have been "unreasonable or without rational basis." *Harvey v. Marshall*, 389 Md. 243, 297 (2005) (quoting Arnold Rochvarg, Maryland Administrative Law, § 4.38 at 128 (2001, 2004 Supp.)). Here, CPHA offered Ms. Ceaser-Gibbons' testimony at the hearing, and Appellants' counsel had ample opportunity to cross examine Ms. Ceaser-Gibbons and challenge the Estimated Retro-Active Rent Charges calculation sheet that was introduced into evidence. Appellants offer no reason why Ms. Ceaser-Gibbons' testimony was deficient, other than the bald allegation that it did not "rise to the level of substantial evidence under the law." We hold that there was substantial evidence to support the hearing officer's decision regarding the unpaid rent

owed by Appellants and, consequently, that the hearing officer's decision was not arbitrary or capricious as a matter of law.

III.

Waiver of Impartiality

Appellants concede that the issue of impartiality may be waived under the Grievance Procedure. Nevertheless, they urge this Court to consider whether the hearing officer was an impartial person under the Grievance Procedure and, if not, whether the Appellants were offered a fair hearing.

CPHA argues that Appellants do not present facts in support of their contention that the hearing officer was not impartial. Furthermore, CPHA presses that Appellants failed to raise any objection prior to the grievance hearing or during hearing and thus this issue is waived. Appellants reply that the hearing officer was not objective because she was a director for another public housing authority and, therefore, she was biased in favor of CPHA.

Maryland Rule 8-131 establishes that an appellate court "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a). Appellants were notified that the hearing officer would be "Ms. Venus P. Bradford, Director of Public Housing Authority of the City of Annapolis" on June 8, 2017. Following notification, Appellants failed to object to the hearing officer as an "impartial person" prior to the

grievance hearing, during the grievance hearing, or in the Appellants' Petition for Writ of Mandamus to the circuit court. We hold, therefore, that this issue was waived by Appellants.

IV.

Hearing in the Circuit Court

Relying on *Fisher v. McCrary*, 186 Md. App. 86 (2009), Appellants assert that the circuit court judge abused her discretion by failing to delay the hearing on the Petition for Writ of Mandamus, because Mr. Elgibali was not physically present.

CPHA responds by highlighting that the facts in *Fisher* are vastly different from the facts in this case. CPHA emphasizes that Appellants' trial counsel never requested the circuit court to delay the hearing or to take a recess so that Mr. Elgibali could be present. CPHA also points out that the circuit court hearing was not an evidentiary hearing.

In reply, Appellants assert that circuit court's failure to ensure Mr. Elgibali's presence affected an essential right, emphasizing that he was prevented from consulting with counsel during the hearing to discuss strategy. For example, Appellants assert that it was important for Mr. Elgibali to be physically present when the circuit court offered to remand the case to the hearing officer, so that Mr. Elgibali could have discussed that offer with trial counsel.

The Maryland Court of Appeals has established that trial courts have discretion in how to conduct a hearing or trial, and we, accordingly, review whether a trial court acted improperly under an abuse of discretion. *See Touzeau v. Deffinbaugh*, 394 Md. 654, 669

(2006). An abuse of discretion is defined as "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id.* (quoting *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003)).

In *Fisher*, we held that a trial court's decision to preclude a party *and* their counsel from participating in a damages hearing *as a sanction*, constituted an abuse of discretion. 186 Md. App. 86, 135 (2009). More specifically, we instructed:

> The complete prohibition against participation converted the damages hearing into an ex parte proceeding. A party's right to be present at a hearing or trial is a substantial right. That right is independent of the ability to present evidence. When a party *and* counsel are precluded from participation, counsel cannot present argument and make objections, thereby preserving the record.

Id. (emphasis added).

In *Green v. North Arundel Hospital Association, Inc.*, the Maryland Court of Appeals analyzed prior case law to address multiple questions surrounding a party's right to be present at a civil trial. 366 Md. 597 (2001). There, the Court of Appeals reaffirmed the holding in *Gorman v. Sabo*, 210 Md. 155 (1956), in the context of denying a motion for a continuance, that "[*t*]*he right of a party to a cause to be present throughout the trial is not an absolute right in a civil case and in the discretion of the court, with due regard to the circumstances as to prejudice, the case may be tried or finished when a party, including a defendant, is absent.*" *Id.* at 167 (emphasis added).

Applying these principles to the instant case, we hold that the judge did not abuse her discretion in not delaying or "continuing" the trial due to Mr. Elgibali's absence. In the instant case, a formal request to postpone or delay the hearing was not made.

Appellants have not presented this Court with a case that establishes that the trial court has a duty to inquire about a party's absence in a civil case before proceeding with a hearing. Indeed, even in the criminal context, we perceive no such duty where the defendant is absent unless the facts in the record show that the party was involuntarily absent. *See State v. Hart*, 49 Md. 246 (2016).

Appellants' reliance on *Fisher* is misplaced. Appellants pluck from our opinion the phrase, "[a] party's right to be present at a hearing or trial is a substantial right," and ignore our holding that the trial court abused their discretion by completely precluding a party and their counsel from a hearing. 186 Md. App. at 135. Unlike the excluded party in *Fisher*, the circuit court judge did not preclude Appellants or their counsel from having a hearing or attending the hearing in this case. Mr. Elgibali's counsel was present and acted on Appellants' behalf during the entire proceeding. *Id.* at 132, 135. It was not the court's role to question, sua sponte, whether Mr. Elgibali intended to be present at the hearing.

We can find no abuse of discretion here.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.