No. 12-CV-0168

DISTRICT OF COLUMBIA COURT OF APPEALS

BYRON S. MITCHELL,

Appellant,

v.

ANNIE GALES,

Appellee.

On Appeal from the Superior Court of the District of Columbia, Civil Division

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REPLY BRIEF OF APPELLANT

John C. Keeney, Jr. (No. 934307)
Kyle J. Fiet (No. 988894)*
Legal Aid Society of the District of Columbia
1331 H Street, N.W., Suite 350
Washington, D.C. 20005
Telephone: (202) 661-5966
Fax: (202) 727-2132

*Presenting oral argument

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INTRODUCTION

Ms. Gales does not dispute the deplorable living conditions in the apartment, her refusal to make repairs, or that she unlawfully attempted to evict Mr. Mitchell the week after he called the housing inspectors. *See* Gales Br. 5-6.[1] Nothing in Ms. Gales' brief suggests that the amount of the OAH award was in any way inequitable or disproportionate to the extreme and unremedied housing code violations that Mr. Mitchell endured during his tenancy.[2] If Ms. Gales was unhappy with the outcome of the OAH proceedings, her proper remedy was to seek reconsideration at OAH or appeal from the administrative proceedings, not to collaterally attack the merits of the Final Order in Superior Court.

District of Columbia law prohibits a party from raising affirmative defenses such as *res judicata* and double recovery to attack the merits of a judgment during an enforcement proceeding. *See* Mitchell Br. 8-15. There are good reasons for that rule. Otherwise, almost every action to enforce an administrative award would turn into a merits retrial, adding to the workload of the courts and contravening the District of Columbia Administrative Procedure Act, D.C. Code § 2-501 *et seq.* (2012) ("DCAPA"), which places judicial review of administrative orders in contested cases in the Court of Appeals, *id.* § 2-510 (a), not the Superior Court.

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[1] Documents in the Rule 30 (f) Appendix that was filed with Mr. Mitchell's opening brief are cited (A–). Documents in the Rule 30 (f) Appendix filed by Ms. Gales are cited (Appellee's A–). Documents in Mr. Mitchell's Supplemental Rule 30 (f) Appendix, which is being filed concurrently with this brief, are cited (Supp. A–).

[2] Although OAH awarded Mr. Mitchell more than the Small Claims Court did, the Small Claims judgment did not include the months after trial. *See* Mitchell Br. 20 & n.14. The amount of the Small Claims judgment is consistent with an award limited to the period between the housing inspection (May 5, 2010) (A7) and the Small Claims trial (July 15, 2010) (A5)—*i.e.*, 3 months at $300/month—rather than the entire length of the tenancy. Because the Small Claims trial was not transcribed, the record does not show how the court computed damages or whether it considered the already pending OAH proceeding when it decided how much to award.

Although Ms. Gales' current health difficulties merit sympathy, they do not excuse an end-run around the rules limiting the scope of Superior Court review in an action to enforce an agency award.

Moreover, Ms. Gales has not shown that she was unable to participate in the Tenant Petition proceedings. There is no dispute that Ms. Gales had notice of the these proceedings and that she promptly consulted with counsel—who was already representing her in the Small Claims action—about them. See *infra* Section II. Ms. Gales' presence was not required for her attorney to raise preclusion defenses based on the Small Claims award, and there is no reason why counsel could not have presented these arguments for her at OAH.

ARGUMENT

I. Neither *Res Judicata* Nor Double Recovery Bars Enforcement Of The Entire OAH Award.

A. Because the housing code violations were a partial breach of the rental agreement and only the OAH award covered August, September and October 2010, neither *res judicata* nor double recovery bars enforcement of this portion of the OAH award.

As explained in Mr. Mitchell's opening brief, in an action to reduce an administrative award to judgment, "'the original cause of action cannot be examined on the merits;'" the only available areas of attack are jurisdiction and fraud in procurement. Mitchell Br. 8 (quoting *Indemnity Ins. Co. v. Smoot*, 80 U.S. App. D.C. 287, 289, 152 F.2d 667, 669 (1945)). But even assuming that Ms. Gales could raise her *res judicata* and double recovery defenses in the enforcement proceedings, the Superior Court clearly erred by dismissing Mr. Mitchell's application to enforce the Final Order *in its entirety*. Neither *res judicata* nor double recovery even arguably applies to the portion of the OAH award covering August, September, and October 2010.

Ms. Gales does not dispute that the July 15, 2010 Small Claims judgment did not include damages for August, September, or October 2010, *compare* Mitchell Br. 20-21, *with* Gales Br. 12-14, so there is no possibility of double recovery in this portion of the OAH award. Nor does Ms. Gales dispute the controlling law that, where there is a *partial* breach of contract, *res judicata* does not prevent the non-breaching party from receiving separate judgments covering different time periods.[3] *Compare* Mitchell Br. 19 (citing, *e.g.*, *Boston Edison Co. v. United States*, 658 F.3d 1361, 1366 (Fed. Cir. 2011)), *with* Gales Br. 12-14. Moreover, Ms. Gales never disputes that her housing code violations were a partial breach of the rental agreement for every month that the violations continued. *See* Gales Br. 12-14. Because neither *res judicata* nor double recovery apply to the portion of the Final Order covering August, September, and October of 2010, at a minimum, enforcement of this portion of the award is required.

Ms. Gales never seriously argues otherwise.[4] *See id.* Instead, she claims that the portion of the award covering August, September, and October 2010 should not be enforced because the Findings of Fact do not "*specifically*" state that there were housing code violations during these months or that Mr. Mitchell was living in the apartment at the time. *Id.* at 13 (emphasis added).

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[3] Partial breach of contract—as opposed to total breach—occurs when the elected party elects to or is required to await the balance of the other party's performance under the contract. *See* Mitchell Br. 19 (quoting Restatement (Second) of Contracts § 236, cmt. b (1981)). In this case, the housing code violations were a partial breach of the lease agreement because the landlord-tenant relationship was ongoing when Mr. Mitchell brought his claims against Ms. Gales.

[4] Ms. Gales does contend the claims in the Small Claims case and the Tenant Petition are "identical" for purposes of *res judicata.* Gales Br. 13. But in doing so, she simply ignores the fact that the Small Claims judgment and the OAH award cover different time periods. Because only the OAH award included damages for August, September and October of 2010, the two are not "identical." *See* Mitchell Br. 20. *See also Popp Telcom v. Am. Sharecom, Inc.*, 210 F.3d 928, 940 (8th Cir. 2000) (holding that claims "encompass[ed] different time periods and [we]re, thus, not identical" for preclusive purposes); *accord Williams v. Astrue*, No. ED CV 10-871-E, 2011 U.S. Dist. LEXIS 22427, *3 n.1 (C.D. Cal. Mar. 7, 2011); *Teachout v. N.Y. City Dep't of Educ.*, No. 04 Civ. 945, 2006 U.S. Dist. LEXIS 7405, *55-56 (S.D.N.Y. Feb. 27, 2006).

She also asserts that the tenancy did not begin until September 2007, so the ALJ erred in awarding a rent reduction covering June, July, and August of that year. *Id.* at 14.

Ms. Gales never raised either of these arguments in the Superior Court and they cannot be raised for the first time on appeal. *Lasche v. Levin*, 977 A.2d 361, 366 & n.4 (D.C. 2009); *Thornton v. Nw. Bank of Minn.*, 860 A.2d 838, 842 (D.C. 2004). But even if these arguments were not waived, they are just more prohibited collateral attacks on the merits of the OAH award. The law is clear that, "[b]ecause of . . . merger, the underlying merits of the judgment are immune from collateral attack in an enforcement action." *Strand v. Frenkel*, 500 A.2d 1368, 1373 (D.C. 1985). If Ms. Gales believed that the Findings of Fact were defective or that the amount of the award was in error, the proper course under both the DCAPA and the Rental Housing Act was to file a motion for reconsideration or relief with OAH, 1 DCMR §§ 2828.3, 2828.9 (2012), appeal to RHC, D.C. Code § 2-1831.16 (b) (2012), or appeal to this Court from the administrative proceedings, *id.* § 42-3502.19, rather than challenge the merits of the award at the enforcement stage.[5]

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[5] Even if Ms. Gales could attack the merits of the Final Order at the enforcement phase, her arguments on the merits are groundless. Ms. Gales cannot dispute that Mr. Mitchell was still renting the apartment in August, September, and October 2010. *See* Gales Br. 13. The docket from her own subsequent eviction action against Mr. Mitchell confirms that he was still her tenant at that time. *See* Docket, *Gales-Bell v. Mitchell*, 2011 LTB 009858 (Supp. A2) (showing judgment for possession issued on 2/14/2012 and writ of restitution executed on 3/20/2012). Ms. Gales also argues that the ALJ never found that there were housing code violations during these months. *See* Gales Br. 13. But the ALJ clearly awarded a rent reduction covering this period, and so it is disingenuous to suggest that the ALJ found otherwise. *See* Final Order 9 (A27). Indeed, the ALJ specifically found that the housing code violations existed "[f]rom the time Tenant moved to the Property" and that Ms. Gales ignored Mr. Mitchell's pleas for repairs. *Id.* at 3 (A21). Ms. Gales has identified no record evidence to suggest, nor did the ALJ find, that Ms. Gales ever made any repairs to the apartment. *See id.* Finally, while Ms. Gales asserts that there is an inconsistency in the Final Order regarding whether the tenancy began in June or September of 2007, she points to no record evidence to show that the earlier date, which was used to calculate the award, was incorrect. *See* Gales Br. 14.

B. Double recovery does not preclude enforcement of the balance of the OAH award in its entirety because the traditional remedy would be to offset the amount of the OAH award by the amount of the Small Claims judgment.

There is no merit to Ms. Gales' argument that the mere possibility of double recovery precludes entry of judgment on the balance of the OAH's award in its entirety. Gales Br. 11-12. Ms. Gales does not deny that double recovery is an affirmative defense, *see id.*, and as such, it cannot be raised during the enforcement proceedings. *See Strand*, *supra*, 500 A.2d at 1373; Restatement (Second) of Judgments § 18(2) (1982).

Ms. Gales argues that because the OAH's award was "solely based on the unchallenged evidence presented by [Mr. Mitchell,]" the traditional rule of merger does not preclude her from asserting double recovery now. Gales Br. 11. But Ms. Gales cites absolutely no legal authority for this argument and there is none. Indeed, under District of Columbia law even *default judgments*—much less judgments based on uncontested evidence—are entitled to preclusive effect. *See Threatt v. Winston*, 907 A.2d 780, 782 n.3 (D.C. 2006); *Firemen's Ins. Co. v. L. P. Steuart & Bro., Inc.*, 158 A.2d 675, 677 (D.C. 1960). And although Ms. Gales complains that Mr. Mitchell's evidence was uncontested, she never identifies even one of the ALJ's factual findings regarding the condition of the apartment that she believes was not supported by substantial evidence.[6] *See* Gales Br. 11-12. This is hardly surprising given that each of these factual findings was consistent with the housing inspection report.

[6] Even though Ms. Gales did not attend either of the OAH hearings, the ALJ found in her favor on an important violation, showing that the ALJ critically evaluated all of the evidence that was presented. The ALJ declined to impose a civil fine on Ms. Gales under D.C. Code § 42-3509.01 for serving an unlawful notice to vacate just days after the housing inspection. Final Order 6-7 (A24-25). The ALJ held that no fine was warranted because, although the notice to vacate was in fact illegal, it was likely nothing "worse than bad judgment" on her part. *Id.* at 7 (A25).

But even assuming that Ms. Gales could raise the double recovery defense in the Superior Court enforcement proceedings, the Superior Court still erred by refusing to enforce the OAH award in its entirety, rather simply offsetting it by the amount of the Small Claims judgment (*i.e.*, $900). Ms. Gales argues that the doctrine of offset does not apply here because the OAH proceeding "should not be construed as a proceeding on the merits," Gales Br. 12, but she cites absolutely no legal authority for this assertion. As explained in Mr. Mitchell's opening brief, the well-established remedy where the enforcement of two judgments would result in a double recovery is to offset the larger award by the amount of the smaller award. *See* Mitchell Br. 17 (citing, *e.g.*, *Giordana v. Interdonato*, 586 A.2d 714, 717 (D.C. 1991)). Even assuming the argument could be raised in the enforcement proceedings, the possibility of double recovery did not justify refusal to enforce the Final Order in its entirety; the Final Order should have been enforced but with a credit for the Small Claims judgment of $900.[7]

Ms. Gales' lead case on this issue, *Medina v. District of Columbia*, 395 U.S. App. D.C. 409, 643 F.3d 323 (2011), does not help her. In *Medina*, a police officer received a jury verdict for $90,000 under the D.C. Human Rights Act and a $90,000 under federal law based on the same incident of racial discrimination. *Id* at 411, 325. Following a post-verdict motion for judgment as a matter of law, the D.C. Circuit held that the total amount of the judgment must be reduced by $90,000 to prevent double recovery. *See id.* *Medina* does not hold that double recovery can be used to collaterally attack the merits of a final administrative award or that offset is not the appropriate remedy.

[7] To the extent that Ms. Gales argues that the Final Order is "problematic" because the OAH was apparently unaware of the Small Claims judgment, *see* Gales Br. 11, she omits that, as the party asserting *res judicata* and double recovery, she had the burden of proving all elements of these affirmative defenses to the ALJ. *See, e.g., Oparaugo v. Watts*, 884 A.2d 63, 75 (D.C. 2005) ("A party asserting an affirmative defense has the burden of proving it.").

II. The Superior Court Erred By Allowing A Collateral Attack To Bar Judicial Enforcement Of The Final Order.

The law in the District of Columbia is clear that, in an action to enforce a judgment, "the original cause of action cannot be examined on the merits." *Indemnity Ins.*, *supra*, 80 U.S. App. D.C. at 289, 152 F.2d at 669; *accord Strand*, *supra*, 500 A.2d at 1373. Considerations of judicial and administrative efficiency, the DCAPA, and the Rental Housing Act all require that Ms. Gales present her arguments about the merits of the Final Order to OAH or RHC for administrative resolution, rather than relitigating the merits of the Final Order in Superior Court. D.C. Code § 2-1831.03 (b-1)(1), 2-1831.16 (b), 42-3502.04 (c) (2012). *See also Threatt*, *supra*, 907 A.2d at 784 (noting that collateral attacks "undermine the finality of judgments, create confusion, and needlessly increase the amount of litigation in our busy trial court").

Because Ms. Gales has not achieved success by following the established legal procedures for seeking review of the OAH proceedings, she has attempted to convert the Superior Court enforcement proceedings into a second merits review.[8] But this is clearly contrary to law, and for good reason. Were it not so, almost every action to enforce an administrative award would turn into an *ad hoc* merits review, adding to the workload of the courts and contravening both the rule against collateral attack and the orderly procedures for seeking judicial review of administrative decisions in the DCAPA and the Rental Housing Act.

Ms. Gales does not dispute that this is the law, but she argues that her case is distinguishable because she was "prevented from participating in the action before the [OAH]" because of her "likely" incapacity in the summer of 2010. *See* Gales Br. 5, 9. But Ms. Gales

[8] In accordance with this procedures established in the DCAPA and the Rental Housing Act, Ms. Gales previously sought relief from the Final Order at OAH (A30), but that motion was denied (A31), and she has appealed the denial of that motion to RHC (A33).

cites absolutely no authority for her assertion that there is an "inability to participate" exception to the rule against collateral attack or, for that matter, the procedures for challenging administrative awards established in the DCAPA and the Rental Housing Act. *See id.* at 9-10. Nor does she attempt to explain why such an exception should be created in this case or how it would be limited. *See id.*

This Court's decision in *Threatt v. Winston*, *supra*, 907 A.2d at 784, makes clear that there is no such exception. In *Threatt*, a landlord never served his tenant with a copy of the complaint, and so tenant had no opportunity to contest suit. *See id.* But even this did not create an exception to the rule against collateral attack. *See id.* at 783 (holding that the tenant's "only" option was to file a Rule 60(b) motion; collateral attack was prohibited). If a party who was without notice of the litigation cannot collaterally attack a judgment, certainly a party that had notice and counsel cannot mount a collateral attack on the basis of an asserted lack of capacity. *Cf. In re Reed*, 861 F.2d 1381, 1383 (5th Cir. 1988) (rejecting argument that there should be "an equitable exception to the doctrine of res judicata" where default was due to the incapacitation of counsel; appeal from the judgment or a Rule 60(b) motion must be pursued instead).[9]

But even assuming there were an "inability to participate" exception, it would not apply here. There is no dispute that Ms. Gales was served with the Tenant Petition and that she was aware of the OAH proceedings. *See* Final Order 2 (A20). Thereafter, Ms. Gales retained counsel. *See* Small Claims Docket (A5). And it is undisputed that Ms. Gales and her counsel appeared at the July 15, 2010 Small Claims trial and obtained favorable results. Gales Br. 5.

[9] Ms. Gales' claim that, under *Osei-Kuffnor v. Argana*, 618 A.2d 712 (D.C. 1993), *res judicata* is not defeated simply because a later judgment provides a "substantially greater" award is a red herring. *See* Gales Br. 8. That has never been Mr. Mitchell's position. The Superior Court should be reversed because, as has been discussed, it allowed a collateral attack on the Final Order that is not allowed under the law.

On August 30, 2010, OAH sent Ms. Gales a scheduling order, *see* Order 2 (Supp. A10), and Ms. Gales consulted with counsel about it. *See* Final Order 2 (A20). Although neither Ms. Gales or her counsel attended the October 4, 2010 hearing, Ms. Gales was clearly aware of the proceedings as she promptly requested that a new hearing date be scheduled. *See id.* (requesting new hearing because her attorney incorrectly informed her that the original hearing had been scheduled for October 5, 2010).

The record does not explain why counsel—with whom Ms. Gales had been consulting regarding the Tenant Petition—did not appear on her behalf at OAH just as he did in Small Claims Court.[10] Indeed, counsel could have contested the Tenant Petition on *res judicata* or double recovery grounds at any point after the Small Claims judgment was entered on July 15, 2010. *See* 1 DCMR § 2819.1 (2012) (authorizing motions for summary adjudication at OAH); *id.* § 2930.2 (authorizing summary dismissal of tenant petitions by OAH). Ms. Gales' assertion that she never had any opportunity to participate in the OAH proceedings is simply not supported by the record.[11]

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[10] Both the *res judicata* and double recovery defenses could have been raised by counsel—with the OAH taking judicial notice of the Small Claims Court proceedings, *see, e.g., Covad Commc'ns. Co. v. Bell Atlantic Corp.*, 366 U.S. App. D.C. 24, 26, 407 F.3d 1220, 1222 (2005) (holding that courts may take judicial notice of the record of another judicial proceeding)—without Ms. Gales ever having to testify or otherwise appear personally before OAH.

[11] Ms. Gales cites a letter from Dr. George Taler, which states that her "incapacity *likely* became evident in the summer of 2010." Taler Ltr. (Appellee's A1) (emphasis added). However, Dr. Taler's diagnosis was not based on an actual examination of Ms. Gales or her medical records. It was based on statements made by family members in April 2011—almost two years after her incapacity "likely" began. *See id.* Nor does Ms. Gales' hospitalization on December 19, 2010 prove that she had no opportunity to participate in the OAH proceedings. *See* Gales Br. 5-6. This hospitalization did not take place until over two months after the initial OAH hearing date (*i.e.*, October 4, 2010) and two weeks after the rescheduled hearing date (*i.e.*, December 1, 2010) and, therefore, it says nothing about whether Ms. Gales could have raised her *res judicata* and double recovery defenses during the administrative proceedings.

Ms. Gales' current health difficulties merit sympathy, but this is not a reason to deny enforcement of the OAH award. Nothing in Ms. Gales' brief suggests that the amount of the OAH award was in any way inequitable or disproportionate to the extreme and unremedied housing code violations that Mr. Mitchell endured while he was her tenant. *See* Final Order 2-3 (A20-21). Ms. Gales' current illness does not undo the unsafe and unsanitary housing conditions that existed. Nor does it justify allowing a collateral attack on the merits of the Final Order or a circumvention of the established procedures for contesting an agency award, neither of which is allowed under the law.

III. There Was No Manifest Error In The OAH Proceedings.

The "manifest error" exception for worker's compensation cases in *Oubre v. District of Columbia Department of Employment Services*, 630 A.2d 699 (D.C. 1993), does not help Ms. Gales either. As an initial matter, Ms. Gales never raised this "manifest error" argument below and she cannot raise it for the first time on appeal. *See Lasche*, *supra*, 977 A.2d at 366 & n.4; *Thornton*, *supra*, 860 A.2d at 842. Indeed, Ms. Gales makes absolutely no attempt to refute Mr. Mitchell's assertion in his opening brief that this argument had been waived. *Compare* Mitchell Br. 13 n.8, *with* Gales Br. 10-11.

But in any event, the argument is without merit. In *Oubre*, the petitioner filed a workers' compensation claim after he was disabled by a workplace injury. 630 A.2d at 700. The parties stipulated that Mr. Oubre received an average weekly wage of $507.28 based on records that his employer provided, and the hearing examiner awarded benefits based on this amount. *Id.* at 701. Neither party sought review or reconsideration. *Id.* Sometime later, Mr. Oubre aggravated his original injury and filed a claim for additional benefits. *Id.* During these proceedings, Mr. Oubre discovered that his employer had provided him with erroneous wage data during his first claim. *See id.* The employer fully acknowledged this fact and agreed that his average weekly

wages were actually $602.24. *Id.* Nonetheless, the employer argued that *res judicata* precluded any judicial reexamination of the previous mistaken finding. *Id.*

This Court rejected the employer's argument. It explained that the preclusive effect of an administrative order can be overcome where there is "manifest error in the record of the prior proceeding" and "manifest injustice" would otherwise result. *Id.* at 703-04. In reaching this conclusion, the Court was heavily influenced by the fact that the Workers' Compensation Act "is to be liberally construed to effectuate its purpose" and that "[i]t would be inconsistent with the statutory mandate . . . to sanction the type of rigidity in the application of collateral estoppel which would preclude the correction of a mutual mistake of fact." *Id.* at 704-05. *See also Walden v. District of Columbia Dep't of Employment Servs.*, 759 A.2d 186, 190 n.4 (D.C. 2000) (explaining that "*Oubre* was based to a considerable extent on the principle . . . that the Worker's Compensation Act 'is to be liberally construed to effectuate its purpose'"); *Kovach v. District of Columbia*, 805 A.2d 957, 963 n.8 (D.C. 2002) (same).

Oubre would not preclude entry of the Final Order as a judgment in this case. As an initial matter, the Superior Court did not find that there was "manifest error" in the record of the OAH proceeding and there was none shown. There is no dispute that every one of the factual findings in the Final Order regarding the condition of the apartment was consistent with the housing inspection report. *Compare* Final Order 3 (A21) *with* Inspection Report (A7-12). Ms. Gales never denies that the apartment was unsafe and unsanitary or that she refused to make repairs. *See* Gales Br. 5-6. This case is, therefore, distinguishable from *Oubre* where *all of the parties* acknowledged that the agency's previous findings of fact were manifestly wrong.

Nor would enforcement of the Final Order be a "manifest injustice." In *Oubre*, the Court found that it would be a manifest injustice to allow the employer to benefit from its own

misfeasance (*i.e.*, providing inaccurate wage data) to the detriment of a disabled worker. 630 A.2d at 704. Here, however, enforcement of the Final Order would work no such injustice. Indeed, there is no dispute that the condition of the apartment was so poor that the District of Columbia's housing inspectors declared it "not habitable," and the ALJ found that Mr. Mitchell had been left with "little more than a roof over his head." Final Order 3, 5 (A21, 23). The apartment was infested with rats and bedbugs, and when Mr. Mitchell requested that Ms. Gales repair a broken pipe that allowed urine and feces to flow from an upstairs bathroom into his apartment, Ms. Gales responded that he would simply have to "live with it." *Id.* at 3 (A21). When Mr. Mitchell arranged for a housing inspection, Ms. Gales served him with an illegal eviction notice the following week. *See id.* Ms. Gales never disputes any of this. *See* Gales Br. 5-6. Moreover, there is no suggestion that Mr. Mitchell acted improperly in the underlying administrative proceedings.[12] And, as discussed above, Ms. Gales' allegations that she never had any opportunity to challenge the merits of the Tenant Petition prior to the enforcement action are not supported by the contemporaneous record. See *supra* Section II.

Furthermore, the statutory basis for the result in *Oubre* is not present here. In *Oubre*, the Court explained that because the Workers' Compensation Act must be "liberally construed" to protect the rights of injured workers, there was statutory authority for *res judicata* to be relaxed in favor of the claimant in that case. 630 A.2d at 704-05. Likewise, the Rental Housing Act is construed liberally when necessary to protect the rights of tenants to safe and affordable rental

[12] To the extent that Ms. Gales believes that it was improper for Mr. Mitchell not to raise the *res judicata* issue for her in her absence, she is mistaken. *Res judicata* is an affirmative defense, which parties are free to waive. *See USPS v. NLRB*, 297 U.S. App. D.C. 64, 69, 969 F.2d 1064, 1069 (1992) ("[C]ourts do not force preclusion pleas on parties who choose not to make them[.]"). After Ms. Gales did not attend the OAH hearings, or retain counsel to represent her (as she did in the Small Claims case), Mr. Mitchell, a *pro se* litigant, was under no obligation to argue Ms. Gales' case for her.

housing. *Allman v. Snyder*, 888 A.2d 1161, 1166 (D.C. 2005) ("The overarching purpose [of the Rental Housing Act] is to protect tenant rights." (quotations omitted)); *Goodman v. District of Columbia Rental Hous. Comm'n*, 573 A.2d 1293, 1299 (D.C. 1990) ("[The Rental Housing Act] should be liberally construed to achieve its purposes."). The facts of this case, however, do not require the Court to relax its well-established rule against collateral attack in order to protect workers' rights or tenants' rights.[13]

CONCLUSION

For the reasons set forth above, the final order of the Superior Court should be reversed and this matter remanded with instructions to grant Appellant's Application for Entry of Administrative Agency's Final Order as Judgment.

Respectfully submitted,

Kyle Fiet

John C. Keeney, Jr. (No. 934307)
Kyle J. Fiet (No. 988894)
Legal Aid Society of the District of Columbia
1331 H Street, N.W., Suite 350
Washington, D.C. 20005
Telephone: (202) 661-5966
Fax: (202) 727-2132

Counsel for Appellant

[13] This Court has twice questioned whether the holding in *Oubre* should be applied outside of the workers' compensation context. *See Kovach*, *supra*, 805 A.2d at 963 n.8; *Walden*, *supra*, 759 A.2d at 190 n.4. However, since the argument has been waived and, moreover, is without merit, the question of whether *Oubre* should be extended to cover administrative proceedings under the Rental Housing Act does not need to be resolved in this case.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Reply Brief of Appellant** to be delivered by first-class mail, postage prepaid, the 27th day of July, 2012, to

Craig A. Butler
The Butler Law Group
1425 K Street, NW
Washington, D.C. 20005

Counsel for Appellee

Kyle Fiet

Kyle Fiet