

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CI 20,758

In re: 2480 16th Street, N.W.

Ward One (1)

DORCHESTER HOUSE TENANTS ASSOCIATION
Tenants/Appellants

v.

DORCHESTER HOUSE ASSOCIATES, LLP.
MODERN PROPERTY MANAGEMENT, INC.¹
Housing Providers/Appellees

DECISION AND ORDER

October 19, 2004

YOUNG, COMMISSIONER. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991) govern these proceedings.

I. PROCEDURAL HISTORY

On February 8, 2001, Dorchester House Associates, LLP, the housing provider of the housing accommodation located at 2480 16th Street, N.W., filed with the Rental Accommodations and Conversion Division (RACD), Capital Improvement (CI) Petition 20,758. The petition sought approval from the Rent Administrator for the replacement of

¹ See Discussion, *supra*, Part III, A.

all plumbing fixtures located in the bathroom of each rental unit, and the modernization of the elevators at the housing accommodation. An OAD hearing was held on the petition on March 29, 2002, with Administrative Law Judge (ALJ), Lennox Simon, presiding.

On August 22, 2002, ALJ Simon issued the Decision and Order in CI 20,758. In his decision the ALJ stated that notice of the time, date and place of the hearing was furnished, in accordance with the provisions of the Act to all 394 units in the housing accommodation, the address of record for the Dorchester Tenants Association at the housing accommodation, as well as to the Association's counsel, Bernard Gray, Sr., Esquire. The decision further stated that present at the March 29, 2002 hearing were: John Hoskinson, agent for the housing provider; Stephen A. Abraham, Esquire, counsel for the housing provider; Anne E. Cooke, the tenant of unit 442; Gamal Ibrahim, the tenant of unit 226; and Mervyn L. Washington, Jr., the tenant of unit 312 at the housing accommodation. The decision stated that neither a representative from the Dorchester House Tenants Association, nor the counsel for the tenant association, Attorney Gray were present at the hearing.² Dorchester House Assocs., LLP v. Dorchester House Tenants Ass'n, CI 20,758 (OAD Aug. 22, 2002) at 2.

The decision and order contained the following findings of fact:

1. The subject housing accommodation, the Dorchester House, located at 2480 16th Street, N.W.; is registered with the District of Columbia Department of Consumer and Regulatory Affairs, Rental Accommodations and Conversion Division; the registration number is #95921.

² At the OAD hearing, Anne E. Cooke, the tenant of unit 442 at the housing accommodation testified that she was an officer in the Dorchester House Tenants Association. Pursuant to 14 DCMR §§ 3812 & 4004 (1991), an association may be represented by a member of the association. See Dorchester House Tenants Ass'n. v. Dorchester House Assocs., Ltd. P'ship., CI 20,758 (RHC May 30, 2003).

2. The subject housing accommodation contains three hundred and ninety-four (394) rental units, all of which will be affected by the proposed improvement.
3. The proposed improvement will not result in an energy savings for the housing accommodation.
4. The principal cost of the improvement, exclusive of interest and service charges, is \$353,638.38.
5. All permits necessary to proceed with the capital improvement have been secured.
6. The cost of the interest and service charges to be included in the surcharge is \$159,181.00.
7. The total cost of the capital improvement \$512,819.00.
8. The rent-ceiling surcharge for the proposed capital improvement #CI-20,758 will be \$14.00 per rental unit per month. The surcharge does not exceed 20% of the rent ceiling for each unit prior to the surcharge.
9. The Petitioner's contract with Water Management, Inc., for replacement of plumbing fixtures does not include replacement of any plumbing fixtures related to, or within the 23,400 square feet [sic] area of the commercial spaces of the building.
10. A housing inspection was conducted within the thirty (30) days immediately preceding the filing of this petition.

Id. at 5-6. The ALJ concluded as a matter of law:

1. Petitioner is entitled to a rent-ceiling surcharge of \$14.00 per rental unit per month for the subject rental units to reimburse Petitioner for the cost of performing capital improvements pursuant to the Act and the regulations.
2. The capital improvement (replacement of all bathroom plumbing fixtures, and modernizing the elevator) will protect or enhance the health and safety of the tenants and the habitability of the housing accommodation for the reasons discussed at great length above in the 'Evaluation of the Evidence and Legal Analysis;' that discussion is hereby incorporated in these findings by reference.

3. The improvements to the housing accommodation are depreciable under the Internal Revenue Code.
4. This case has not involved any issue or determination with regard to the proper rent ceilings. The rent charged prior to the date of this decision. Accordingly, this decision shall not constitute a bar to a subsequent action by a tenant, the landlord or the Rent Administrator, with regard to the proper rent ceilings, or the lawfulness of any rent charged, prior to the date of this decision.
5. The proposed surcharge does not exceed twenty percent (20%) above the current rent.

Id. at 15-16.

II. ISSUES ON APPEAL

On September 11, 2002, the tenants, through their counsel filed a notice of appeal in the Commission of the August 22, 2002, final Decision and Order. The notice of appeal raised the following issues:

- A. Whether the ALJ erred when he failed to list the housing provider's management as required by 14 DCMR § 3905 (1991).
- B. Whether the ALJ erred when he determined that the housing provider had obtained all permits necessary to perform the proposed capital improvement.
- C. Whether the ALJ erred when he found that the housing provider complied with the Act, D.C. OFFICIAL CODE § 42-3502.08(b)(2) (2001), requiring that the housing accommodation and each of the rental units in the housing accommodation be inspected within the thirty (30) days immediately preceding the filing of a petition for adjustment.
- D. Whether the ALJ erred when he failed to make findings of fact on the issue of notice provided to elderly and disabled tenants at the housing accommodation.
- E. Whether the ALJ erred when he failed to dismiss the petition when the evidence showed that the Notice required by 14 DCMR § 4210.2 (1991) was not provided to the tenants until January and March, 2002 when the petition was filed on February 8, 2001.

III. DISCUSSION OF THE ISSUES

A. Whether the ALJ erred when he failed to list the housing provider's management as required by 14 DCMR § 3905 (1991).

The tenants argue that the ALJ erred when he failed to include Modern Property Management, Inc., in the caption of the case after determining that John Hoskinson of Modern Property Management, Inc., testified at the OAD hearing as the representative of the housing provider, Dorchester House Associates, LLP.

The applicable regulation, 14 DCMR § 3905.2 (1991), provides:

Captions shall contain the name of the housing provider as listed on the registration statement; Provided, however, that if the management agent represents the housing provider in any proceeding, the management agent shall also be listed in the caption and identified as the agent.

In the instant case, John Hoskinson of Modern Property Management, Inc., testified on behalf of the housing provider in support of the capital improvement petition. The capital improvement petition reflects that John Hoskinson of Modern Property Management, Inc., is the authorized representative of Dorchester House Associates. See Record at 31. The regulations also provide, “[i]f it appears to the Commission that the identity of the parties has been incorrectly determined by the Rent Administrator, the Commission may substitute or add the correct parties on its own motion.” 14 DCMR § 3809.3 (1991). Because the management agent, Modern Property Management, Inc., participated in the OAD hearing as representative of the owner of the housing accommodation the ALJ was required by the regulations to include the name of Modern Property Management, Inc., in the caption of the case. Accordingly, this appeal issue is granted and the Commission corrects the caption of the appeal to include Modern Property Management, Inc., as the management agent.

B. Whether the ALJ erred when he determined that the housing provider had obtained all permits necessary to perform the proposed capital improvement.

- C. Whether the ALJ erred when he found that the housing provider complied with the Act, D.C. OFFICIAL CODE § 42-3502.08(b)(2) (2001), requiring that the housing accommodation and each of the rental units in the housing accommodation be inspected within the thirty (30) days immediately preceding the filing of a petition for adjustment.
- D. Whether the ALJ erred when he failed to make findings of fact on the issue of notice provided to elderly and disabled tenants at the housing accommodation.
- E. Whether the ALJ erred when he failed to dismiss the petition when the evidence showed that the Notice required by 14 DCMR § 4210.2 (1991) was not provided to the tenants until January and March, 2002 when the petition was filed on February 8, 2001.

In the instant case, the tenants' association, through its representative, Anne E. Cooke raised two (2) issues regarding CI 20,758 at the OAD hearing. Ms. Cooke testified at the OAD hearing and questioned why the bathroom fixture portion of the capital improvement, which was not an "emergency" capital improvement,³ was started before the OAD hearing. She also questioned why the tenants were not able to have hearings on outstanding tenant petitions, while the housing provider continued to file and have approved capital improvement petitions. See Dorchester House Tenants Ass'n. v. Dorchester House Assocs., Ltd. P'ship., CI 20,758 (RHC May 30, 2003) at 2.

In Tenants of 2480 16th St., N.W. v. Dorchester House Assocs., Ltd. P'ship., CI 20,768 (RHC Aug. 31, 2004) at 9, the Commission, citing Stone v. Keller, TP 27,033 (RHC May 19, 2004), stated:

[T]his issue was not raised below at the hearing and cannot be raised on appeal to the Commission. See 1880 Columbia Rd. N.W. Tenants' Assoc. v. District of Columbia Rental [Accommodations] Comm'n, 400 A.2d [333], 339 (D.C. 1979); Lenkin Co. Mgmt., Inc. v. District of

³ The Act, D.C. OFFICIAL CODE § 42-3502.10(g) (2001), provides: "The housing provider may make capital improvements to the property before the approval of the rent adjustment by the Rent Administrator for the capital improvements where the capital improvements are immediately necessary to maintain the health or safety of the tenants."

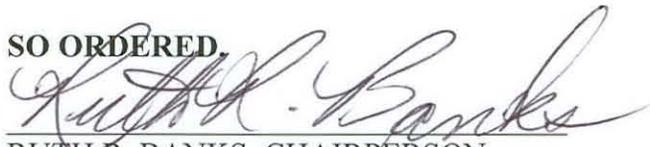
Columbia Rental Hous. Comm'n, 642 A.2d 1282 (D.C. 1994)
(where the court stated failure to raise a claim at the agency
level precludes raising it on appeal).
The hearing examiner is affirmed on this issue.

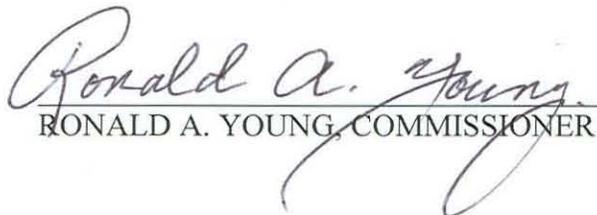
Issues B through E were not raised as issues before the ALJ at the OAD hearing on the
petition. Therefore, these issues cannot now be raised on appeal before the Commission.
Accordingly, these appeal issues are dismissed.

IV. CONCLUSION

The tenants' appeal issue A, seeking the listing of the management agent in the
caption of the case is granted. The remaining issues raised by the tenants, B through E
are dismissed, because the tenants failed to raise these issues at the OAD hearing.
Accordingly, the decision and order granting the capital improvement is affirmed.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Decision and Order** in CI 20,758 was mailed postage prepaid by priority mail, with delivery confirmation on this **19th day of October, 2004** to:

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