

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

HP 20,781

In re: 2724 Woodley Place, N.W.

Ward One (1)

TENANTS OF 2724 WOODLEY PLACE, N.W.

Tenants/Appellants

v.

LUSTINE REALTY COMPANY, INC.

Housing Provider/Appellee

**DECISION AND ORDER**

**JUNE 25, 2004**

**PER CURIAM.** This case is on appeal from the 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. Law 6-10, 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 (DCMR), 14 DCMR §§ 3800-4399 (1991), govern the proceedings.

**I. PROCEDURAL HISTORY**

Lustine Realty Company, Inc. (Lustine), filed Hardship Petition (HP) 20,781 with the Housing Regulation Administration (HRA) on May 22, 2000 concerning a single family dwelling located at 2724 Woodley Pl., N.W. On August 7, 2000, Monika Thiele, a tenant, filed exceptions and objections to the auditor's report. At the time the hardship petition was filed, there was record evidence that the tenants were Ms. Thiele, Paul

DeMorgan, and Vanessa Grawjer. Record (R.) at 22-24. On August 7, 2000, the Rent Administrator sent the case to the Office of Adjudication (OAD) for a hearing.<sup>1</sup>

On August 10, 2000, Hearing Examiner Gerald Roper conducted a hearing. The tenant, Monika Thiele, counsel for the housing provider, Richard W. Luchs, Esquire, housing provider, Gerald Lustine, and housing provider, Gary Lustine were present at the hearing. Both parties indicated that they were conducting settlement negotiations. The hearing examiner then instructed the parties to continue negotiations and apprise the OAD upon completion. A settlement agreement, which Monika Thiele signed “For Tenants,” and a lease, dated September 1, 2000 which contained signatures from Ms. Thiele, Kristen McDonald, and Denise Key, were filed with the OAD on April 6, 2001. R. at 26-32. Hearing Examiner Roper issued the decision and order dated April 11, 2002 and dismissed the hardship petition with prejudice. Lustine Realty Co., Inc. v. Tenants of 2724 Woodley Pl., N.W., HP 20,781 (OAD Apr. 11, 2002).

On April 22, 2002, the housing provider filed a motion for reconsideration of the decision and order. The motion stated that the hearing examiner erred when he dismissed the hardship petition with prejudice rather than granting the hardship petition according to the terms of the settlement agreement. R. at 44. On May 7, 2002, the housing provider filed a “Protective Notice of Appeal” with the Commission. The notice of appeal sought the reversal of the hardship petition dismissal. On August 16, 2002, the Commission reviewed the record and remanded the case to the Rent Administrator for a hearing de novo, because the hearing tape of the OAD proceeding was not part of the

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<sup>1</sup> See 14 DCMR § 4209.19(f)(3) (1991). “If exceptions or objections are filed, a hearing limited to the exceptions or objections shall be held within forty-five (45) days after issuance of the audit report.” There is a typographical error in the regulation, 14 DCMR § 4209.19(f) (1991). (The regulation contains subsections one (1), two (2) and three (3), however the number three (3) is mistakenly represented by the letter (c)).

record. Lustine Realty Co., Inc. v. Tenants of 2724 Woodley Pl., N.W., HP 20,781 (RHC Aug. 16, 2003).

The Rent Administrator scheduled a hearing for January 9, 2003. Hearing Examiner Keith Anderson convened the hearing. Neither the tenants nor a representative for the tenants was present. Attorney Luchs appeared for the housing provider. The hearing examiner stated that notice of the hearing was sent to Monika Thiele as the representative for the tenants. At the hearing, counsel submitted a copy of the April 6, 2001 settlement agreement and stated that it was in effect. He also stated that the purpose for the hearing was to incorporate the settlement agreement into the evidentiary record and to request that the hardship petition be granted and not dismissed with prejudice. The hearing examiner granted the petition and entered the settlement agreement into the record. The hearing examiner issued the decision and order on April 24, 2003.

On May 13, 2003, Denise Key, Susan Barnidge, and Elizabeth Pika filed a motion for reconsideration. On May 21, 2003, the housing provider filed an opposition to the motion for reconsideration stating that the tenants were not residents of the property when the housing provider filed the original hardship petition.

On May 27, 2003, the hearing examiner issued a decision and order denying the tenants' motion for reconsideration and granting the housing provider's opposition to the motion. The hearing examiner determined that the tenants, Susan Barnidge and Elizabeth Pika, were not residents at the time the housing provider filed the hardship petition. It was determined that "Monika Thiele appeared in this matter on behalf of herself, Denise Key, Paul DeMorgan and Vanessa Grawjer as tenants of 2724 Woodley Place NW." R. at 69. On June 13, 2003, tenants Denise Key, Susan Barnidge, and Elizabeth Pika filed a

notice of appeal with the Commission, and on September 22, 2003 the Commission heard the appeal.

## II. ISSUES ON APPEAL

- A. [Whether] [n]o former or current tenants were notified of the de novo hearing.
- B. [Whether] the [d]ue [p]rocess rights of the Tenants of 2724 Woodley Place, NW [sic] were violated because they were not notified of the de novo hearing scheduled for January 9, 2003.
- C. [Whether] the Hearing Examiner's determinations recognize that Denise Key is an interested party in this matter.
- D. [Whether] the tenants of 2724 Woodley Place, NW [sic] have standing [to appeal] because current tenant Denise Key is an interested party on the lease submitted as part of the settlement agreement that was submitted to and accepted by the Hearing Examiner on or about August 10, 2000.

Notice of Appeal at 1.

## III. DISCUSSION

- A. **Whether no former or current tenants were notified of the de novo hearing.**
- B. **Whether the due process rights of the tenants were violated because they were not notified of the de novo hearing scheduled for January 9, 2003.**

The tenants assert that the hearing notice was not delivered to Monika Thiele or the current tenant and interested party Denise Key. The Commission is a reviewing body, and its review is limited to the evidence contained in the record. Meir v. District of Columbia Rental Accomodation Comm'n, 372 A.2d 566 (D.C. 1977). The agency has the responsibility of providing proper notice of the hearing, in accordance with the provisions of the Act. The Act provides:

If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing.

D.C. OFFICIAL CODE § 42-3502.16(c) (2001). Therefore, the hearing examiner must evaluate the evidence concerning delivery of notice. In the instant case, however, the hearing examiner did not make findings of fact and conclusions of law regarding the issue of notice.

Findings of fact and conclusions of law, which are mandated by statute, were not part of the May 27, 2003 decision and order. The DCAPA provides that:

Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable and probative, and substantial evidence.

D.C. OFFICIAL CODE § 2-509(e) (2001). The hearing examiner's decision must contain findings of fact and conclusions of law in order to conform with the DCAPA. Without the findings of fact and conclusions of law, the Commission cannot determine whether the decision was supported by substantial evidence. McNair v. Young HP 20,744 (RHC Nov. 25, 1998); see also George Washington Univ. Med. Ctr. v. District of Columbia Dep't of Employment Servs., 704 A.2d 1194, 1195 (D.C. 1997).

When the hearing examiner convened the hearing, the housing provider's attorney appeared. However, the tenant did not appear. Before the hearing examiner proceeded with the hearing, he had a responsibility to ensure that the non-appearing party, the tenant, received notice of the hearing.

The decision and order was devoid of findings of fact and conclusions of law concerning notice. The Commission has stated that:

Findings of fact are the bases of meaningful review, and serve to inform the parties of the facts relied upon by the hearing examiner. Consequently, “generalized, conclusory or incomplete findings” are unacceptable.

In the instant case, the hearing examiner... failed to issue findings of fact. The examiner’s failure to issue findings of fact violated the Act, DCAPA, and more than twenty years of case law.

Thorpe v. Independence Fed. Sav. Bank, TP 24,271 (RHC Aug. 19, 1999) at 8 (footnote omitted). See also Perkins v. District of Columbia Dep’t of Employment Servs., 512 A.2d 301, 302-303 (D.C. 1986); Newsweek Magazine v. District of Columbia Comm’n on Human Rights, 376 A.2d 777, 795 (D.C. 1977).

Since the appealing parties state that their due process rights were violated, and there are no findings of fact and conclusions of law, the hearing examiner must address the issue of notice in findings of fact and conclusions of law in the decision and order.

The record contains information concerning notice for the hearing de novo. There was an envelope addressed to Monika Thiele, at 2724 Woodley Pl., N.W., which was date stamped by the United States Postal Service (USPS) on December 12, 2002. The USPS also stamped it: “RETURNED TO SENDER.” R. at 51. It was unclear, because there are no findings of fact and conclusions of law, what the hearing examiner determined concerning the adequacy of service. This issue must be resolved before the Commission can conduct its review.

If the tenants were not given proper notice as provided for in the Act, then they were denied due process of law. Brown v. Samuels, TP 22,587 (RHC Sept. 17, 1997). If the hearing examiner finds adequate service, then an amended decision and order should

be issued. If the hearing examiner finds inadequate service, then service must be perfected and a hearing de novo ordered.

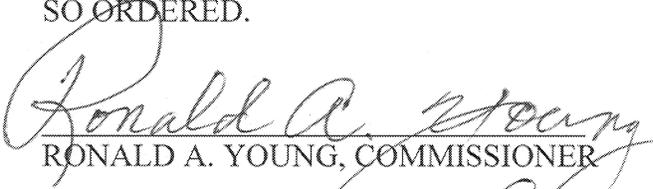
- C. Whether the hearing examiner's determinations recognize that Denise Key is an interested party in this matter.
- D. Whether the tenants have standing to appeal because a current tenant, Denise Key, is an interested party because she is listed on the lease submitted as part of the settlement agreement entered into the record on April 6, 2001.

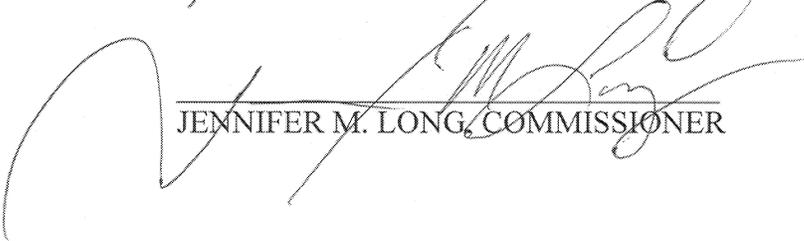
The remaining issues raised on appeal are dependant on the hearing examiner's decision regarding the issue of notice. The hearing examiner is directed to issue a new decision and order. Subsequently, this new decision and order will entitle the parties to new appeal rights.<sup>2</sup> The Commission will review any issues raised upon a new appeal.

#### IV. CONCLUSION

The record revealed that the Rent Administrator failed to address the statutory requirements for service of notice as mandated by the Act. The Commission, therefore, remands HP 20,781 to the Rent Administrator.

SO ORDERED.

  
RONALD A. YOUNG, COMMISSIONER

  
JENNIFER M. LONG, COMMISSIONER

<sup>2</sup> "Because this is a 'case' remand, review by [the Commission] of any future final decision by the [Rent Administrator] will require the filing of a new notice of appeal." Bell v. United States, 676 A.2d 37, 41 (D.C. 1996) cited in Majerle Mgmt., Inc. v. Dist. of Columbia Rental Hous. Comm'n, 777 A.2d 785 (D.C. 2001).

## 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 D.C. Court of Appeals. The Court's Rule, D.C. App. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk." The Court may be contacted at the following address and phone 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 HP 20,781 was mailed by priority mail with delivery confirmation, postage prepaid, on this **25<sup>th</sup> day of June, 2004** to:

Denise Key  
2724 Woodley Place, N.W.  
Washington, D.C. 20008

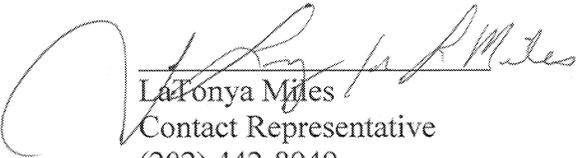
Susan Barnidge  
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Washington, D.C. 20008

Elizabeth Pika  
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Washington, D.C. 20008

Monika Thiele  
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