

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

SR 20,103

In re: 3256 N Street N.W. Multi-Unit Dwelling

Ward Two (2)

In re: MLW, LLC
Housing Provider/Petitioner

DECISION AND ORDER

June 18, 2007

PER CURIAM: This case is on appeal from a decision and order of District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (RHC), pursuant to the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), and the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001). The District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) also apply.

I. PROCEDURAL HISTORY

On November 18, 2005, Mary L. Wagshal, managing partner of MLW, LLC and owner of the housing accommodation located at 3256 N Street N.W., filed Petition for Substantial Rehabilitation (SR) 20,103. In the petition, Ms. Wagshal requested authorization for a “complete rehabilitation and renovation of all units, common space and building exterior.” Upon completion, petitioner also requested an adjustment in the rent ceilings¹ in the housing

¹Since this petition was filed, rent ceilings have been subsequently repealed. The Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE § 42-3502.06 (a) (2001) reads:

Rent ceilings are abolished, except that the housing provider may implement, in accordance with § 42-3502.08(g), rent ceiling adjustments pursuant to petitions and voluntary agreements approved by the Rent Administrator prior to August 5, 2006. Petitions and voluntary agreements pending as of August 5, 2006,

accommodation in the amount of \$2,749 or 125%² of the current rent ceiling. Record (R.) at 15. The following attachments were filed in support of the petition: (1) vacant building registration (R. at 14, 18), (2) DCRA Building Permit No. B470714 for exterior work (R. at 13, 18), (3) DCRA Building Permit No. B474036 for interior work (R. at 12, 18), (4) Certificate of Occupancy Permit No. CO 61776 (R. at 11, 18), (5) Basic Business License 86108XXXX-53005375 (R. at 10, 18), (6) two complete sets of architectural plans and drawings (R. at 18); (7) most recent real property tax bill (R. at 9, 18), (8) construction budget contract estimate (R. at 5-8, 18), (9) First Liberty National Bank loan commitment letter (R. at 4, 18), and (10) Amended Registration Forms (R. at 1-3, 18).

On December 12, 2005, Richard W. Luchs, Esquire filed a Notice of Appearance as counsel for the petitioner (R. at 24). On May 17, 2006, the petitioner sent a request to the HRA, to substitute a revised Proposed Rent Adjustment Schedule for the original, filed in SR 20,103, because “during the 6 months this [p]etition has been pending an updated Certificate of Election of Adjustment of General Applicability was filed ... thereby establishing new rent ceilings which should be reflected in this [p]etition (R. at 25-27).” On June 12, 2006, Hearing Examiner Gloria

shall be decided pursuant to the provisions of this subchapter in effect prior to August 5, 2006, and may be implemented in accordance with § 42-3502.08(g).

In this case the petition was pending prior to August 5, 2006, and shall be decided pursuant to § 42-3502.07 (2001) which provides, in pertinent part: “The rent ceiling for a particular rental unit computed according to the procedures specified in § 42-3502.06 may be increased or decreased, as the case may be... (5) According to § 42-3502.14 because of substantial rehabilitation.” Section 42-3502.07 was repealed on Aug. 5, 2006, pursuant to, D.C. Law 16-145, § 2(d), 53 DCR 4889. The Act, now reads:

(a) If the Rent Administrator determines that (1) a rental unit is to be substantially rehabilitated, and (2) the rehabilitation is in the interest of the tenants of the unit and the housing accommodation in which the unit is located, the Rent Administrator may approve, contingent upon completion of the substantial rehabilitation, an increase in the rent charged for the rental unit, if the rent increase is no greater than the equivalent of 125% of the rent charged applicable to the rental unit prior to substantial rehabilitation.

D.C. OFFICIAL CODE § 42-3502.14 (emphasis added).

² One hundred twenty-five (125)% of the current rent ceiling (at the time of filing) is equivalent to \$2,749.

Johnson issued a Decision and Order without a hearing because “the subject housing accommodation ... was vacant when (SR) 20,103 was filed (R. at 42).” See 14 DCMR §§ 4212.1 and 4212.5 (2004). Examiner Johnson made the following findings of fact and conclusions of law:

A. Findings of Fact

1. The subject housing accommodation, 3256 N Street, N.W., is registered with the RACD.
2. Petitioner, MLW, LLC, owns the subject housing accommodation, which contains 5 rental units, all of which are the subject of SR 20,103.
3. The building permits issued for the interior and exterior renovations, which are part of the renovation was [sic] issued in year 2005.
4. The assessed value of the subject property is \$288,990.00; fifty percent (50%) of which is \$144,495.00.
5. The cost of the proposed renovation of the 5 rental units is \$1,404,313.00.
6. Each rental unit at the subject housing accommodation was vacant at the time the petition was filed.
7. There is record evidence that each tenant vacated the subject rental units voluntarily. One unit was occupied by the former owner who died.
8. Petitioner submitted documentation to substantiate the plans, specifications, costs, permits and licenses for the subject renovation, including the building permits needed for electrical, plumbing and other interior and exterior installation work.
9. The rent ceilings for each of the 5 rental units prior to completion of the substantial [rehabilitation] are set forth in the RACD Case File for SR 20,103.
10. The rent ceilings for each of the 5 units will increase \$2,437.20 per month. The rent charged for each of the 5 units will increase \$2437.00 per month to a total of \$4,636.
11. The instant substantial rehabilitation was considered and disposed of without a hearing.

12. The proposed rent ceiling adjustment does not exceed 125% of the current rent ceiling for each unit.

B. Conclusions of Law

1. Petitioner has demonstrated that Substantial Rehabilitation Petition 20,103 meets the criteria for initiating a substantial rehabilitation affecting a vacant housing accommodation, under Section 214 of the Act, D.C. Official Code Sect. 42-3502.14 (2001), and 14 DCMR Sect. 4212 (1991).
2. Petitioner is entitled to an upward rent ceiling adjustment for each of the 5 rental units that are the subject of SR 20,103 by \$2749.00, upon completion of the subject substantial rehabilitation, provided that all rent adjustments are taken in accordance with 14 DCMR Sects. 4212.11 and 4212.12 (1991).

MLW, LLC v. Tenants of 3256 N St., N.W., SR 20,103 (RACD June 12, 2006) at 9-10. On June 16, 2006, counsel for the housing provider/petitioner filed a Motion to Amend Decision and Order and a Memorandum in Support of Motion to Amend Decision and Order requesting that the Hearing Examiner correct a mathematical error in finding of fact ten (10). On July 6, 2006, counsel for the housing provider/petitioner filed a Notice of Appeal in the Commission. The RHC scheduled and conducted a hearing on the appeal on May 17, 2007 at 2:00 p.m.

II. ISSUE ON APPEAL

In the notice of appeal, the housing provider raised one (1) issue, stated as follows: “The Hearing Examiner committed an error in calculating the increase to which the Housing Provider is entitled.”

III. DISCUSSION OF THE ISSUE

A. Whether the Hearing Examiner committed an error in calculating the increase to which the Housing Provider is entitled.

On appeal, MLW, LLC alleged that, “[t]he Hearing Examiner committed an error in calculating the increase to which the Housing Provider is entitled.” In her decision, the Hearing Examiner determined that the housing provider/petitioner properly initiated substantial

rehabilitation³ at the subject housing accommodation and was eligible for an upward adjustment in the rent ceilings upon completion, because (1) the renovation met the definition of a substantial rehabilitation, pursuant to the Act, D.C. OFFICIAL CODE § 42-3501.03(34)(2001); (2) the proposed rehabilitation would enhance the habitability of the housing accommodation; (3) the petitioner had not begun the rehabilitation or sought to evict any tenant without prior approval of the Rent Administrator, pursuant to 14 DCMR § 4212.3(2004); (4) SR 20,103 met the requirements for a petition affecting a vacant housing accommodation pursuant to 14 DCMR § 4212.5(2004); (5) the petitioner has included with SR 20,103 the information required pursuant to 14 DCMR § 4212.2(2004); and SR 20,103 complied with the Act and the Regulations.

The calculations set out by the Hearing Examiner reveal error in the form of internal inconsistencies.⁴ The Hearing Examiner lists calculations for a rent increase in three subsections of the Decision and Order. The Hearing Examiner's analysis of the rent ceiling increase, finding of fact ten (10), and conclusion of law two (2) address the relevant calculations. First, the Calculation of Rent Ceiling Increase for Each Unit includes the following:

The total cost for the substantial rehabilitation is \$1,404,313.00.
The loan in the principal amount of the cost of the approved rehabilitation, \$1,404,313.00, is amortized over 20 years at [an] 8.50% rate of interest according to the loan commitment agreement, which results in a monthly loan payment of

³ The hearing examiner cites the definition of substantial rehabilitation as follows: "Substantial rehabilitation means any improvement or renovation of a housing accommodation for which: (A) The building permit was granted after January 31, 1973; and (B) The total expenditure of the improvement or renovation equals or exceeds 50% of the assessed value of the housing accommodation before the rehabilitation." D.C. OFFICIAL CODE § 42-3501.03(34). In this case, MLW, LLC obtained two building permits issued in 1995, and the proposed "cost of the renovation, \$1,400,000.00, exceeds the assessed value of the housing accommodation. Accordingly, the Examiner finds that the cost of renovation exceeds 50% of the assessed value of the property (R. at 38)."

⁴ The applicable regulation states that, "[t]he Commission shall reverse final decisions of the Rent Administrator which ... contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator." 14 DCMR § 3807.1 (2004). The Hearing Examiner's findings of fact "must be supported by substantial evidence in the agency record; and conclusions of law must follow rationally from its findings." DCAPA, D.C. OFFICIAL CODE § 2-509, n.24; Murchison v. District of Columbia Dept. of Public Works, 813 A.2d 203(D.C. 2002).

\$12,186.00. This number [,] is divided by the number of rental units in the housing accommodation, which is 5. The result is \$2,437.20. The pre-construction rents were \$2199 for each of the five (5) one bedroom units in the subject property. It is proposed that the rental of each be increased 125% to add the amount of \$2,437.00 to each for a total proposed rent of \$4637.00. The additional \$2,437.00 per month does not exceed 125% of the proposed increased rent ceilings for each of the subject rental units.

MLW, LLC v. Tenants of 3256 N St., N.W., SR 20,103 (RACD June 12, 2006) at 9. The Hearing Examiner states that \$12,186.00 divided by 5 is \$2,437.20. The amount of the “pre-construction rents [was] \$2199” plus “the amount of [the increase⁵,] \$2,437.00,” equals \$4,636.00. This result is one dollar different from the Hearing Examiner’s total of \$4,637.00. Finding of fact ten (10) is consistent with the calculations discussed above. Finding of fact ten (10) states, “[t]he rent ceilings for each of the 5 units will increase \$2,437.20 per month. The rent charged for each of the 5 units will increase \$2437.00 per month to a total of \$4,636.” Id. at 10. However, conclusion of law two (2) states, “[p]etitioner is entitled to an upward rent ceiling adjustment for each of the 5 rental units that are the subject of SR 20,103 by \$2749.00 upon completion of the subject substantial rehabilitation, provided that all rent adjustments are taken in accordance with 14 DCMR Sects. 4212.11 and 4212.12 (1991).” Conclusion of law number two (2) is inconsistent with the calculation of rent ceiling increase for each unit and finding of fact ten (10). Therefore, conclusion of law two (2) is unsupported by the findings of fact. Moreover, the petitioner requested an adjustment in the amount of \$2,749.00 (R. at 15). It is beyond the scope of the Commission’s authority to determine which figure, \$2,437.00 or \$2,749.00 is correct. See Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000) at 9-

⁵One hundred-twenty five (125)% of \$2,199.00 equals \$2,748.75.

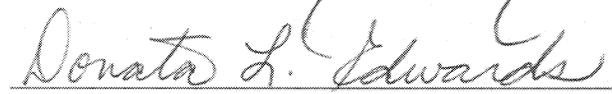
10.⁶ Therefore, the decision of the hearing examiner is reversed and the case is remanded to the Office of Administrative Hearings⁷ for findings of facts and conclusions of law which logically follow and are consistent with the evidence in the record to determine the rent ceiling increase to which the housing provider is entitled.

IV. CONCLUSION

The Rent Administrator's decision and order is reversed and the case is remanded to the Office of Administrative Hearings for the appropriate findings of fact and conclusions of law, based on the present record.

SO ORDERED.


RONALD A. YOUNG, CHAIRMAN


DONATA L. EDWARDS, COMMISSIONER

⁶ In Alexandra, the Commission ordered a remand to the Rent Administrator, where “[i]n his Finding of Fact the Examiner levie[d] a \$75.00 fine on the housing provider. The Order, however impose[d] a \$750.00 fine (10 times as much) without further explanation (emphasis in original, citations omitted).” Moreover, Alexandra stated that,

[The Commission] could not amend the Rent Administrator's order [because]... substantial evidence in the record [did not] render the inconsistency between the findings of fact and the order containing the alleged error a “plain error,” because the correct fine amount is not obvious to the Commission... [t]herefore, the conflict must be remanded to the OAD for proceedings consistent with this decision in order to resolve the conflict between the finding of fact and the order. TP 24,777 (RHC Aug. 15, 2000) at 9-10.

⁷ The Office of Administrative Hearings Establishment Act of 2001, D.C. OFFICIAL CODE § 2-1831.01 provides:

(a) Section 6(b-1) (D.C. OFFICIAL CODE § 2-1831.03(b-1)) is amended as follows: “(1) In addition to those agencies listed in subsections (a) and (b) of this section, as of January 1, 2006, this chapter shall apply to adjudicated cases under the jurisdiction of the Rent Administrator in the Department of Consumer and Regulatory Affairs.

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

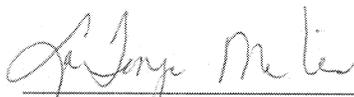
Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions 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 hereby certify that a copy of the foregoing **Decision and Order** in SR 20,103 was mailed postage prepaid by priority mail, with delivery confirmation on this **18th day of June, 2007** to:

Richard W. Luchs, Esquire
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