DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,597

JOHN EVANS
Tenant

v.

424 Q STREET LIMITED PARTNERSHIP/
T.K. CHAMBERLAIN
Housing Provider

DECISION AND ORDER

May 28, 2002

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 the proceedings.

I. PROCEDURAL HISTORY

John Evans, tenant/appellee, who occupied unit 1 of the housing accommodation at 424 Q Street, N.W., filed Tenant Petition (TP) 24,597 with the Rental Accommodations and Conversion Division (RACD) on October 16, 1998. In the petition the tenant asserted that the housing provider, 424 Q Street Limited Partnership: 1) charged a rent which exceeded the legally calculated rent ceiling; 2) failed to properly register the seven (7) unit housing accommodation with RACD; and

3) substantially reduced services and facilities provided in connection with the rental unit.

On January 25, 1999, Hearing Examiner Gerald Roper presided at the Office of Adjudication (OAD) hearing. The tenant appeared with counsel. Theodore Chamberlain, one of the general partners, appeared on behalf of the housing provider, 424 Q Street Limited Partnership. On November 26, 1999, the hearing examiner issued the OAD decision and order. The hearing examiner found in favor of the tenant, sustaining the assertions made in the tenant petition and concluded that the tenant was entitled to a rent roll back, a rent refund, plus interest, and trebled refund. See Evans v. 424 Q Street Ltd. Partnership, TP 24,597 (OAD Nov. 26, 1999) at 16.

On December 15, 2000 the housing provider filed a notice of appeal with the Commission. The Commission held the hearing on appeal on April 6, 2000. The Commission's decision and order in 424 Q St. Ltd. P'ship/T.K. Chamberlain v. Evans, TP 24,597 (RHC July 31, 2000), was issued on July 31, 2000. The Commission's decision affirmed the hearing examiner's decision in part, reversed the decision in part, and remanded the decision for a determination of the rent ceiling and a proper calculation of the rent refund due the tenant. Additionally, the Commission reversed the hearing examiner's failure to impose a fine for the registration violations, and the Commission fined the housing provider $5000.00.

In Evans v. 424 Q St. Ltd. P'ship, TP 24,597 (OAD Oct. 11, 2001), the hearing examiner dismissed TP 24,597 with prejudice. The hearing examiner based his dismissal on a settlement agreement reached by the parties in the Landlord-Tenant Branch of the Superior Court of the District of Columbia. In Evans v. 424 Q St. Ltd.

P'ship/T.K. Chamberlain, TP 24,597 (RHC Nov. 16, 2001), the Commission initiated review of the OAD order pursuant to D.C. OFFICIAL CODE § 42-3502.16 and 14 DCMR § 3808.[1] In its Notice of Initiated Review the Commission stated:

> The Commission has initiated review of the Rent Administrator's decision, because the hearing examiner dismissed TP 24,597, despite the fact that the Commission issued a final decision and order on the pivotal issues raised in the petition. Moreover, there was no record proof that the housing provider registered the property, obtained a certificate of occupancy, housing business license, and paid the $5000.00 fine imposed by the Commission.

Evans v. 424 Q St. Ltd. P'ship/T.K. Chamberlain, TP 24,597 (RHC Nov. 16, 2001) at 2. The Commission held its hearing on the initiated review on January 8, 2002.

II. ISSUES ON APPEAL

The Commission raised the following issues in its initiated review:

1. Whether the hearing examiner erred when he dismissed TP 24,597, when the Commission issued a final decision and order concerning the pivotal issues, including the registration and reduction in services issues.

2. Whether the hearing examiner erred in dismissing TP 24,597, when there was no record proof that the housing provider registered the property, obtained a housing business license, certificate of occupancy, cured the defects in the housing accommodation, and paid the $5000.00 fine that the Commission imposed in TP 24,597.

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[1] 14 DCMR § 3808 provides:

> 3808.1 Not later than twenty (20) days after the deadline for the parties to file an appeal, the Commission may initiate a review of any decision of the Rent Administrator.
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> 3808.2 The Commission shall serve the parties who appeared before the hearing examiner with its reasons for initiating a review and shall inform them of their right and opportunity to present arguments on the issues identified by the Commission.
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> 3808.3 All due process rights afforded parties in a review commenced by a notice of appeal shall also be provided when the review is initiated by the Commission.
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> 3808.4 In appeals initiated pursuant to this section, the provisions of §§3802.10, 3802.11 and 3805.5 shall not apply.

3. Whether the hearing examiner's decision in TP 24,597 should be reversed, because the decision did not contain findings of fact or conclusions of law as required by the DCAPA.

III. DISCUSSION OF THE ISSUES

A. Whether the hearing examiner erred when he dismissed TP 24,597, when the Commission issued a final decision and order concerning the pivotal issues, including the registration and reduction in services issues.

B. Whether the hearing examiner erred in dismissing TP 24,597, when there was no record proof that the housing provider registered the property, obtained a housing business license, certificate of occupancy, cured the defects in the housing accommodation, and paid the $5000.00 fine that the Commission imposed in TP 24,597.

After reviewing the evidence of record and the testimony adduced at the OAD hearing in this case, the Commission stated:

> The housing provider admitted he never registered the housing accommodation, secured a certificate of occupancy, or housing business license. In the notice of appeal the housing provider wrote, "[w]hen I testified that we could not afford the C of O, I meant it. .... Certainly I have not 'willfully' [sic] failed to obtain a C of O." Notice of Appeal at 2-3.
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> ...
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> The housing provider has operated the housing accommodation in violation of the requirements of the Act and regulations for more than twenty years. Neither the Act nor the regulations support the notion that the housing provider's failure to meet the registration and licensing requirements should be excused, because the housing provider professed a financial inability to meet the requirements. The regulations, which mandate compliance before beginning operations, prohibit a housing provider from operating a multi-family dwelling until the agency issued a certificate of occupancy. When a housing provider fails to comply with the laws and regulations governing the certificate of occupancy, the regulations provide an avenue to apply for an extension when there are special or unusual circumstances. See 14 DCMR 1404; see also 14 DCMR 109; 11 DCMR 3107.2. The regulations governing the certificate of occupancy provide several avenues for a housing provider to seek a variance under extraordinary or exceptional circumstances.

424 Q St. Ltd. P'ship/T.K. Chamberlain v. Evans, TP 24,597 (RHC July 31, 2000) at 17-18.

The Commission also stated:

> The regulation, 14 DCMR 200.4, provides, 'no person shall operate a housing business in any premises in the District of Columbia without first having been issued a housing business license for the premises by the District.' Moreover, 14 DCMR 1401.1 prohibits the use of 'any structure for any purpose ... other than a one-family dwelling, until a Certificate of Occupancy has been issued to that person stating that the use complies with the Zoning Regulations and related building, electrical, plumbing, mechanical and fire prevention requirements.' (emphasis added.)

Id. at 17. The Commission reversed the examiner's failure to impose a fine for the registration violations. Citing the applicable section of the Act, D.C. OFFICIAL CODE § 3509.01(b)[2] which provides, "any person who willfully ... commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or fails to meet obligations required under this chapter shall be subject to a civil fine of not more than $5000.00 for each violation."

Citing the District of Columbia Court of Appeals (DCCA) decision in Revithes v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1007, 1021-1022 (D.C. 1987), the Commission imposed a $5000.00 fine because of the housing provider's failure to register, obtain a certificate of occupancy or housing business license.

In his order dismissing the tenant petition, the hearing examiner correctly stated, "[i]n its Decision and Order the Commission remanded the case to the jurisdiction of the Rent Administrator for the Hearing Examiner to make a determination of the rent ceiling for the subject rental unit and a proper calculation of the rent refund to the Petitioner." Evans v. 424 Q St. Ltd. P'ship, TP 24,597 (OAD Oct. 11, 2001) at 1. When he dismissed the tenant petition with prejudice, the hearing

[2] Formerly D.C. CODE § 45-2591(b).

examiner failed to carry out the remand instructions contained in the Commission's decision. The Act does not invest the hearing examiner with the power to nullify a determination of the Commission. The Act provides that only the District of Columbia Court of Appeals (DCCA) has the power review Commission decisions. Therefore, a hearing examiner's refusal to comply with the remand instructions in a decision issued by the Commission is arbitrary, capricious, an abuse of discretion and not in accordance with the law. See Envoy Assocs. Ltd. P'ship v. Word, TP 12,100 (RHC July 28, 1989). In the instant case the hearing examiner abused his discretion when he dismissed the tenant petition without calculating the refund and absent payment of the fine imposed by the Commission's decision, as a result of the housing provider's long-standing violations of the registration requirements of the Act.

Accordingly, the Commission reinstates its decision in 424 Q St. Ltd. P'ship/T.K. Chamberlain v. Evans, TP 24,597 (RHC July 31, 2000), which affirmed the hearing examiner's finding of a substantial reduction in services and facilities; which affirmed the imposition of treble damages and the hearing examiner's finding that the housing provider failed to register the housing accommodation. The Commission also reinstates that part of its decision which reversed the OAD decision and remanded it to the hearing examiner for calculation of the rent refund due the tenant. Finally, the Commission reinstates that part of its decision which imposed a $5000.00 fine on the housing provider for the registration violations.

C. Whether the hearing examiner's decision in TP 24,597 should be reversed, because the decision did not contain findings of fact or conclusions of law as required by the DCAPA.

The order of the hearing examiner that dismissed the tenant's petition, TP 24,597, Evans v. 424 Q St. Ltd. P'ship, TP 24,597 (OAD Oct. 11, 2001), did not include findings of fact or conclusions of law. The applicable section of the DCAPA, D.C. OFFICIAL CODE § 2-509(e) (2001), provides in relevant part:

> 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, probative, and substantial evidence.

Further, the DCCA has ruled that the decision, "adopting or rejecting the compromise proposal, shall contain findings of fact and conclusions of law sufficient for this court's review." Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542 (1984).

The decision by the hearing examiner to accept the settlement agreement was flawed because he failed to make findings of fact and conclusions of law sufficient for review by the Commission as required by Proctor. Since the hearing examiner violated the requirement of making findings of fact as set forth in Proctor, supra, his decision to accept the settlement agreement is reversed. On this second remand, the hearing examiner must issue a decision containing findings of facts and conclusions of law in conformity with the DCAPA and the court's decision in Proctor.

IV. CONCLUSION

The decision of the hearing examiner to dismiss TP 24,597 with prejudice is reversed. The Commission's decision in 424 Q St. Ltd. P'ship/T.K. Chamberlain v.

Evans, TP 24,597 (RHC July 31, 2000) is reinstated. The case is remanded to the hearing examiner for a recalculation of the rent refund due the tenant, as ordered by the Commission, as well as proper findings of fact and conclusions of law regarding the settlement agreement in conformity with the court's decision in Proctor. No additional hearings are to be held.

The housing provider shall remit the $5000.00[3] fine to the D.C. Treasurer. The housing provider shall remit the fine to the Office of the Chief Financial Officer, Accounting Division, 941 North Capitol Street, N.E., Suite 9607, Washington, D.C. 20002. The housing provider shall present proof of payment to the Commission within 30 days of the date of this decision and order.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

[3] D.C. OFFICIAL CODE § 3509.01(b)[3] provides, "[a]ny person who willfully ... commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (fails to meet obligations required under this chapter shall be subject to a civil fine of not more than $5000.00 for each violation."

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Decision and Order** in TP 24,597 was mailed by priority mail with delivery confirmation this **28th day of May, 2002** to:

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