

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 25,001

In re: 5343 C Street, S.E., Unit 102

Ward Seven (7)

PHYLLIS FRANK
Tenant

v.

THE BARAC COMPANY
Housing Provider

DECISION AND ORDER

August 20, 2002

LONG, COMMISSIONER. This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). In accordance with § 42-3502.16(h), the Commission initiated review of the Rent Administrator's decision that Hearing Examiner Carl Bradford issued on August 13, 2001. The Act, 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

Phyllis Frank filed Tenant Petition (TP) 25,001 with the Rental Accommodations and Conversion Division (RACD) on June 20, 2000. In the petition, she alleged that the housing provider, The Barac Company, reduced the services and facilities provided in connection with her unit, directed retaliatory action against her, increased her rent

without making timely repairs, and used rental units as a day care, community center, and storage facility in violation of the permit and license issued for the housing accommodation.

Hearing Examiner Carl Bradford held the adjudicatory hearing on October 16, 2000. The tenant and the housing provider appeared pro se. Following the hearing, the hearing examiner issued a decision and order on August 13, 2001 and dismissed the petition with prejudice.

On September 14, 2001, the Commission initiated review of the hearing examiner's decision and order pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001) and 14 DCMR § 3808 (1991).¹ In accordance with 14 DCMR § 3808.2 (1991), the Commission notified the parties of its reasons for initiating review and informed the parties of their right to present arguments on the issues identified by the Commission. The Commission held the hearing on its initiated review on March 6, 2002. The tenant and the housing provider appeared pro se.

II. ISSUES

In its notice of initiated review, the Commission identified the following two issues as the basis of its review.

¹ The regulation, 14 DCMR § 3808 (1991), 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.

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.

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.

3808.4 In appeals initiated pursuant to this section, the provisions of §§3802.10, 3802.11 and 3805.5 shall not apply.

A. Whether the Office of Adjudication (OAD) record contained proof of service of the hearing examiner's decision and order.

B. Whether the hearing examiner erred when he dismissed TP 25,001 based upon the doctrine of res judicata without issuing findings of fact and conclusions of law or discussing the sameness or identity of issues in the Superior Court of the District of Columbia case, Barac Co. v. Frank, L&T 9620-00 (Sept. 13, 2000).

Notice of Commission Initiated Review (RHC Sept. 14, 2001) at 1.

III. DISCUSSION

A. Whether the OAD record contained proof of service of the hearing examiner's decision and order.

The Act requires the Rent Administrator to mail all decisions by certified mail or another form of service that assures delivery of the decision to the parties. See D.C. OFFICIAL CODE § 42-3502.16(j) (2001). In Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24, 26 (D.C. 1999), the Court observed that the "statute's specification of 'certified mail' is obviously important, because that form of mailing – permitting the agency to obtain a return receipt – is calculated to 'assure delivery,' as the statute requires." (emphasis added). The use of certified mail or another form of service that assures delivery of the decision is vital, because the time period for filing a notice of appeal begins when the agency mails the decision. See id. at 27 (citation omitted).

The decision and order in the instant case contains a certificate of service that states the OAD mailed the decision by certified mail on August 13, 2001. However, the record does not contain a return receipt nor any other documents issued by the United States Postal Service for use in certified mailing. Moreover, the certificate of service does not reflect that the agency requested a return receipt.

When the Commission convened the hearing on its initiated review, the housing provider informed the Commission that he received the Rent Administrator's decision and order. The tenant, however, stated that she did not receive the decision and order issued by the Rent Administrator. The Rent Administrator's "obligation was to use certified mail or another form of delivery designed to guarantee, if possible, receipt of the decision in time for petitioner to pursue her further rights as an aggrieved party." Joyce, 741 A.2d at 26.

Since the record contains neither the return receipt nor proof that the Rent Administrator issued the decision and order by certified mail with a request for a return receipt, the Commission remands the decision to the Rent Administrator.

B. Whether the hearing examiner erred when he dismissed TP 25,001 based upon the doctrine of res judicata without issuing findings of fact of conclusions of law or discussing the sameness or identity of issues in the prior case, Barac Co. v. Frank, L&T 9620-00 (Sept. 13, 2000).

The doctrine of res judicata, a doctrine of claim preclusion, provides that "a final judgment on the merits of a claim bars relitigation in a subsequent proceeding of the same claim between the same parties or their privies." Patton v. Klein, 746 A.2d 866, 870 (D.C. 1999) (citations omitted). Res judicata is an affirmative defense that must be pleaded and proved by the party that invokes the doctrine. The hearing examiner cannot invoke the doctrine of res judicata sua sponte, when the prior action was not a petition that was adjudicated by the Rent Administrator.²

² "[A] trial court may raise res judicata grounds sua sponte 'in the interest of judicial economy where ... both actions were brought before the same court.'" Mowbray v. Cameron County, Texas, 274 F.3d 269, 281 (5th Cir. 2001) quoted in Carrollsborg v. Anderson, 791 A.2d 54, 60 (D.C. 2002) (citation omitted).

When a party invokes the doctrine of res judicata, the party must present sufficient evidence to enable the hearing examiner to issue findings of fact and conclusions of law concerning the following:

- (1) Whether the claim was adjudicated finally in the first action;
- (2) Whether the present claim is the same as the claim which was raised or which might have been raised in the prior proceeding; and
- (3) Whether the party against whom the plea is asserted was a party or in privity with a party in the prior case.

Patton, 746 A.2d at 870.

In a section of the decision and order entitled “Procedural History,” the hearing examiner wrote the following:

The Respondent testified that a complaint for possession of Real Estate [sic] was filed in the Superior Court in Barac Company v. Phyllis Frank[,] L&T 9620-00, September 13, 2000. Rev. Ken E. Brown argues, this judgment resolves all matters between the parties arising out of the landlord and tenant relationship, including but not limited to this action and the pending tenant petition. A final decision and order was rendered on September 13, 2000 in favor of the landlord.

The Examiner, upon initial review of the arguments and testimony presented by the parties, concludes that he does not have jurisdiction to overturn a prior court’s decision where the identical parties were present and the identical issues set forth in the tenant petition were, or could have been litigated under the doctrine of res judicata.

Frank v. The Barac Co., TP 25,001 (OAD Aug. 13, 2001) at 1-2. In the remainder of the two-page decision, the hearing examiner quoted sections of opinions where the District of Columbia Court of Appeals discussed the doctrine of res judicata. The hearing examiner ended the second page of the decision with the following: “It is hereby ordered ... that Tenant Petition #25,001 is hereby

denied and dismissed, with prejudice.” Id. at 2. Curiously absent from the decision and order were findings of fact and conclusions of law.

The hearing examiner's responsibility to issue findings of fact and conclusions of law in the decision and order is well settled in this jurisdiction. Pursuant to the DCAPA, D.C. OFFICIAL CODE § 2-509(e) (2001), the hearing examiner's decision must meet the following three criteria: "(1) the decision must state findings of fact on each material, contested, factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings." Perkins v. District of Columbia Dep't of Employment Servs., 482 A.2d 401, 402 (D.C. 1984) quoted in Nursing Servs. v. District of Columbia Dep't of Employment Servs., 512 A.2d 301, 302-303 (D.C. 1986). In addition, the Court has held the following: "There must be a finding on each material fact necessary to support the conclusions of law. ... We will continue to order that administrative agencies specify the precise findings and conclusions which support their decisions." Newsweek Magazine v. District of Columbia Comm'n on Human Rights, 376 A.2d 777, 784 (D.C. 1977) quoted in Braddock v. Smith, 711 A.2d 835, 838 (D.C. 1998).

When a decision and order does not contain findings of fact and conclusions of law, the reviewing body is compelled to remand the matter because the record is insufficient for review. See Hedgman v. District of Columbia Hackers' License Appeal Bd., 549 A.2d 720 (D.C. 1988); Nursing Services, 512 A.2d at 303; Lustine Realty v. Pinson, TP 20,117 (RHC Jan. 13, 1988).

Accordingly, the Commission remands TP 25,001 to the Rent Administrator for findings of fact and conclusions of law based on the existing record. "In order to

[properly] apply the doctrine of res judicata, the [hearing examiner shall issue] findings of fact that satisf[y] the factors”³ enunciated in Patton v. Klein, 746 A.2d 866 (D.C. 1999). In addition, the findings of fact shall demonstrate whether the housing provider invoked the doctrine of res judicata and submitted transcripts or other reliable evidence concerning the prior claim. See Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000).

IV. CONCLUSION

For the foregoing reasons, the Commission vacates the hearing examiner’s decision and order and remands TP 25,001 to the Rent Administrator.

The hearing examiner shall issue a decision and order that contains findings of fact and conclusions of law on the existing record. The hearing examiner shall not conduct a hearing or receive additional evidence. See Wire Properties v. District of Columbia Rental Hous. Comm’n, 476 A.2d 679 (D.C. 1984).

Further, the hearing examiner shall issue the decision by either certified mail, return receipt requested, by priority mail with delivery confirmation, or by another means of service that assures delivery. The record shall contain documents from the United States Postal Service that evidence the manner of service and evince delivery to the parties at their current addresses.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER


JENNIFER M. LONG, COMMISSIONER

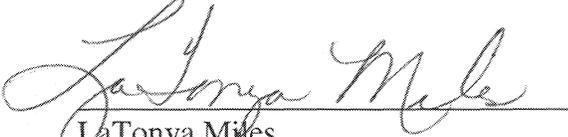
³ Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000) at 12.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 25,001 was mailed by priority mail with delivery confirmation, postage prepaid, this 20th day of August 2002 to:

Phyllis Frank
2801 Jasper Street, S.E.
Apartment 3A
Washington, D.C. 20020

Reverend Ken E. Brown
3409 Alabama Avenue, S.E.
Washington, D.C. 20020



LaTonya Miles
Contact Representative