

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 25,072

In re: 829 Quincy Street, N.W., Unit 511

Ward Four (4)

**MARLO JOHNSON**  
Tenants/Appellants

v.

**BERNSTEIN MANAGEMENT COMPANY**  
Housing Provider/Appellee

**ORDER ON REMAND**

**September 10, 2007**

**YOUNG, CHAIRMAN.** This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). 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 (2004), govern the proceedings.

**I. THE PROCEDURES**

On September 1, 2000, Marlo Johnson, the tenant, filed in the Housing Regulation Administration Tenant Petition (TP) 25,072, as the representative of "Tenants of 829 Quincy Street, N.W. See Record (R.) at 16-17. The petition alleged: 1) a rent increase was taken while the Tenant's rental unit was not in substantial compliance with the

District of Columbia Housing Regulations, and 2) a reduction of services and facilities occurred in the rental unit. The Tenant attached to the petition a letter, which gave an explanation of the reduction in services and raised the issue whether the Housing Provider implemented an improper rent increase based on the notice of increase of general applicability effective September 1, 2000. R. at 2.

On July 5, 2002, Examiner Carl Bradford issued the Rent Administrator's decision in Johnson v. Bernstein Mgmt./Columbia Realty Venture, TP 25,072 (OAD July 5, 2002). On December 16, 2002<sup>1</sup> the tenant filed a notice of appeal in the Commission. On September 22, 2004, the Commission issued its decision and order. The Commission's decision stated:

Since the hearing examiner gave the Tenant inappropriate and erroneous legal advice that she could leave the hearing and file an interlocutory appeal with the Commission, another hearing examiner must hold a de novo hearing and issue a remand decision and order.

Tenants of 829 Quincy St., N.W. v. Bernstein Mgmt., Co., TP 25,072 (RHC Sept. 22, 2004).

The record reflects that a remand hearing was conducted by Hearing Examiner Sandra McNair on August 18, 2005. The tenant filed a notice of appeal in the Commission on August 18, 2005. In accordance with the regulations,<sup>2</sup> the Commission requested that the Rent Administrator transmit the certified record in TP 25,072 to the

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<sup>1</sup> On November 1, 2002, the hearing examiner issued an order re-issuing the July 5, 2002 decision and order because the tenant did not receive a copy of the original decision.

<sup>2</sup> The applicable regulation, 14 DCMR § 3804 (2004), states:

Upon receipt of a notice of appeal, the Commission shall request in writing that the Rent Administrator forward the complete record of the case, including all tape recordings made at any hearing held before the hearing examiner.

Commission. After numerous requests to the Office of the Rent Administrator, the certified record in TP 25,072 was delivered to the Commission on July 17, 2006.<sup>3</sup> In its review of the certified record the Commission noted that the record contained the Rent Administrator's final decision. However, the decision was neither signed by Hearing Examiner McNair nor dated. , did it provide

## II. THE ISSUE

### Whether the Commission has jurisdiction to review the August 18, 2005 notice of appeal.

The Act provides that appeals may be made to the Commission from the decisions of the Rent Administrator within ten (10) days of the Rent Administrator's decision. D.C. OFFICIAL CODE § 42-3502.16(h) (2001). The regulation applicable to filing notices of appeal, 14 DCMR § 3802.2 (2004), provides:

A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed. (emphasis added.)

The hearing examiner neither signed the decision and order, nor did she complete that section of the decision and order reserved for the date of issuance. Further, the hearing examiner failed to indicate the time limits within which to file a motion for reconsideration with the Rent Administrator or an appeal in the Commission. As a consequence, there was no record evidence of the date the hearing examiner issued the decision and order.<sup>4</sup>

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<sup>3</sup> The Commission did not follow its customary practice of notifying the parties of a hearing date within thirty (30) days of receipt of the certified record due to the absence of a quorum in the Commission.

<sup>4</sup> The Commission contacted RACD in an unsuccessful effort to ascertain the date of the issuance of the decision.

### **III. DISCUSSION OF THE ISSUE**

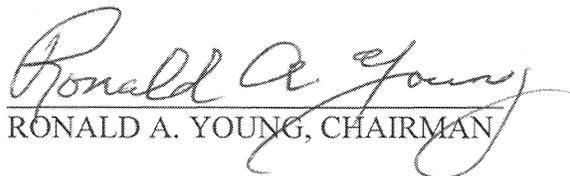
When the Commission reviewed the certified record it reflected that the tenant filed her notice of appeal on the same day as the RACD hearing, August 18, 2005. Accordingly, it would appear that the tenant filed her notice of appeal prior to a final decision and order issued by the Rent Administrator, which is prohibited by 14 DCMR § 3802.2 (2004). However, as a result of the hearing examiner's failure to provide the date of the decision and order, the Commission could not review the record to determine if the notice of appeal was timely.

The hearing examiner's failure to indicate the date of the issuance of the decision and order constituted agency error that caused a dearth in the record evidence. Because the agency's error led to the absence of the date from which the Commission could determine the timeliness of the appeal, the Commission declines to conclude that the notice of appeal violated the provisions of the Act and the regulations. See Hudley v. McNair, TP 24,040 (June 30, 1999).

### **IV. THE COMMISSION'S ORDER**

The Commission remands the record in TP 25,072 to the Rent Administrator for re-issuance of the decision and order, properly signed and dated, including the appropriate appeal rights. In the absence of the original hearing examiner, Sandra McNair, the Rent Administrator shall reissue the decision and order in accordance with D.C. OFFICIAL CODE § 2-509(d) (2001).

SO ORDERED

  
RONALD A. YOUNG, CHAIRMAN

## 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:

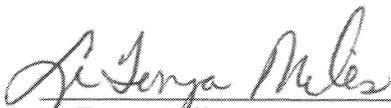
D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W., 6th Floor  
Washington, D.C. 20001  
(202) 879-2700

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing **ORDER ON REMAND** was mailed by priority mail, with confirmation of delivery, postage prepaid this 10<sup>th</sup> day of **September, 2007** to:

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