

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 26,129

In re: 5716 16th Street, N.W.

Ward Four (4)

THEO MEYERS
Housing Provider/Appellant

v.

CURTIS L. SMITH
Tenant/Appellee

DECISION AND ORDER

March 17, 2003

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator. 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 (DCMR), 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

I. THE PROCEDURES

Curtis L. Smith filed his tenant petition (TP 26,129) on October 27, 2000, and Administrative Law Judge (ALJ) Henry McCoy held the hearing in the Office of Adjudication (OAD) on July 16, 2001, with both parties present. He issued the OAD decision and order on July 5, 2002, with the following relevant findings of fact:

1. Petitioner has resided in the single-family house located at 5716 16th Street, NW [sic] since 1974 when he purchased it and staying on in residence after the bank foreclosed on the property on or around November 1996.

2. Petitioner paid no rent from November 1996 to March 1997 while continuing to reside in the house.
3. Respondent purchased the subject premises on July 1, 1997.
4. Petitioner and Respondent never signed a lease agreement but mutually agreed that Petitioner would pay \$1,500.00 per month to live in the house.
...
6. On October 12, 1999, Respondent registered the subject premises by filing the appropriate form with the RACD and received registration number LR #2330.
...
10. Petitioner notified Respondent on November 17, 1997, that the front porch was in serious need of repair.
11. Petitioner notified Respondent on December 28, 1997 and again on January 4, 1998, that there was no heat.

Smith v. Myers, TP 26,129 (OAD July 5, 2002) at 4 & 5.

The ALJ made the relevant conclusion of law:

“Petitioner has proved, by substantial record evidence, that Respondent has substantially reduced related services and/or facilities in his rental unit, in violation of D.C. [sic] Code 42-3502.11.” Id. at 11.

The hearing examiner ordered, in part:

“Respondent shall pay a fine pursuant to D.C [sic] Code § 42-35__ [sic] in the amount of ONE THOUSAND DOLLARS (\$1,000.00) for substantially reducing Petitioner’s services and/or facilities in violation of D.C. [sic] Code § 42-3502.11.” Id.

Theo Meyers, the Housing Provider, filed his appeal in the Commission on July 24, 2002, and the Commission held its hearing on December 19, 2002.

II. ISSUE ON APPEAL

The notice of appeal contained only one issue: [Whether] “the Examiner [sic] exceeded his authority when he fined the Housing Provider for substantially reducing Petitioner’s service [sic] and/or facilities.” Notice of Appeal at 1.

III. DISCUSSION OF ISSUE

A. The Law

The Act provides:

Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

Any person who willfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation.

D.C. OFFICIAL CODE § 42-3509.01(b) (2001) (emphasis added).

The Commission recently discussed the law about fines under the Act in RECAP-

Gillian v. Powell, TP 27,042 (RHC Dec. 19, 2002), which stated:

In Quality Mgmt. v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73, 75-76 (D.C. 1986) the court quoted the legislative history of the penalty section of the Act to explain the distinction between a “knowing” violation of the Act under § 42-3509.01(a) as distinct from § 42-3509.01(b), which requires a housing provider to act “willfully” in violation of the Act. The court stated the distinction, “is further supported by the necessity to draw some independent meaning from the word “willfully,” as used in ... [§ 42-3509.01(b)].” Id. The Council created legislative history during debates on the distinctions, which states:

From the context it is clear that the word ‘willfully’ as it is used in [§ 42-3509.01(b)] demands a more culpable mental state than the word “knowingly” as used in [§ 42-3509.01(a)]....There is a difference. ‘Willfully’ goes to

intent to violate the law. 'Knowingly' is simply that you know what you are doing. A different standard. If you know that you are increasing the rent, the fact that you don't intend to violate the law would be 'knowingly.' If you also intended to violate the law, that would be 'willfully.' Knowingly [is a] lower ... standard.

Id. at 5.

In RECAP-Gillian, the Commission also quoted Ratner Mgmt. Co. v. Tenants of Shipley Park, TP 11,613 (RHC Nov. 4, 1988), in part, which stated:

We do not find present the element of intent and conscious choice necessary to sustain a finding of wilfulness. There is no doubt that the proof sustains the finding that the violations were "knowing" as that word is used in [§ 42-3509.01(a)] of the Act, but no testimony was presented to meet the heavier burden imposed by [§ 42-3509.01(b)] of showing that the landlord's conduct was intentional, or deliberate or the product of a conscious choice. Accordingly, the fine will be vacated.

Id. at 4 & 5, quoted in RECAP-Gillian at 9.

B. The Analysis

The law in the Act, D.C. OFFICIAL CODE § 42-3509.01(b) (2001), gives the ALJ authority to impose fines. However, the ALJ did not cite to the Act for the imposition of the fine in this appeal.¹ Moreover, the Commission's review of the decision and order in the instant appeal reveals that the ALJ did not make findings of fact, and conclusions of law, on the imposition of a fine. See Lee v. District of Columbia Zoning Comm'n, 411 A.2d 635 (D.C. 1980) (where the court stated whenever an administrative agency fails to make a finding on a material contested issue, the reviewing court cannot properly fill the gap itself by inferring findings). In this appeal the Commission cannot infer findings on whether the Housing Provider's acted "knowingly" under D.C. OFFICIAL CODE § 42-3509.01(a) (2001) or "willfully" under D.C. OFFICIAL CODE § 42-3509.01(b) (2001).

¹ The ALJ wrote "Respondent shall pay a fine pursuant to D.C [sic] Code § 42-35_____" See p. 2, supra.

In Schauer v. Assalaam, TP 27,084 (RHC Dec. 31, 2002), the Commission held:

The housing provider's assertion that the fines imposed by the hearing examiner for retaliation and a reduction of services and facilities were not authorized by law is in error. The Act, D.C. OFFICIAL CODE § 42-3509.01(b) (2001), 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.['] Further, the District of Columbia Court of Appeals has stated:

It has long been established that an administrative agency may be authorized to impose penalties in the form of fines to enforce public rights created by statutes ... [P]ursuant to an amendment to the 1985 Act, the RHC [Commission] is indisputably authorized to impose fines pursuant to subsection (b) or any other provision of the penalty section.

[citing] Revithes v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1007, 1021-1022 (D.C. 1987).

Id. at 10-11. The Commission reversed and remanded the fine issue in Schauer, for a determination whether the Housing Provider willfully violated the Act. Id. at 16.

IV. CONCLUSION

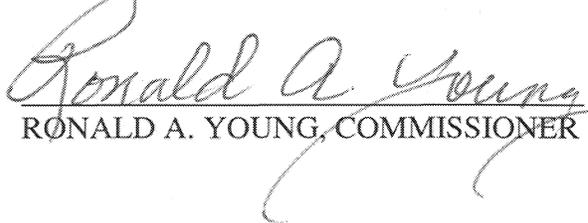
The lack of findings of fact and conclusions of law that the Housing Provider's conduct showed "wilfulness" was fatal in Ratner, and RECAP-Gillian, where the Commission reversed the imposition of fines in both appeals. Likewise, in the instant appeal, the Commission reverses the imposition of the \$1,000.00 fine by the ALJ, because there was no finding of fact and conclusions of law based on record evidence showing there was willful conduct by the Housing Provider. Pursuant to D.C. OFFICIAL CODE § 2-509(e) 2001, the DCAPA, the hearing examiner was required to include findings of fact and conclusions of law on the fine issue for review, but did not. Accordingly, he is reversed on the fine issue, and that issue is remanded to the ALJ for

findings of fact and conclusion of law on the fine. A de novo hearing is not ordered, because the record is complete. Wire Properties, Inc. v. District of Columbia Rental Hous. Comm'n, 476 A.2d 679 (D.C. 1984).

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



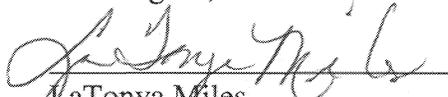
RONALD A. YOUNG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the decision and order in TP 26,129 was served by priority mail, with delivery confirmation, postage prepaid, this **17th day of March, 2003**, to:

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