DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,045 & TP 27,046

In re: 1426 12th Street, N.W., Units 4 & 6

Ward Two (2)

MAX NOORI
Housing Provider/Appellant

v.

ELIZABETH WHITTEN, et al.
Tenants/Appellees

DECISION AND ORDER

September 13, 2002

YOUNG, COMMISSIONER. These cases are 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. 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, 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

I. PROCEDURAL HISTORY

The housing accommodation located at 1426 12th Street, N.W., is a six (6) unit building owned and operated by the housing provider/appellant, Max Noori. On March 16, 2001, Elizabeth E. Whitten, the tenant in unit six (6) of the housing accommodation filed Tenant Petition (TP) 27,045. In her petition Whitten alleged: 1) The rent ceiling filed with the Rental Accommodations and Conversion Division for her unit is improper;

2) a rent increase was taken while her unit was not in compliance with the D.C. Housing Regulations; and 3) services and/or facilities provided in connection with the rental of her unit were substantially reduced. Also on March 16, 2001, Sirajus Salekeen, the tenant in unit four (4) of the same housing accommodation filed Tenant Petition (TP) 27,046. Mr. Salekeen alleged in his petition that a rent increase was taken which was larger than the amount of increase, which was allowed by any applicable provision of the Act.[1]

On July 24, 2001, Administrative Law Judge (ALJ) Henry McCoy conducted OAD hearings on both TP 27,045 and TP 27,046. At the OAD hearing both tenants and the housing provider offered testimony and documentary evidence concerning the issues raised in the tenant petitions. The OAD decisions and orders in both cases were issued on October 23, 2001. In TP 27,045 the ALJ made the following pertinent findings of fact:

3. On December 18, 2000, the Respondent purchased the six (6)--unit apartment building located at 1426 – 12th Street, N.W.

4. On March 2, 2001, the Respondent served the Petitioner with a "Tenant Notice of Increase of General Applicability" that raised her unit's rent ceiling from $705.00 to $720.00 and raised the rent charged from $500.00 to $720.00 effective April 1, 2001 (Respondent's Ex. #6).

5. On March 5, 2001, the Respondent perfected an increase in the rent ceiling for the Petitioner's unit by filing a Certificate of Election of Adjustment of General Applicability with the RACD (Respondent's Ex. #1).

6. On March 27, 2001, a District of Columbia government housing inspector found twenty-four (24) housing code violations during an inspection of the Petitioner's apartment. The violations included holes in the ceiling, loose and peeling paint, and cracks in the wall throughout the apartment.

7 The housing inspector prepared Housing Deficiency Notice #593078 on May 11, 2001, which listed the violations found in the Petitioner's apartment.

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[1] Pursuant to 14 DCMR § 3811.2 (1991) these appeals were consolidated for decision by the Commission. See Noori v. Whitten, TP 27,045 & TP 27,046 (RHC Jan. 4, 2002).

8. During the same inspection on March 27th, the housing inspector cited a violation with the water closet flushing mechanism and issued a violation notice, Housing Violation Notice #595152, mandating abatement within twenty-four (24) hours.

9. On April 1, 2001, the Petitioner started paying the new rent charged for her unit, $720.00, and has continued to do so each month to date.

10. The housing accommodation containing the Petitioner's rental unit was not registered by the Respondent with the RACD at the time of the April 1, 2001 rent increase.

11. As of the date of the hearing, July 24, 2001, all of the housing code violations cited had been abated.

Whitten v. Noori, TP 27,045 (OAD Oct. 23, 2001) at 3-4. The ALJ concluded as a matter of law:

> 1. The Respondent implemented an adjustment in the rent on April 1, 2001 when the rental unit was not in substantial compliance with the housing regulations in violation of D.C. [OFFICIAL CODE § 42-3502.08(a)(1)(A) (2001)] and 14 DCMR §4205.5(a).
>
> 2. The Respondent implemented an adjustment in the rent without being properly registered in violation of D.C. [OFFICIAL CODE § 42-3502.08(a)(1)(B) (2001)] and 14 DCMR §4205.5(b).
>
> 3. The Petitioner failed to meet her burden of proving services or facilities provided in connection with her rental unit have been substantially reduced.

Id. at 7.

Finally, the ALJ's decision ordered:

> [T]hat the rent ceiling and the rent charged for Apartment #6 at 1426 – 12th Street, NW [sic] shall be rolled back immediately to $705.00 and $500.00 respectively, the prior approved levels.
>
> It is **FURTHER ORDERED** that the Respondent shall refund to the Petitioner, within thirty (30) days of the issuance of this order, the excess of monthly rent payments over the approved rent of $500.00, times the number of months since April 1, 2001, plus interest at the rate of 6% per annum for a total refund of $1,632.00. ($220.00 x 7 + 92.00 = $1,632.00.)

It is **FURTHER ORDERED** that the Respondent shall pay a fine in the amount of One Thousand Dollars ($1,000.00) for violating the provisions of D.C. [OFFICIAL CODE § 42-3502.08(a)(1)(A) and (B) (2001).]

Id. at 8.

In TP 27,046 the ALJ made the following pertinent findings of fact:

2. On December 18, 2000, the Respondent purchased the six (6)-unit apartment building located at 1426 – 12th Street, NW [sic].

3. The official rent charged for apartment #4 is $580.00 per month.

4. On March 2, 2001, the Respondent served the Petitioner with a "Tenant Notice of Increase of General Applicability" that raised his unit's rent ceiling from $790.00 to $807.00 and raised the rent charged from $580.00 to $807.00 effective April 1, 2001 (Respondent's Ex. #4).

5. On March 5, 2001, the Respondent perfected an increase in the rent ceiling for the Petitioner's unit by filing a Certificate of Election of Adjustment of General Applicability with the RACD (Respondent's Ex. #1).

6. On April 1, 2001, the Petitioner started paying the new rent charged for his unit, $807.00, and has continued to do so each month to date.

7. The housing accommodation containing the Petitioner's rental unit was not registered by the Respondent with the RACD at the time of the April 1, 2001 rent increase.

Salekeen v. Noori, TP 27,046 (OAD Oct. 23, 2001) at 3. The ALJ concluded as a matter of law:

1. The Respondent implemented an adjustment in the rent without being properly registered in violation of D.C. [OFFICIAL CODE § 42-3502.08(a)(1)(B) (2001)] and 14 DCMR §4205.5 (b).

2. The rent increase implemented by the Respondent was larger than allowed by any applicable provision of the Rental Housing Emergency [sic] Act of 1985.

Id. at 5-6. The ALJ ordered that TP 27,046 be granted, and further ordered:

> [T]hat the rent ceiling and the rent charged for Apartment #4 at 1426 – 12th Street, NW [sic] shall be rolled back immediately to $790.00 and $580.00 respectively, the prior approved levels.

> It is **FURTHER ORDERED** that the Respondent shall refund to the Petitioner, within thirty (30) days of the issuance of this order, the excess of monthly rent payments over the approved rent of $580.00, times the number of months since April 1, 2001, plus interest at the rate of 6% per annum for a total refund of $1,684.00. ($227.00 x 7 + 95.00 - $1,684.00.)
>
> It is **FURTHER ORDERED** that the Respondent shall pay a fine in the amount of Five Hundred Dollars ($500.00) for violating D.C. [OFFICIAL CODE § 42-3502.08(a)(1)(B) (2001)].

Id. at 6.

II. PRELIMINARY ISSUES ON APPEAL

A. Whether the ALJ erred in his decision and order in TP 27,046 when he concluded, as a matter of law that a rent increase was taken by the housing provider that was larger than allowed by any provision of the Act without making findings of facts on that issue.

In his decision in TP 27,046 the ALJ concluded as a matter of law: "The rent increase implemented by the Respondent was larger than allowed by any applicable provision of the Rental Housing Emergency [sic] Act of 1985." Salekeen v. Noori, TP 27,046 (OAD Oct. 23, 2001) at 6. However, in his decision and order the ALJ made no findings of fact regarding this issue raised by the tenant. The DCAPA, D.C. OFFICIAL CODE § 2-509(e) (2001), provides:

> 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. (emphasis added).

In order to meet the requirements of the DCAPA, D.C. OFFICIAL CODE § 2-509 (2001), "(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 King v. District of Columbia Dep't of Employment Servs., 742 A.2d 460, 465 (D.C. 1999). When a decision and order does not contain findings of fact, the reviewing body is compelled to remand the matter, because the record is insufficient for review. Hedgman v. District of Columbia Hackers' License Appeal Bd., 549 A.2d 720, 723 (D.C. 1988). See Collins v. Peter N.G. Schwartz Mgmt., Co., TP 23,571 (RHC Feb. 10, 2000).

In the instant case the ALJ concluded that the housing provider implemented a rent increase larger than allowed by any applicable provision of the Act. However, that conclusion did not "rationally flow" from findings of fact on this issue made by the ALJ. Accordingly, the Commission remands the decision and order in TP 27,046 to OAD for correction of this plain error[2] and for findings of fact consistent with the record evidence on this issue.

The dissent argues that the Commission's power to correct "plain error" is limited to "errors of calculation, apparent mistakes concerning dates and numbers, and errors that are not subject to dispute." The majority of the Commission respectfully disagrees. A review of decisions issued by the Commission reveals that the dissenter joined the Commission when it noticed plain error in decisions which contained errors other than miscalculations of interest, mistakes concerning dates and numbers, and other errors not subject to dispute. The Commission noticed plain error and remanded the Rent Administrator's decision in Baxter v. Jackson, TP 24,370 (RHC Sept. 12, 2000), where the hearing examiner relied upon missing or inadmissible documents in his decision and

[2] "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error." 14 DCMR § 3807.4 (1991).

order. In Ford v. Dudley, TP 23,973 (RHC June 3, 1999), the Commission noticed plain error and stated:

> The Commission's obligation to sustain a hearing examiner's findings of fact, and conclusions of law, is premised on the absence of arbitrary and capricious action, and plain error. In this case, when the hearing examiner held the tenant/petitioner to the standard, clear and convincing evidence, he failed to follow the Act and regulations, and therefore, his use of the clear and convincing evidence standard was plain error. (Footnotes omitted.)

Id. at 9.

The Commission has also noticed plain error in a decision by a hearing examiner where he failed to comply with the DCAPA, as occurred in the instant case. In Joyce v. Webb, TP 20,720 & TP 20,739 (RHC July 31, 2000), the Commission stated:

> The agency, [the Office of Adjudication], had the duty under law, in the Act and in the DCAPA, to preserve the testimony of the witnesses. In other words OAD committed plain error when it failed to preserve properly all the testimony on the hearing tapes, causing the inability of the court reporter to transcribe the tapes and the inability of the Commission to review the complete hearing record for substantial evidence to decide the appeal issues in accordance with D.C. Code § 45-2526(h).

Id. at 6. In the instant case, the ALJ concluded as a matter of law, that the housing provider charged the tenant, Mr. Salekeen, a rent that was larger than allowed by any provision of the law. However, the ALJ failed to make a finding of fact from which that conclusion of law rationally flowed. The majority holds that the ALJ committed plain error, which must be corrected.

B. Whether the ALJ erred when he failed to provide a calculation of the interest on the rent refunds he awarded the tenants.

In his decisions and orders the ALJ awarded interest on the rent refunds given to the tenants. In Whitten v. Noori, TP 27,045 (OAD Oct. 23, 2001), the decision stated:

> [T]he Respondent shall refund to the Petitioner, within thirty (30) days of the issuance of this order, the excess of monthly rent payments over the approved rent

> of $500.00, times the number of months since April 1, 2001, plus interest at the rate of 6% per annum for a total refund of $1,632.00. ($220.00 x 7 + 92.00 = $1,632.00.)

Id. at 8. In Salekeen v. Noori, TP 27,046 (OAD Oct. 23, 2001), the decision stated:

> [T]he Respondent shall refund to the Petitioner, within thirty (30) days of the issuance of this order, the excess of monthly rent payments over the approved rent of $580.00, times the number of months since April 1, 2001, plus interest at the rate of 6% per annum for a total refund of $1,684.00. ($227.00 x 7 + 95.00 = $1,684.00.)

Id. at 6. In each case the ALJ awarded interest on refunds without providing the calculation he utilized to arrive at the amount of interest awarded. The ALJ computed the refund by multiplying the monthly overcharge by the number of months the tenant paid rent. After reaching the total amount of the rent overcharge, the ALJ indicated the dollar amount of the interest. He offered no explanation of the method or equation he used to calculate the interest. In each case this was plain error, because the Commission cannot review the calculation as stated by the ALJ in his decisions and orders.

"Interest is calculated using the formula, I (interest) = P (principal) x R (rate) x T (time). Interest is calculated by multiplying the amount of the overcharge; by the number of months the overcharge was held by the housing provider, by the annual judgment interest rate, which has been converted to a monthly rate. A separate calculation is performed for each month, to arrive at the total." Hudley v. McNair, TP 24,040 (RHC June 30, 1999) at 17-18; citing Stevens v. Cannon, TP 23,523 (RHC Oct. 23, 1998); Johnson v. Gray, TP 21,400 (RHC Aug. 1, 1994); 14 DCMR § 3826.2 (1991).[3] Accordingly, the decisions in TP 27,045 and TP 27,046 are remanded to OAD for a

[3] After giving notice in the D.C. Register on August 15, 1997, the Commission amended Title 14 DCMR on December 22, 1997 with the adoption of a new section 3826 on the calculation of interest. The notice of final rule making was published in the D.C. Register on February 6, 1998.

recalculation of the interest due the tenants, showing the method utilized to arrive at the interest amount.

III. ISSUE ON APPEAL

The housing provider/appellant, Max Noori, filed timely appeals of both OAD decisions. In both notices of appeal the appellant argues:

> Appellant made all the attempts to diligently follow all the steps to obtain all the required documents for providing a lawful housing for his tenant. The only unintentional or technical mistake was made was [sic] when filling [sic] the forms for Department of Consumer and Regulatory Affairs Housing Regulation and Administration [sic], appellant forgot to put his existing registration number i.e., 41000103 (see attachment 1), and he put the prior owner's license number 3000068 (see attachment 2). This is the issue.
>
> Since the applicant possessed his own registration number at the time, appellant insists that this was only a technical and an unintentional mistake, so there was no other reason to use the prior owner's number.

Notices of Appeal at unnumbered pages 3.

IV. DISCUSSION OF THE ISSUE

Whether the ALJ erred when he imposed fines on the housing provider for violating the provisions of the Act at D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A) and (B) (2001).

In his decisions in TP 27,045, the ALJ ordered that the housing provider pay a $1,000.00 fine for violating the provisions of the Act. In TP 27,046 the ALJ ordered the housing provider pay a $500.00 fine. In each case, the ALJ found that the housing provider violated the Act at D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A) & (B) (2001), which provide:

> a)(1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:
>
> (A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be

> limited to housing regulations violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures;
> (B) The housing accommodation is registered in accordance with § 42-3502.05.

In both cases the ALJ determined that the housing provider used the Registration/Claim of Exemption number of the prior owner of the housing accommodation. In his decisions the ALJ stated:

> There is no indication that the Respondent filed a registration statement with the Rent Administrator for the housing accommodation at 1426 – 12th Street, NW. [sic]. In fact, it is apparent from the documents he introduced into evidence at the hearing that he used the prior owner's registration number instead of filing a Registration/Claim of Exemption form in his own name as required. The Respondent's failure to meet the registration requirements negates his ability to implement a rent adjustment for the Petitioner's unit.

...

> In this case, the Respondent knew or should have known that he had to register the apartment building after he purchased it. Further, the documents he filed with RACD specifically put him on notice that the housing accommodation had to be properly registered.

Whitten v. Noori, TP 27,045 (OAD Oct. 23, 2001) at 5-6; Salekeen v. Noori, TP 27,046 (OAD Oct. 23, 2001) at 5.

The record contains a Certificate of Occupancy issued to the housing provider, Max Noori, on January 16, 2001, by the Department of Consumer and Regulatory Affairs (DCRA), Building and Land Regulation Administration. The Certificate of Occupancy bears the number 189705. Record in TP 27,046 (R. TP 27,046) at 40. The record also contains a Housing Business License issued to the housing provider on January 16, 2001 by DCRA's, Business Services Division, Business Regulation Administration bearing license number 31000331. R. TP 27,046 at 41. The only registration form contained in the record is an Amended Registration Form date-stamped by DCRA on March 14, 2000,

and lists David B. Tolson, LLC as the owner of the housing accommodation at 1426 12th Street, N.W. R. TP 27,045 at 29; R. TP 27,046 at 22. The property registration number listed on the form is 3000068, the identical number used by the current housing provider, Max Noori, when he filed Certificates of Election of Adjustment of General Applicability for the tenants' units.

The Act, D.C. OFFICIAL CODE § 42-3502.05(g) (2001), provides:

> An amended registration statement shall be filed by each housing provider whose rental units are subject to registration under this chapter within 30 days of any event which changes or substantially affects the rents ... services, facilities, or the housing provider or management of any rental unit in a housing accommodation.

On appeal to the Commission, the housing provider argues that he committed an "unintentional" or "technical mistake," when he used the prior owner's Registration/ Claim of Exemption number. He further argues that he attempted to meet all the obligations required by law. However, the record does not contain evidence that the housing provider complied with the registration requirement of the Act as stated in § 42-3502.05(g). The ALJ, the finder of fact, determined that the housing provider committed a "knowing" violation of the Act. The Act, D.C. OFFICIAL CODE § 42-3509.01(b) also provides, any person who wilfully ... 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.

The District of Columbia Court of Appeals has previously held:

> 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 [Rental Housing Commission] is indisputably authorized to impose fines pursuant to subsection (b) or any other provision of the penalty section.

Revithes v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1007, 1021-1022 (D.C. 1987). The Commission has held: "When a housing provider fails to register, obtain a certificate of occupancy or housing business license, he circumvents the safeguards designed to insure the safe operation of the housing accommodation, and he thwarts the government's interest in stabilizing rent levels." 424 Q St. Ltd. P'ship/T.K. Chamberlain v. Evans, TP 24,597 (RHC July 31, 2002) at 19.

The Commission's authority to review the ALJ's decisions is found in D.C. OFFICIAL CODE § 42-3502.16(h), which states:

> The Rental Housing Commission may reverse, in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this chapter, or unsupported by substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision.

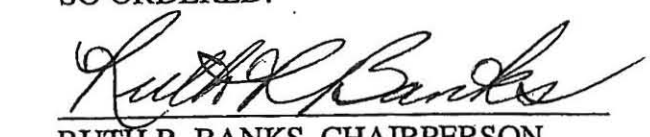
The ALJ properly exercised his discretion when he imposed a fine for the housing provider's violations of the registration requirements of the Act. The Commission will not reverse a decision of the Rent Administrator where it finds the party appealing the decision fails to show that the decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the provisions of the Act. Accordingly, the decisions of the ALJ imposing fines in the amount of $1,500.00 are affirmed.

V. CONCLUSION

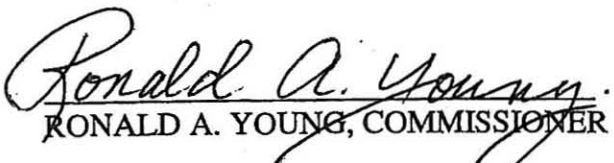
These decisions are remanded to the ALJ for findings of fact leading to his conclusions of law that the housing provider implemented a rent increase larger than allowed by any applicable provision of the Act. Further, the ALJ is ordered to re-calculate the interest due on the rent refunds awarded utilizing the method discussed supra. Finally, the Commission notes that the housing provider, Max Noori, has failed to

file a Registration/Claim of Exemption Form with this agency. Accordingly, the housing provider is ordered to file a Registration/Claim of Exemption Form with DCRA's Rental Accommodation and Conversion Division within 30 days of receipt of this decision. See 14 DCMR § 4101 (1991).

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



RONALD A. YOUNG, COMMISSIONER

LONG, COMMISSIONER, dissenting:

When the majority of the Commission raised Preliminary Issue A in Part II of its decision and remanded the issue raised in Preliminary Issue B, the majority exceeded the bounds of its authority to correct plain error.

I. PRELIMINARY ISSUE A

In support of its decision to raise Preliminary Issue A, the majority cited 14 DCMR § 3807.4 (1991), which provides: "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error." The Commission's regulations do not define plain error. However, the Commission invokes its power to correct plain errors of calculation, apparent mistakes concerning dates and numbers, and errors that are easily discernible and not subject to dispute. Assalaam v. Lipinski, TPs 24,726 & 24,800 (RHC Aug 31, 2000); Kemp v. Marshall Heights Cmty. Dev., TP 24,786 (RHC Aug. 1, 2000) at 9 n.15; 424 Q St. Ltd. P'ship v. Evans, TP 24,597 (RHC July 31, 2000); Stevens v. Cannon, TP 23,523 (RHC

1998). See also Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542 (D.C. 1984) (holding that Commission rules permit the Commission to consider issues not raised in the notice of appeal insofar as they revealed plain error and specifically holding that the Commission may exercise its discretion to notice the plain error concerning a computation that the tenants did not raise in the notice of appeal, but alleged during the Commission hearing).

The majority raised Preliminary Issue A and determined that the ALJ erred in TP 27,046 when he concluded, as a matter of law, that the rent increase implemented by the housing provider was larger than allowed by any applicable provision of the Act, but failed to make "findings of fact regarding this issue raised by the tenant." Majority Decision at 5 (emphasis added). The majority remanded the decision in TP 27,046 "for correction of this plain error and findings of fact consistent with the record evidence on this issue." Id. at 6 (emphasis added).

The majority's remand for the ALJ to correct the error reveals that the error was not the type of plain error that the law empowers the Commission to correct. The remand requires the ALJ to issue findings of fact, which may affect the judgment and the rights of the parties in a manner that far exceeds the Commission's power to correct plain error.[4] The necessity of a remand, because the majority could not correct the error, illustrates the fact that the issue raised by the majority was not plain error within the

[4] When the ALJ issues the decision and order following the majority's remand of an issue that neither party raised, the new findings of fact may affect the original judgment, impact the majority's rulings in the instant appeal, and generate a new appeal.

meaning of 14 DCMR § 3807.4 (1991). Moreover, Preliminary Issue A was not "plain error," because it is subject to dispute.[5]

In the absence of plain error, the majority raised an issue because the ALJ failed to make "findings of fact regarding this issue raised by the tenant." Majority Decision at 5 (emphasis added). The Commission is not empowered to review the ALJ's failure to address an issue that the tenant raised before the ALJ, in the absence of an appeal on this issue. The Commission shall only review issues that parties raise in the notice of appeal. 14 DCMR § 3807.4 (1991). The majority exceeded its authority when it raised Preliminary Issue A, because the tenant did not file a notice of appeal to allege error in the ALJ's decision; and the tenant's right to challenge the ALJ's decision terminated at the end of the appeal period. The majority has raised an issue that the tenant did not appeal. Arguably, the tenant did not appeal because the tenant received a favorable ruling. The majority's remand may disturb the judgment in favor of the tenant, when the tenant alleged no error concerning the ALJ's alleged failure to issue "findings of fact regarding this issue [that was not] raised by the tenant" on appeal. Id. Moreover, when the majority raised Preliminary Issue A for the first time in the decision and order, neither party received notice nor an opportunity to present argument on the issue raised by the majority.

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[5] The notion that the "conclusion of law did not 'rationally flow' from the findings of fact" is subject to dispute. One could argue that the ALJ's conclusion that the rent increase was larger than allowed by the Act rationally flowed from Findings of Fact 4 and 7. In Finding of Fact 4, the ALJ found that the housing provider increased the rent ceiling from $790.00 to $807.00 and increased the rent from $580.00 to $807.00, effective April 1, 2001. In Finding of Fact 7, the ALJ found that the rental unit was not registered with RACD at the time of the April 1, 2001 rent increase. The ALJ rolled the rent ceiling and the rent back to $790.00 and $580.00 respectively, which were the levels before the housing provider implemented the increases on April 1, 2001. See Salekeen v. Noori, TP 27,046 (OAD Oct. 23, 2001).

In response to the dissent, the majority has mistakenly characterized the dissent as arguing that the Commission's power to correct plain error is limited to calculation errors. The thrust of the dissent is that the Commission's authority is limited to noticing and correcting plain error. When the majority raised an issue that did not constitute plain error, the majority exceeded the parameters of its limited power to review issues that parties raise on appeal.

II. PRELIMINARY ISSUE B

The majority raised Preliminary Issue B in accordance with 14 DCMR § 3807.4 (1991). The ALJ's failure to properly calculate interest on the rent refunds is the type of error that is properly raised and corrected pursuant to the Commission's power to correct plain error. However, the majority failed to follow the dictate of § 3807.4 and correct the calculation error. A remand is counter intuitive to the concept of correcting plain error and invites protracted adjudication on an issue that the parties did not raise.

III. CONCLUSION

When the majority raised Preliminary Issue A, the majority departed from the time-honored concept that an appellate body may only review issues that a party raises on appeal. The majority exceeded the scope of its power to correct plain error when it raised and remanded Preliminary Issue A. The majority properly invoked 14 DCMR § 3807.4 (1991) to address a calculation error in Preliminary Issue B; however, the majority erred when it remanded the issue and failed to correct the plain error.

Accordingly, I dissent.

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,045 and TP 27,046 was served postage prepaid by priority mail with delivery confirmation this **13th day of September, 2002** to:

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