

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,084

Ward Six (6)

In re: 116 P Street, S.W., Unit One (1)

BARBARA SCHAUER  
Housing Provider/Appellant

v.

AHMED ASSALAAM  
Tenant/Appellee

**ORDER ON MOTION FOR RECONSIDERATION**

**May 6, 2004**

**BANKS, CHAIRPERSON.** In Assalaam v. Schauer, TP 27,084 (OAD July 15, 2002) at 9, Administrative Law Judge (ALJ) Henry McCoy calculated the rent refund to be \$1050.00,<sup>1</sup> and that amount was trebled to \$3150.00<sup>2</sup> with \$274.05 added as interest<sup>3</sup> at 4% to the date of the decision for the total of \$3424.00. The Housing Provider appealed the rent refund (\$1050.00), the treble amount (\$3150.00), and the imposition of interest (\$274.05). On April 15, 2004, the Commission issued the decision and order, which inter alia, affirmed the imposition of treble damages and interest. The Commission's decision quoted and relied upon the Housing Provider's counsel's representations in the notice of appeal, which stated:

Since closing of the record of the case in 2001, the parties, on July 29, 2003 had a full trial before the D.C. Superior Court on the issue of rent due over the 53 month period between July 1, 1999 and July 31, 2003. The trial judgment credited to Mr. Assalaam the \$1050.00 rent refund

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<sup>1</sup> Rent refunds are authorized by D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

<sup>2</sup> Treble damages are authorized by D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

<sup>3</sup> Interest is authorized by 14 DCMR § 3826 (1991).

(plus interest) that had been affirmed by the Rental Housing Commission order of December 31, 2002. (emphasis added.)

Notice of Appeal at 2 & 3.

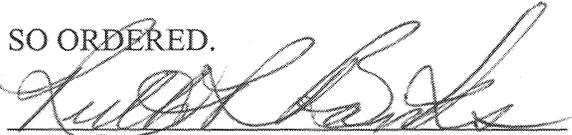
The Commission's decision dated April 15, 2004, relied upon the above representation of counsel, who signed the notice of appeal. On April 21, 2004, Ahmed Assalaam, Tenant, filed a motion for reconsideration, which stated that the Superior Court had not credited him with all the interest (\$274.05) awarded by the ALJ, and affirmed by the Commission in its decision dated April 15, 2004. Counsel for the Housing Provider did not oppose the motion and did not consent that the Tenant's assertions about the amount of interest credited to him were correct.

The Commission is presented, in this appeal, with a classic conflict of facts between the parties. The issue is whether the Tenant received credit in the Superior Court for all of the interest awarded to him, as stated in the notice of appeal. The Commission cannot make the missing findings of fact, because that is the function of the hearing agency, not an appeals agency, like the Commission. Meier v. District of Columbia Rental Accommodations Comm'n, 372 A.2d 566 (D.C. 1977). Where the appeal court determines that sufficient findings of fact are not before it, the proper procedure is to remand the case to the hearing agency for findings of fact on the issue before the appeals court. See Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n, 573 A.2d 362 (D.C. 1990).

The Commission concludes that the record contains the conflicting representation of counsel in the notice of appeal and representation of the Tenant in the motion for reconsideration, on interest, without record evidence to support either of them. Since there is no record evidence independent of the conflicting statements of the parties on the

amount of interest credited to the Tenant in the Superior Court, this case is remanded for proof on that one issue: what amount of interest was credited to the Tenant by the Superior Court from the amount of interest, \$274.05, awarded by the ALJ and affirmed by the Commission.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



RONALD A. YOUNG, COMMISSIONER

#### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion for Reconsideration in TP 27,084 was mailed by priority mail, with confirmation of delivery, postage prepaid this 6<sup>th</sup> day of May, 2004, to:

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