

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,098

In re: 1930 Columbia Road, N.W., Unit 316

Ward One (1)

**ABDUL WAKIL AMIRI**  
Tenant/Appellant

v.

**THE GELMAN MANAGEMENT COMPANY**  
Housing Provider/Appellee

**DECISION AND ORDER**

**March 11, 2004**

**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.**

On May 8, 2001, Abdul Wakil Amiri, Tenant, filed in the Housing Regulation Administration a tenant petition alleging: 1) improper rent increases, 2) reduction of services and facilities, and 3) an illegal demand for a security deposit. On September 25, 2001, a hearing was held on the petition. On July 30, 2002, Hearing Examiner Gerald Roper issued the decision and order containing the following text:

After careful evaluation and analysis of the evidence, the Examiner finds as a matter of fact:

### Findings of Fact

1. The Housing Accommodation is located at 1930 Columbia Road, N.W., Washington, D.C.
2. The Housing Accommodation is managed by Gelman Management Company.
3. Petitioner has been a tenant of Unit 316 at the Housing Accommodation since May 19, 1995.
4. The Housing Accommodation has 167 rental units.
5. In April 1995, Respondent took a 12% vacancy increase in the rent ceiling with respect to Unit 316 increasing the rent ceiling to \$1,036.
6. The rent charged to Petitioner at the inception of his tenancy in Unit 316 was \$475.
7. Effective June 1, 1996, the rent ceiling for Unit 316 was increased from \$1,036 to \$1,056 and the rent charged was increased from \$475 to \$485.
8. Effective June 1, 1997, the rent ceiling for Unit 316 was increased from \$1,056 to \$1,086 and the rent charged was increased from \$475 to \$500.
9. Effective June 1, 1998, the rent ceiling for Unit 316 was increased from \$1,086 to \$1,106 and the rent charged was increased from \$500 to \$515.
10. Effective June 1, 1999, the rent ceiling for Unit 316 was increase [sic] from \$1,106 to \$1,117 and the rent charged was increased from \$515 to \$540.
11. Effective June 1, 2000, the rent ceiling for Unit 316 was increased from \$1,117 to \$1,140 and the rent charged was increased form \$540 to \$575.
12. Effective June 1, 2001, the rent ceiling for Unit 316 was increased from \$1,140 to \$1,178 and the rent charged was increased from \$575 to \$625.
13. The rent charged did not, at any time, exceed the legally calculated rent ceiling.

14. The rent for Unit 316 had not been increased within 180 days prior to June 1, 2001.
15. Notice of all the increases in the rent during Petitioner's tenancy at Unit 316 were properly given.
16. There is no evidentiary basis to reduce the current \$1,178 rent ceiling for Unit 316 below the current \$625 rent charged.
17. The security deposit demanded by Respondent and paid by Petitioner with respect to Petitioner's tenancy at Unit 316 was demanded when Petitioner moved into Unit 316.

Amiri v. Gelman Mgmt. Co., TP 27,098 (OAD July 30, 2002) (Decision) at 8-9.

### **Conclusions of Law**

After careful evaluation of the evidence, the Examiner concludes, as a matter of law:

1. The rent increases to the rent charged to Petitioner for 1999, 2000, and 2001 were in conformity with the Unitary Rent Ceiling Adjustment Act, D.C. Code codified as § 45-2518 (h) (1) (and now codified as § 42-35 02.08 (H) (1)) [sic].
2. There is no violation of the Act upon which to reduce the rent ceiling to a level below the current rent charged.
3. No security deposit was demanded of Petitioner after he moved into Unit 316, in violation of D.C. Code § 42-3502.17.

Decision at 9.

The Tenant filed a motion for reconsideration and on August 12, 2002, the hearing examiner issued an order on the Tenant's motion for reconsideration. The order denied the Tenant's attempt to find error in the decision based on a housing inspection report that was the result of an inspection, which occurred in June 2002. The inspection report issued in July 2002, after the hearing record closed in September 2001. Therefore, the

report was not a part of the hearing record in this case, and not newly discovered evidence, pursuant to 14 DCMR § 4013 (1991).

## **II. THE NOTICE OF APPEAL**

On August 15, 2002, Amiri, the Tenant, filed a pro se notice of appeal in the Commission. The notice of appeal raised the following issues: 1) Whether the Gelman Mgmt. Co., the Housing Provider, failed to comply with the housing code when it increased the Tenant's rent during the eight years prior to filing the tenant petition; 2) Whether the Tenant can appeal an order on a motion for reconsideration to the Commission; and 3) Whether the fine against the Housing Provider entitled the Tenant to a refund of rent based on the housing code violations. The Commission held the appellate hearing on February 25, 2003.

## **III. DISCUSSION OF THE ISSUES**

### **A. Whether the Housing Provider failed to comply with the housing code, when it increased the Tenant's rent during the eight years prior to the Tenant filing the tenant petition.**

The hearing examiner made findings of fact and conclusions of law that all of the rent ceiling and rent charged increases were proper, and the Commission reviewed them and determined they were supported by substantial evidence in the record. Decision at 4-5. The hearing examiner held that housing code violations were not severe enough to reduce the rent ceilings and make a rent refund to the Tenant in accordance with D.C.

OFFICIAL CODE § 42-3502.11 (2001), which provides:

If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease

the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.

See Kemp v. Marshall Heights Cmty. Dev. Ctr., TP 24,786 (RHC Aug. 1, 2000); Hiatt Place P'ship v. Hiatt Place Tenants' Assoc., TP 21,149 (RHC May 10, 1991) (where the Commission held the tenant was entitled to a rent refund, only if the reduced rent ceiling was lower than the rent charged).

In addition, the Housing Provider urges that the hearing examiner's decision and order be affirmed, because the Tenant's claims are barred by the statute of limitations. Since the Housing Provider did not appeal to the Commission, we look to the law on whether we can consider the Housing Provider's position. Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293, 1302 (D.C. 1990) quoting United States of American Ry Express Co., 265 U.S. 425, 435 [citations omitted] (1924), which stated:

[T]he appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court or an insistence upon a matter overlooked or ignored by it. Accord, Edwards v. Woods, 385 A.2d 780, 783 (D.C. 1978) ('[i]n pursuing her defense on this appeal, [appellee] is free to urge a rationale different from that utilized by the trial court').

Id. at 1302.

Counsel for the Housing Provider argued to the Commission that:

[T]he Hearing Examiner failed to address the fact that Appellee [Housing Provider], during the hearing in this matter, moved to dismiss Appellant's reduction of services claim. This motion was based upon the Decision of the Rental Housing Commission in Borger Mgmt., Inc. v. Warren, TP 23,909 (RHC July 22, 1998). ... Although the Decision and Order with respect to the reduction in services aspect of the Tenant Petition may not be as complete as is desirable, due to the Hearing Examiner's failure to address Appellee's Motion to Dismiss the reduction of services claims based on the statute of limitations, this failure is harmless error because, as

a matter of law, the reduction of services claims are barred by the applicable statute of limitations....

Housing Provider's Memorandum in Lieu of Brief at 1-2.

D.C. OFFICIAL CODE § 42-3502.06(e) (2001) states:

A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment.

A Tenant may challenge a rent adjustment within three years of its effective date.

D.C. OFFICIAL CODE § 42-3502.06 (2001). See Kennedy v. District of Columbia Rental Hous. Comm'n, 709 A.2d 94 (D.C. 1998); Amiri v. Gelman Mgmt. Co., TP 27,501 (RHC Oct. 3, 2003) (where the Commission disallowed a rent refund for housing code violations which were eight years in duration, because they exceeded the three-year statute of limitations in the Act.)

While the Housing Provider has the right to assert the statute of limitations as a reason to affirm the hearing examiner's decision, because the Housing Provider raised the statute of limitations below at the hearing in the motion to dismiss, the Commission affirms the hearing examiner for the different reason used by the hearing examiner. The Tenant presented his case as two separate issues: whether the rent increases were proper<sup>1</sup> and he asserted that he had reductions of services and facilities, which the hearing examiner held were not sufficient to cause a reduction in the rent ceiling below the rent charged for a rent refund. Decision at 7; Hiatt Place P'ship v. Hiatt Place Tenant's

---

<sup>1</sup> On the tenant petition, the Tenant checked the box stating, "[t]he rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Emergency [sic] Act of 1985." His handwritten explanation on this boiler plate did not state his rent was increased while housing code violations existed and the CD recording of the hearing did not include testimony that the rent increases occurred when housing code violations existed.

Assoc., TP 21,149 (RHC May 1, 1991). The Commission affirms the hearing examiner's ruling, which does not rely on the statute of limitations as argued by the Housing Provider to the Commission.

The Tenant did not present at the hearing below the issue of whether the Housing Provider failed to comply with the housing code, when it increased the Tenant's rent during the eight years prior to the Tenant filing the tenant petition. See D.C. OFFICIAL CODE § 42-3502.08 (2001). The law is that an issue must be raised at the hearing before it is raised on appeal. Alternatively stated, an issue not raised below cannot be raised on appeal. See 1880 Columbia Rd. Tenants' Assoc. v. District of Columbia Rental Hous. Comm'n, 400 A.2d 330, 339 (D.C. 1979); Lenkin Co. Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 642 A.2d 1282 (D.C. 1994) (where the court stated failure to raise a claim at the agency level precludes raising it on appeal).

Accordingly, this issue is denied and the hearing examiner is affirmed.

**B. Whether the Tenant can appeal to the Commission  
an order on a motion for reconsideration.**

On August 12, 2002, pursuant to 14 DCMR § 4013 (1991), the hearing examiner issued an order on the Tenant's motion for reconsideration. The order denied the motion, because it was based on a Housing Deficiency Notice that was issued on July 10, 2002, more than a year *after* the tenant filed the tenant petition on May 8, 2001. The Housing Deficiency Notice was not a part of the hearing record, but was attached to the motion for reconsideration after the decision and order issued on July 30, 2002. Tenant's notice of appeal stated, "the hearing examiner erred again to judge the motion for reconsideration of 08-07-02." Notice of Appeal at I.

The law is that an order on motion for reconsideration is not subject to appeal to the Commission, 14 DCMR § 4013.3 (1991). See Dey v. L. J. Dev., Inc., TP 26,119 (Aug. 29, 2003); Alpar v. Polinger, TP 27,146 (RHC Aug. 8, 2003.) n.1; Wedderburn v. Thomas, TP 23,970 (RHC July 30, 1996). Therefore, the Commission dismisses this appeal issue.

**C. Whether the fine against the Housing Provider entitled the Tenant to refund of rent based on housing code violations.**

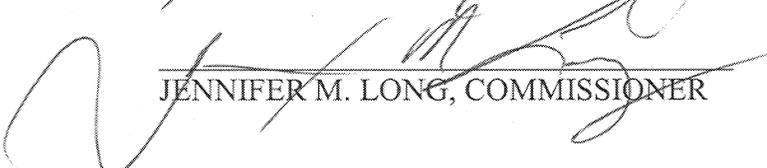
The fine of \$1840.00 against the Housing Provider was stated on the Housing Deficiency Notice, which was attached to the Tenant's motion for reconsideration. See Record (R.) at 98. The fine was not a part of the hearing record, see issue B above, and therefore, cannot be considered on appeal, because it was presented by the Tenant as an attachment to the motion for reconsideration, rather than as evidence in the hearing record. Moreover, the fine in the Housing Deficiency Notice was not imposed by the hearing examiner in the decision, and therefore is not subject to review by the

Commission, which only has jurisdiction to review the decisions and orders issued by the Rent Administrator, pursuant to D.C. OFFICIAL CODE § 42-3502.02 (2001).<sup>2</sup> Thus, this issue is denied and the hearing examiner is affirmed.

SO ORDERED.

  
RUTH R. BANKS, CHAIRPERSON

  
RONALD A. YOUNG, COMMISSIONER

  
JENNIFER M. LONG, COMMISSIONER

#### 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's Rule, D.C. App. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by

---

<sup>2</sup> The Act, D.C. OFFICIAL CODE § 42-3509.01(f), provides:

Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of subsections (b), (d), and (e) of this section, or any rules or regulations issued under the authority of these subsections, pursuant Chapter 18 of Title 2. Adjudication of any infraction of these subsections shall be subject to Chapter 18 of Title 2.

Therefore, the fine in the Housing Deficiency Notice was subject to adjudication in accordance with Chapter 18, Title 2 of the D.C. OFFICIAL CODE.

tendering the prescribed docketing fee to the clerk." The Court may be contacted at the following address and telephone number:

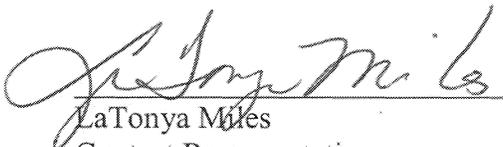
D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W., 6th Floor  
Washington, D.C. 20001  
(202) 879-2700

### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,098 was mailed by priority mail, with confirmation of delivery, postage prepaid this 11<sup>th</sup> day of March, 2004, to:

Abdul W. Amiri  
1930 Columbia Road, N.W.  
Unit 316  
Washington, D.C. 20009

Stephen H. Abraham, Esquire  
Greenstein DeLorme & Luchs, P.C.  
1620 L Street, N.W., Suite 900  
Washington, D.C. 20036



LaTonya Miles  
Contact Representative  
(202) 442-8949