

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,150

In re: 3140 Q Street, N.W.

Ward Two (2)

JAMES A. LINEN  
Tenant/Appellant

v.

DOUGLAS LANFORD  
Housing Provider/Appellee

**DECISION AND ORDER**

September 29, 2003

**LONG, COMMISSIONER.** This case is on appeal from the 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. 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**

On June 6, 2001, Attorney Morris Battino filed Tenant Petition (TP) 27,150 on behalf of the tenant, James A. Linen. The petition concerned the housing accommodation located at 3104 Q Street, N.W. The tenant alleged that the housing provider, Douglas Lanford, implemented a rent increase that was larger than any increase permitted by the Act; failed to file the proper rent increase forms with the Rental Accommodations and

Conversion Division (RACD); charged a rent that exceeded the legally calculated rent ceiling; filed an improper rent ceiling with the RACD; failed to properly register the housing accommodation; and directed retaliatory action against the tenant in violation of § 502 of the Act.

The Office of Adjudication scheduled the matter for a hearing on January 29, 2002. The tenant appeared with counsel, Morris Battino. The housing provider, Douglas Lanford, appeared with counsel, Steven Levine and Irene Lindner, and a witness, Kevin Schlosberg. Shortly before the hearing, the housing provider filed a motion to dismiss the tenant petition, based on the statute of limitations. Hearing Examiner Henry McCoy continued the hearing to enable the parties to submit briefs on the issues raised in the motion to dismiss. The hearing examiner reconvened the hearing on March 19, 2002 and received evidence on the allegations raised in the tenant petition.

On August 23, 2002, the hearing examiner issued the decision and order. The hearing examiner issued his ruling on the housing provider's motion to dismiss the tenant petition based upon the statute of limitations.<sup>1</sup> Since the tenant filed the petition on June 6, 2001, the hearing examiner determined that the tenant could challenge any rent adjustments implemented between June 6, 1998 and June 6, 2001. The hearing examiner granted the motion to dismiss all challenges to rent adjustments implemented prior to June 6, 1998; denied the motion as to the tenant's claims that fell within the three year

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<sup>1</sup> D.C. OFFICIAL CODE § 42-3502.06(e) (2001) provides:

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, except that a tenant must challenge the new base rent as provided in § 42-3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

statute of limitations; and held that there was no statute of limitations on challenging the validity of a claim of exemption. In addition, the hearing examiner rendered the following conclusions of law:

1. The rent increased [sic] implemented by Respondent were larger than the amount of increase allowed by any applicable provision of the Act, D.C. Code § 42-3501.01 *et seq.*
2. Respondent failed to file the proper rent increase forms with RACD as required by 14 DCMR 4205.4.
3. The rent being charged exceeded the legally calculated rent ceiling in violation of D.C. Code § 42-3502.08(a)(1)(B).
4. The rent ceiling filed with RACD is improper in violation of D.C. Code § 42-3502.06.
5. The housing accommodation is not properly registered with RACD in accordance with D.C. Code § 42-3502.05(f).
6. Respondent has directed retaliatory action against Petitioner in violation of D.C. Code § 42-3505.02(b).

Linen v. Lanford, TP 27,150 (OAD Aug. 23, 2002) at 13. The hearing examiner ordered the housing provider to refund \$24,392.51 to the tenant, rolled the tenant's rent back to \$1616.00, and imposed a fine in the amount of \$1000.00 for directing retaliatory action against the tenant.

The tenant appealed the decision to the Commission on September 4, 2002, and the housing provider filed a cross appeal on September 24, 2002. The Commission held the appellate hearing on November 13, 2002. Thereafter, the Commission dismissed the housing provider's cross appeal because it was untimely, and denied the tenant's attorney's motion to file the appellate brief out of time. See Linen v. Lanford, TP 27,150 (RHC Mar. 24, 2003); Linen v. Lanford, TP 27,150 (RHC May 21, 2003).

## II. ISSUES ON APPEAL

In the notice of appeal the tenant, through counsel, raised the following issues:

1. Whether the denial of treble damages by the hearing examiner was reversible error.
2. Whether the finding/holding below of retaliation by the Housing Provider against Appellant is inconsistent with no finding of bad faith and no award of treble damages.
3. Whether the failure by the Hearing Examiner to award damages up to the date of the Decision and Order was error.
4. Whether a finding of no fraud by the Housing Provider was reversible error.
5. Whether the finding of no bad faith by the hearing examiner to determine treble damages was reversible error.

Notice of Appeal at 2.

## III. DISCUSSION

- A. Whether the denial of treble damages by the hearing examiner was reversible error.
- B. Whether the finding of no bad faith by the hearing examiner to determine treble damages was reversible error.

The hearing examiner found that the housing provider knowingly demanded rent that exceeded the maximum allowable rent for the housing accommodation. The hearing examiner ordered the housing provider to refund \$24,392.51, which was the amount by which the rent exceeded the applicable rent ceiling, and he rolled the tenant's rent back to the amount of the rent ceiling. However, the hearing examiner did not impose treble damages.

The hearing examiner imposed a rent refund in accordance with the penalty provision of the Act, D.C. OFFICIAL CODE § 42-3509.01(a) (2001), which 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 .... 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.

The hearing examiner enunciated and properly applied the two-prong test to determine whether the housing provider was liable for treble damages. The hearing examiner stated:

As to whether Respondent acted in bad faith, and is liable for treble damages, the Rental Housing Commission has established a two-pronged test. First is a determination that there was a knowing violation of the Act, which was just made. Second is a determination that the housing provider's conduct was bad enough to warrant a finding of bad faith. See Fazekas v. Dreyfuss Brothers, Inc., TP 20,394 (RHC Apr. 14, 1989). ... In the case at bar, the situation is such that Respondent improperly registered the property and subsequently, based on that improper registration increased Petitioner's rent.

While Respondent should have known or should have inquired about the necessary documents to make his registration complete and proper, there is nothing in the record that rises to the level of egregious conduct. Respondent testified that he managed the property himself, filled out the registration form, and at the time thought he had filled it out accurately to exempt his rental property from the requirements of the Act. Respondent's testimony on filing the claim of exemption form is found to be credible.

While it is now determined that the filing was improper, there is nothing in the record to support Petitioner's argument that Respondent intended to perpetrate a fraud. Respondent believed he had taken the proper step to make his property exempt and acted accordingly. While there was competing testimony as to the basis for the increases taken, Respondent's testimony that they were taken to bring the house up to market level rents was deemed more credible. Therefore no bad faith is found.

Linen v. Lanford, TP 27,150 (OAD Aug. 23, 2002) at 9.

The record evidence revealed that the housing provider lived in the housing accommodation for nearly twenty years. After he retired, he moved to Alabama and rented the upper level of his home, which the tenant currently occupies.<sup>2</sup> The housing provider filed a claim of exemption with the RACD on June 19, 1992, and the agency assigned a claim of exemption number. The housing provider was not aware that his registration was defective until approximately a decade after he filed the claim of exemption and received an exemption number from the agency. The housing provider testified that the subject housing accommodation is the only rental property he owns in the District of Columbia. He indicated that he managed the property and filed the claim of exemption without the assistance of a management company. He indicated that he was not aware that he needed a certificate of occupancy, and his mistakes were made as a result of his ignorance of the law.

The hearing examiner identified the two-prong test for determining whether to award treble damages, and he properly applied the test to the facts of the instant case. The hearing examiner found the housing provider to be credible, and he determined that the housing provider's conduct was not sufficiently egregious to warrant a finding of bad faith. The Commission affirms the hearing examiner's decision and denies Issues A and B, because the substantial record evidence supported the hearing examiner's decision to deny treble damages.

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<sup>2</sup> The housing provider rented the basement unit of the housing accommodation from 1976 until August 31, 2001. Finding of Fact 2, OAD Decision at 4.

**C. Whether the finding below of retaliation by the housing provider against the tenant is inconsistent with no finding of bad faith and no award of treble damages.**

A housing provider who knowingly demands or receives an improper rent or substantially reduces or eliminates services or facilities shall be liable 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. D.C. OFFICIAL CODE § 42-3509.01(a) (2001). When a housing provider retaliates against a tenant, he shall be subject to a civil fine. D.C. OFFICIAL CODE § 42-3509.01(b) (2001). The notice of appeal did not cite any authority for the proposition that a finding of retaliation is inconsistent with no finding of bad faith and no award of treble damages. Absent a showing that a finding of retaliation is tantamount to a finding of bad faith, the Commission denies Issue C.

**D. Whether the hearing examiner erred when he failed to award damages up to the date of the decision and order.**

The hearing examiner did not err when he failed to award damages up to the date of the decision and order. “An administrative decision should rest solely upon evidence appearing in the public record of the agency proceeding. Ordinarily, the record closes upon termination of the hearing below. ... [E]vidence submitted post-hearing may not be admitted into the record and, therefore, may not provide a basis upon which an agency may issue a decision.” Harris v. District of Columbia Rental Hous. Comm’n, 505 A.2d 66, 69 (D.C. 1986) (citations omitted); see also Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995) (holding that the agency may order a rent refund up to the date the record closed, when there is evidence of a continuing violation).

When the hearing examiner issued the decision and order he properly stated, “The record closed at the conclusion of the hearing on March 19, 2002.” OAD Decision at 3.

Consequently, there was no basis for an award of damages up to the date of the decision and order.

**E. Whether a finding of no fraud by the housing provider was reversible error.**

In the decision and order, the hearing examiner stated there was nothing in the record to support the tenant's argument that the housing provider intended to perpetrate a fraud. The notice of appeal did not contain a recitation of evidence or a citation to authority that demonstrated the hearing examiner erred when he ruled there was no evidence of fraud. Moreover, the Commission's review of the record did not uncover evidence of fraud. Accordingly, the Commission denies Issue E.

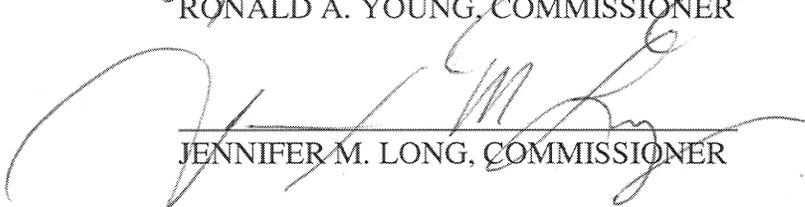
**IV. CONCLUSION**

For the foregoing reasons, the Commission affirms the hearing examiner's decision and order in TP 27,150.

SO ORDERED.

  
RUTH R. BANKS, CHAIRPERSON

  
RONALD A. YOUNG, COMMISSIONER

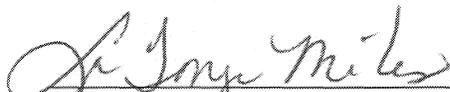
  
JENNIFER M. LONG, COMMISSIONER

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,150 was mailed by priority mail with delivery confirmation, postage prepaid, this 29<sup>th</sup> day of September 2003 to:

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