

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,175

In re: 2145 California Street, N.W., Unit 204

Ward Two (2)

BARBARA NEGLEY
Tenant/Appellant

v.

PETER HUBLEY AND SHARON CALKINS-HUBLEY
Housing Providers/Appellees

DECISION AND ORDER

August 26, 2004

LONG, COMMISSIONER. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudications (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) and its amendments, govern the proceedings.

I. PROCEDURAL HISTORY

Barbara Negley initiated this action when she filed Tenant Petition (TP) 27,175 with the Rental Accommodations and Conversion Division (RACD) on June 28, 2001. The tenant filed the complaint against the housing providers, Peter Hubley and Sharon Calkins-Hubley, who own condominium unit 204 at the housing accommodation located at 2145 California Street, N.W. The tenant alleged that the housing providers increased

her rent in less than 180 days after the previous rent increase; failed to provide a proper thirty day notice of the rent increase, reduced the services and facilities provided in connection with her rental unit, and directed retaliatory action against her.

On February 21, 2002, Administrative Law Judge (ALJ) Henry McCoy convened the evidentiary hearing. The tenant appeared with counsel, Lynn Johnson. Sharon Calkins-Hubley appeared on behalf of the housing providers with counsel, Anson C. Asaka. In addition, Maxine Mennen testified as a witness for the housing providers. After the hearing, the tenant and the housing providers submitted proposed decisions and orders. On October 4, 2002, the ALJ issued the decision and order, which contained the following findings of fact and conclusions of law.

Findings of Fact

1. The subject rental unit is located at 2145 California Street, N.W., Apt. #204.
2. The subject rental unit is a condominium situated in a four (4)-story condominium building consisting of approximately twenty (20) units.
3. Barbara Negley, Tenant/Petitioner, leased the rental unit from August 1, 1996 to June 28, 2001 (the date of the filing of the Tenant Petition/Complaint) pursuant to a written lease agreement executed by the parties on July 1, 1996.
4. Peter Hubley and Sharon Calkins-Hubley, Housing Provider/Respondents, have owned the rental unit as joint tenants throughout the Petitioner's lease of the unit.
5. Sharon Calkins-Hubley owned a housing unit (2153 California Street, N.W., #502), which was sold in 1988.
6. At the outset of the Petitioner's lease of the rental unit, the rent for the rental unit was \$720.00 per month.
7. Petitioner's rent for the rental unit was increased as follows:

\$730.00/month effective August 1, 1997 (no written notice)

\$755.00/month effective August 1, 1998 (no written notice)

\$775.00/month effective August 1, 1999 (no written notice)

\$830.00/month effective August 1, 2000 (no written notice)

\$915.00/month effective September 1, 2000 (by notice dated July 30, 2000)

\$1,200.00/month effective December 1, 2001 (by notice served October 27, 2001)

8. At the outset of the Petitioner's lease (August 1, 1996), both the heating and air conditioning system for the rental unit were not working fully or adequately to keep the premises comfortable at all times of the year; both parties were aware of this circumstance at the time the lease was entered into.
9. On May 10, 2002, the Housing Provider filed, for the first time, a Registration/Claim of Exemption Form signed by the Housing Provider stating that the rental unit was qualified as being exempt from registration for the reason that the owners held and operated four (4) or fewer rental units or that they only have an interest in one rental unit.
10. Ms. Maxine Mennen resides in a unit abutting the Petitioner's rental unit.
11. The Housing Provider did not own more than 4 rental housing units.

Negley v. Hubley, TP 27,175 (OAD Nov. 6, 2002) at 6-7.

Conclusions of Law

1. The Housing Provider was not exempt from the Act as a small housing provider prior to filing the claim of exemption form on May 9, 2001.
2. The Petitioner did not timely appeal the rent increase of August 1, 1997 to \$730.00, *i.e.* within the three-year period required by law, D.C. Code § 42-3502.06(e).
3. The following rent increases implemented by the [H]ousing Provider were not allowed by 14 DCMR § 4205.5(b): **(amended by deleting subsection (e))**
 - (a) \$755.00 effective August, 1998
 - (b) \$775.00 effective August, 1, 1999
 - (c) \$830.00 effective August, 1, 2000
 - (d) \$915.00 effective September 1, 2001 [sic].¹

¹ The record reflects that the increase in the amount of \$915.00 was effective on September 1, 2000, not September 1, 2001. P. Exh. 4, Record at 62; Amended Decision at 15 & 17.

4. The Housing Provider did not substantially reduce the Petitioner's services and facilities in violation of D.C. Official Code § 42-3502.11 (2001). **(amended)**
5. The Housing Provider retaliated against the Tenant by increasing the rent [to] \$915.00 effective July 1, 2001 in violation of D.C. [Official] Code 42-3505.02(b).
6. The Housing Provider did not retaliate against the Tenant by issuing the October 27, 2001 notice to cure.
7. The Housing Provider did not act in bad faith as required by D.C. Official Code § 42-3509.01(a) (2001) for the award of treble damages. **(amended)**
8. The equities in this case indicate that the award of attorney fees to the Tenant should be withheld.

Id. at 22-23. The ALJ ordered the housing providers to refund \$3976.58 to the tenant, and he ordered the housing providers to pay a fine of \$500.00 for retaliating against the tenant.

On October 24, 2002, the tenant's counsel filed a praecipe withdrawing as counsel. On that same date, the tenant filed a motion for reconsideration with the ALJ pro se, and the housing providers, through counsel, filed a notice of appeal with the Commission. The ALJ granted the motion for reconsideration in part, and issued an amended decision and order on November 6, 2002. On November 7, 2002, the tenant filed an answer to the notice of appeal that the housing providers filed in the Commission on October 24, 2002. The tenant filed a motion for reconsideration of the ALJ's amended decision and order on November 18, 2002. The ALJ did not respond to the tenant's second motion for reconsideration. As a result, the motion was denied by operation of law in accordance with 14 DCMR § 4013 (1991).

On December 16, 2002, the tenant filed an appeal from the November 6, 2002 amended decision and order. The housing providers, who appealed the decision issued

on October 4, 2002, did not appeal the amended decision and order. On March 23, 2003, the Commission held the appellate hearing. During the hearing, the housing providers' attorney asked the Commission to treat the appeal filed from the October 4, 2002 decision and order, as an appeal from the amended decision and order issued on November 6, 2002. The Commission dismissed the housing providers' appeal, because the housing providers did not appeal the amended decision and order, and the Commission did not have jurisdiction to hear the appeal from the October 4, 2004 decision and order. Hubley v. Negley, TP 27,175 (RHC July 18, 2003).

II. ISSUES ON APPEAL

When the tenant filed the notice of appeal from the amended decision and order, she raised the following issues:

1. The amended decision and order fails to state the grounds on which reasonable minds might accept the allegations put forward by the Housing Provider's witness with regard to the Notice to Cure or Vacate issued on October 27, 2001. Contradictory, unsubstantiated, and uncorroborated testimony by the witness and misattributed testimony, as noted in the Tenant/Petitioner's motion for reconsideration of October 24, 2002, remains unacknowledged.
2. In both the original and amended decision and order, the Hearing Examiner found two notices of rent increase to be retaliatory: the notice of rent increase served on July 31, 2001 (pp. 16-17 of the Amended Decision) and the notice of rent increase served on October 27, 2002 (p. 17 of the Amended Decision). However, the Hearing Examiner carries only one of these two findings of retaliation into his conclusions of law and into the computation of refund for rent overcharges. As stated in numerous paragraphs addressing the Housing Providers' rent increases, the computation presented in the table on pages 21 and 22 of the amended decision and order should therefore be extended from November 2001 to November 2002.
3. The Hearing Examiner found all rent increases except the August 1, 1997, increase to be unlawful and recognized this in his initial decision and order, which called for the rent to be rolled back to \$730.00. The deletion of the rollback from the amended decision and order is

therefore inconsistent with the Hearing Examiner's findings with regard to improper and unlawful rent increases. It should be noted that the order allows the Housing Providers to increase the rent based on "supporting detail for the rent increase, including but not limited to housing costs for comparable units and all the data in support of the rent increase applies to the Tenant's rental unit...") p. 23 of the Amended Decision and Order.

Notice of Appeal at 1-2.

III. DISCUSSION

A. Whether the amended decision and order fails to state the grounds on which reasonable minds might accept the allegations put forward by the housing providers' witness with regard to the Notice to Cure or Vacate issued on October 27, 2001.

When the tenant filed TP 27,175, she alleged that the housing providers served the notice to cure or vacate as an act of retaliation. After recounting the record evidence offered to support and rebut the tenant's allegation, the ALJ concluded that the housing providers did not retaliate against the tenant by issuing the notice to cure or vacate on October 27, 2001. Conclusion of Law 6.

On appeal, the tenant maintains that the "amended decision and order fails to state the grounds on which reasonable minds might accept the allegations put forward by the [h]ousing [p]rovider[s]' witness with regard to the Notice to Cure or Vacate issued on October 27, 2001." In addition, she maintains, "[c]ontradictory, unsubstantiated, and uncorroborated testimony by the witness and misattributed testimony, as noted in the Tenant/Petitioner's motion for reconsideration of October 24, 2002, remains unacknowledged." Notice of Appeal at 1. Contrary to the tenant's assertions, the amended decision and order contains grounds on which reasonable minds would accept the allegations that the housing providers' witness testified to during the hearing.

On October 27, 2001, the housing providers' agent served the tenant with a Notice to Cure Violation of Tenancy or Vacate (Notice). The housing providers notified the tenant that she violated paragraph 34 of her lease agreement by engaging in a course of conduct that disturbed her neighbors' peaceful enjoyment of their homes. The housing providers advised the tenant that she could cure the violation by ceasing to disturb her neighbors and making unwanted contact with them. Specifically, the housing providers instructed the tenant to refrain from "knocking on neighbors' doors at all hours of the day and night and leaving disturbing messages on neighbors' answering machines." Notice at 1; see also Amended Decision at 18.

The tenant testified that she received the notice on October 27, 2001. The notice, which reflects that it was personally served on the tenant on October 27, 2001, contained the following pertinent provisions:

Violation of Paragraph #34: "The tenant shall conduct himself/herself and require other person on the premises, to conduct themselves in a manner that will not disturb neighbors' peaceful enjoyment of their premises. The Tenant further agrees that he/she will not use nor permit said premises to be used for any improper, illegal or immoral purposes, nor will he/she permit the property to be used by any person or persons in any noisy, dangerous, offensive, illegal or improper manner."

The violation(s) cited herein may be cured as follows:

The tenant is to cease disturbing her neighbors and making unwanted contact with them. Specifically, knocking on neighbors' doors at all hours of the day and night and leaving disturbing messages on neighbors' answering machines. Continued unsolicited contact with other tenants could be actionable in a court of law.

Please be advised that if you fail to [sic] said violations within the time prescribed in this notice you are to vacate the premises.

The violation(s) cited in this notice may be cured on or before the expiration of thirty days (30 days) after this notice is served upon you.

Notice at 1, Record at 118.

When the tenant testified during the hearing, she denied disturbing her neighbors or having unwanted contact with them. The tenant also testified that the notice did not contain the date to cure, the factual basis of the claim, or the actions that she must take to cure.

In an effort to rebut the tenant's allegation that the housing providers served the notice to quit or cure to retaliate against the tenant, the housing providers offered testimony to prove they served the notice after receiving numerous complaints that the tenant was harassing her neighbors.

The housing provider, Sharon Calkins-Hubley, testified that the tenant's next-door neighbor, Maxine Mennen, sent a letter to her recounting the tenant's abusive behavior. In addition, Mrs. Calkins-Hubley testified that she received over twenty calls from a member of the condominium association concerning the tenant's behavior.

The housing providers' witness, Maxine Mennen, testified that the tenant engaged in a course of menacing conduct that began in 1997 and continued through the weeks immediately preceding the OAD hearing. Ms. Mennen testified that the tenant made harassing telephone calls, pounded on her door and walls, peered into her peephole, and talked incoherently while in front of her door. Ms. Mennen testified that she lodged numerous complaints with the condominium association, the police, and the housing providers. She also testified that she hired an attorney, who instructed her to keep a diary of her encounters with the tenant.

The housing providers offered several exhibits that corroborated Mrs. Calkins-Hubley and Ms. Mennen's testimony. For example, the housing providers introduced

letters from Ms. Mennen's attorney to the housing providers' attorney, and letters from Ms. Mennen to the housing providers and the condominium association. The letters chronicled Ms. Mennen's complaints concerning the tenant's behavior. See Respondents' Exhibits 10-13, R. at 101-106.

During the hearing, the parties offered conflicting testimony concerning the tenant's conduct. The tenant denied harassing her neighbors. The housing providers offered oral and documentary evidence, which reflected that the tenant harassed her neighbors, and engaged in a course of menacing conduct over several years.

The ALJ is empowered to determine the credibility of witnesses and resolve any conflicts in the testimony. Fazekas v. Dreyfuss, TP 20,394 (RHC Apr. 14, 1989). In Eilers v. District of Columbia Bureau of Motor Vehicles Servs., 583 A.2d 677 (D.C. 1990), the court held that the hearing officer's credibility determinations should be given deference by reviewing courts, and those findings should not be disturbed if they are supported by substantial evidence. See also Smith Prop. Holdings Three D.C. Ltd. P'ship v. Tenants of 2601 Woodley Place, N.W., CI 20,736 (RHC June 30, 1999); Ford v. Dudley, TP 23,973 (RHC June 3, 1999). Accordingly, the Commission will not disturb the ALJ's credibility determinations, when the substantial record evidence supports them. Wire Enterprises v. Ruffin, TP 20,486 (RHC Aug. 25, 1989) cited in Reid v. Hughes, TP 23,577 (RHC Aug. 31, 1998); see also D.C. OFFICIAL CODE § 42-3502.16(h) (2001).²

² D.C. OFFICIAL CODE § 42-3502.16(h) (2001) provides:

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.

In the amended decision and order, the ALJ stated: "The record is replete with testimony and exhibits intended to support the claim that the Petitioner had been a long-time annoyance to others at the condominium where the rental unit is located." Amended Decision at 18. The ALJ recounted the oral and documentary evidence that supported the housing provider's assertion that they served the notice to cure or vacate because the tenant violated her neighbor's peaceful enjoyment. Contrary to the tenant's assertions, the amended decision and order, and the record, contain grounds on which reasonable minds would accept the allegations that the housing providers' witness testified to during the hearing.

The ALJ made a credibility determination in favor the housing providers. The Commission will not disturb the ALJ's credibility determination, because the substantial record evidence supports the ALJ's decision. Accordingly, the Commission affirms the ALJ's amended decision and order and denies Issue A.

B. Whether the ALJ erred when he carried only one of two findings of retaliation into his conclusions of law and into the computation of the refund for rent overcharges.

The provision of the Act that governs retaliatory conduct, D.C. OFFICIAL CODE § 42-3505.02 (2001), provides:

(b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant [takes one of six enumerated actions].

The ALJ determined that the housing providers retaliated against the tenant when they served a rent increase notice in the amount of \$85.00 on July 31, 2000, and notice of a \$285.00 rent increase on October 27, 2001. After comparing the rent increases noticed

on July 31, 2000 and October 27, 2001 with the tenant's previous rent increases, the ALJ determined that the rent increases served on July 31, 2000 and October 27, 2001 were substantial and presumptively retaliatory, and the housing providers did not rebut the presumption by clear and convincing evidence. See De Szunyogh v. William C. Smith & Co., 604 A.2d 1 (D.C. 1992).³

The tenant argues that the ALJ erred, because he only included the July 31, 2000 finding of retaliation in the conclusions of law and the computation of the refund for the rent overcharges, and he failed to compute the rent refund through November 2002. The Commission disagrees.

The ALJ did not err when he treated the July 31, 2000 notice of increase and the October 27, 2001 notice of rent increase differently, for purposes of the rent refund, because the housing providers were subject to the rent stabilization provisions of the Act in July 2000. However, the housing providers were exempt when they issued the rent increase notice on October 27, 2001.

Before the ALJ reached the retaliation claim, the ALJ addressed the initial issue, which was whether the rental unit was exempt from the Act's registration requirements, before and after the housing providers filed the claim of exemption. Amended Decision at 3.

The housing providers and the tenant executed a lease agreement on July 1, 1996. The housing providers filed a Registration/Claim of Exemption Form on May 10, 2001. The housing providers claimed an exemption from the rent stabilization provisions of the

³ In De Szunyogh v. William C. Smith & Co., 604 A.2d 1, 4 (D.C. 1992), the court held: "[I]f a tenant alleges acts which fall under the retaliatory eviction statute ... the statute by definition applies, and the landlord is presumed to have taken 'an action not otherwise permitted by law' unless it can meet its burden under the statute."

Act, because they owned fewer than four rental units.⁴ Since the housing providers did not file the Registration/Claim of Exemption Form before May 10, 2001, the ALJ held that they were subject to the rent stabilization provisions of the Act from the inception of the tenancy until May 10, 2001.

Thereafter, the ALJ evaluated the rent increases that the housing providers implemented during the tenancy. The ALJ determined that the rent increase noticed on July 31, 2000 was improper, because the housing providers were not registered when they increased the rent on September 1, 2000, which was the effective date of the July 31, 2000 notice. As a result, the ALJ ordered the housing providers to refund the increased rent.

When the ALJ evaluated the rent increase notice issued on October 27, 2001, the ALJ stated:

At the time the Petitioner received the [October 27, 2001] notice that the rent for the rental unit was being increased from \$915.00 to \$1,200.00, the Housing Provider[s] had filed an exemption (May 10, 2001) from the rent control provisions of the Act on the grounds that they were a [sic] small landlord. It has been previously found here that the Housing Provider has presented facts, which support the validity of the

⁴ D.C. OFFICIAL CODE § 42-3502.05 (2001) provides:

(a) Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District except:

...

(3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons;

(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change.

claimed exemption. Thus, the Housing Provider[s] had a right to raise the rent for the rental unit without the limitations imposed upon them that would apply to a nonexempt landlord.

Amended Decision at 17. Since the housing providers were exempt from the rent stabilization provisions of the Act when they issued the notice on October 27, 2001, the ALJ ruled that they were entitled to increase the rent to \$1200.00. As a result, the tenant was not entitled to a rent refund, when the housing providers increased the rent to \$1200.00. Accordingly, the ALJ did not err when he did not include the rent increase noticed on October 27, 2001 when he computed the rent refund.

In the body of the decision and order, the ALJ determined that the \$285.00 rent increase noticed on October 27, 2001 was issued in retaliation,⁵ because the housing providers issued the notice of the substantial rent increase less than six months after the tenant filed TP 27,175. The ALJ issued a conclusion of law concerning the July 31, 2000 retaliatory rent increase notice. However, he did not issue a conclusion of law concerning the October 27, 2001 retaliatory rent increase notice. On appeal, the tenant argues that the ALJ erred, because he “carrie[d] only one of these two findings of retaliation into his conclusions of law and into the computation of refund for rent overcharges ... and the amended decision and order should therefore be extended from November 2001 to November 2002 .” Notice of Appeal at 1.

The ALJ did not err when he did not include the finding of retaliation concerning the October 27, 2001 notice in the computation of the refund for rent overcharges,

⁵ The retaliation provisions of the Act apply to exempt and nonexempt housing providers. Blakney v. Atlantic Terrace/Winn Mgt., TP 24,972 (RHC Mar. 28, 2002) (citing Sendar v. Burke, HP 20,213 & TP 20,772 (RHC Apr. 6, 1988)).

because the penalty for violating the retaliation provision of the statute is a fine, not a rent refund.⁶

The penalty provision of the Act provides:

(b) Any person who wilfully (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 (2001) (emphasis added).

The ALJ ordered the housing providers to “pay a fine in the amount of Five Hundred Dollars (\$500.00) as authorized by D.C. [Official] Code § 42-3509.01(b) for retaliating against the Petitioner.” Amended Decision at 23. Since § 42-3509.01(b) prescribes a fine as the penalty for violating the retaliatory provision of the Act, the ALJ could not impose a rent refund as a penalty for retaliating against the tenant.⁷

Accordingly, the ALJ did not err when he did not include the October 27, 2001 finding of retaliation in the computation of the rent refund. Moreover, the amended

⁶ See Johnson v. Moore, TP 23,705 (RHC Mar. 23, 1999) (holding that a tenant is not entitled to any portion of the fine that the hearing officer imposes on a housing provider).

⁷ As stated previously, the ALJ could not impose a rent refund for the rent increase noticed on October 27, 2001, because the housing providers were exempt from rent stabilization provisions of subchapter II. The penalty provision of the Act that governs rent refunds, § 42-3509.01(a), does not apply to exempt housing providers. D.C. OFFICIAL CODE § 42-3509.01(a) (2001) provides:

(a) 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.

decision and order should not be extended from November 2001 to November 2002, because there is no basis on which to compute the rent refund to November 2002.

Finally, the Commission agrees with the tenant's assertion that the ALJ did not issue a conclusion of law concerning the October 27, 2001 retaliatory rent increase. However, the ALJ's failure to issue a conclusion of law concerning the October 27, 2001 retaliatory rent increase was harmless error,⁸ because the ALJ thoroughly evaluated the tenant's claim concerning the October 27, 2001 rent increase notice, and he ordered the housing provider to pay a fine for retaliating against the tenant.

For the foregoing reasons, the Commission denies Issue B.

C. Whether the deletion of the rollback from the amended decision and order is inconsistent with the ALJ's findings with regard to improper and unlawful rent increases.

In the initial decision and order, the ALJ determined that all of the rent increases implemented during the statutory period of the petition were improper. As a result the hearing examiner rolled the tenant's rent back to \$730.00, which was the rent level in effect three years before the tenant filed the petition.⁹ The ALJ erred when he rolled the rent back to \$730.00, because the housing providers became exempt from the rent stabilization provisions of the Act, when they filed the claim of exemption on May 20, 2001. When the ALJ issued the amended decision and order, he corrected his error.

⁸ Harmless error is "[a]n error that does not affect a party's substantive rights or the case's outcome. • A harmless error is not grounds for reversal." BLACK'S LAW DICTIONARY 563 (7th ed. 1999).

⁹ 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.

The ALJ did not roll the rent back to \$730.00 in the amended decision and order, because he determined that the housing providers properly increased the tenant's rent to \$1200.00 on October 27, 2001. The ALJ's decision not to roll back the tenant's rent to \$730.00 was in accordance with the penalty provision of the Act. D.C. OFFICIAL CODE § 42-3509.01(a) (2001) permits the hearing officer to roll back the rent when a housing provider "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." Since the housing providers were exempt from the rent stabilization provisions of the Act as of May 10, 2001, the penalty provision that governs rent roll backs did not apply. Therefore, the ALJ was not empowered to roll back the tenant's rent to \$730.00. Accordingly, the ALJ did not err when he did not roll the tenant's rent back to \$730.00 when he issued the amended decision and order.¹⁰

¹⁰ When the tenant drafted the third issue in the notice of appeal, she stated, "It should be noted that the order allows the Housing Providers to increase the rent based on 'supporting detail [sic] for the rent increase, including but not limited to housing costs for comparable units and all the data in support of the rent increase as applies to the Tenant's rental unit....'" Notice of Appeal at 2. This constituted plain error. Since the housing providers are exempt from the rent stabilization provisions of the Act, the ALJ erred when he ordered the housing providers to provide justification for rent increases, because the Act does not require exempt housing providers to provide justification for rent increases.

IV. CONCLUSION

For the foregoing reasons, the Commission affirms the amended decision and order issued on November 6, 2002.

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

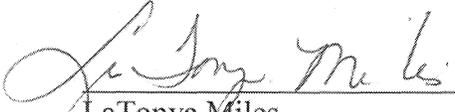
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W.
6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,175 was mailed by priority mail with delivery confirmation, postage prepaid, this 26th day of August 2004 to:

Barbara A. Negley
2145 California Street, N.W.
Unit 204
Washington, D.C. 20008

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