

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,312

In re: 2400 16TH Street, N.W.

Ward One (1)

ENVOY ASSOCIATES LIMITED PARTNERSHIP
Housing Provider/Appellant

v.

2400 TENANT ASSOCIATION
Tenant/Appellee

DECISION AND ORDER

July 15, 2004

PER CURIAM. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accomodation and Conversion Division (RACD), 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 (DCMR), 14 DCMR §§ 3800-4399 (1991), govern the proceedings.

I. PROCEDURAL HISTORY

On September 28, 2001, the 2400 Tenant Association filed Tenant Petition (TP) 27,312 with the RACD. The tenants alleged that the rent increases taken by Envoy Associates Limited Partnership, the housing provider, were larger than the increases allowed by the Act. Hearing Examiner Gerald Roper convened the hearing on November 19, 2002. Neither the tenant nor a representative for the tenant was present at the

hearing. Present at the hearing were Ananna Royster, housing provider, Timothy Taylor, housing provider, and Vincent Policy, Esquire, counsel for the housing providers. At the hearing, Hearing Examiner Roper noted that notice of the hearing was delivered by the United States Postal Service (USPS) on October 25, 2002 to tenant Dorothy Kemp, who is President of the 2400 Tenant Association. Record (R.) at 38. Attorney Policy moved that the matter be dismissed with prejudice for failure to prosecute based on the nonappearance of the tenants. Hearing Examiner Roper stated that he would grant the motion and dismiss the matter with prejudice. On November 22, 2002, Hearing Examiner Roper issued the decision and order, which dismissed the tenant petition without prejudice. The decision and order did not contain findings of fact and conclusions of law.

The housing provider, on December 12, 2002, filed a notice of appeal with the Commission. The tenant, on December 16, 2002, filed a motion for reconsideration with the RACD. The hearing examiner retained jurisdiction over the "matter solely for the purpose of deciding the motion for reconsideration" according to 14 DCMR § 3802.3 (1991).¹ Hearing Examiner Roper, however, did not act on the motion for reconsideration. Therefore, it was denied pursuant to 14 DCMR § 4013.5 (1991).²

The housing provider filed a brief on appeal on February 28, 2003. On March 31, 2003, the tenant, through Attorney Dalton Howard, filed a motion to enlarge the time in

¹ The filing of a notice of appeal removes jurisdiction over the matter from the [Hearing Examiner]... if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the [Hearing Examiner] shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration....

² "Failure of a hearing examiner to act on a motion for reconsideration within the time limit prescribed by § 4013.2 [ten (10) days after receipt] shall constitute a denial of the motion for reconsideration."

which to file a responsive brief. The housing provider filed an opposition to the motion to enlarge the time in which to file a responsive brief. On April 9, 2003, the Commission denied the tenant's motion to enlarge the time in which to file a responsive brief. On April 11, 2003, the Commission held a hearing on the housing provider's appeal from the November 22, 2002 decision and order.

II. ISSUE ON APPEAL

The housing provider raised the following issue in the notice of appeal:

The [h]earing [e]xaminer erred by dismissing the [t]enant [p]etition without prejudice. The [t]enant [p]etition was required to be dismissed with prejudice. The [h]earing [e]xaminer orally dismissed the [t]enant [p]etition with prejudice at the hearing, and then in his written [d]ecision and [o]rder reversed his position to a dismissal without prejudice. The dismissal without prejudice was contrary to the statute, arbitrary and capricious and without substantial evidence in the record of these proceedings. For the reasons stated, the November 22, 2002 [d]ecision and [o]rder below should be dismissed with prejudice.

Notice of Appeal at 2.

III. PRELIMINARY ISSUE

Whether the decision and order dated November 22, 2002, which does not contain findings of fact and conclusions of law, is sufficient for review by the Commission.

As a preliminary matter in the instant appeal, the Commission reviewed the November 22, 2002 decision and order. The Commission noted that the decision and order contained neither findings of fact nor conclusions of law. The Commission has consistently held, pursuant to the DCAPA, that the decision and order must contain findings of fact and conclusions of law. The DCAPA states:

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.

D.C. OFFICIAL CODE § 2-509(e) (2001). Findings of fact and conclusions of law are essential elements of the decision and order. In their absence, there cannot be a review of the record because the Commission cannot determine whether the hearing examiner's decision and order was "supported by and in accordance with the reliable, probative, and substantial evidence." Id.

The Commission cannot infer or ascertain findings of fact or conclusions of law that are not present in the decision and order. These assessments must be made by the hearing examiner. The hearing examiner must evaluate issues surrounding material facts and then support these findings of fact with conclusions of law. The District of Columbia Court of Appeals (DCCA) held:

This court has admonished administrative agencies on several occasions that a reiteration of the evidence is not a finding of fact. Neither will generalized, conclusory or incomplete findings suffice. There must be a finding on each material fact necessary to support the conclusions of law.... We will continue to order that administrative agencies specify the precise findings and conclusions which support their decisions.

Newsweek Magazine v. District of Columbia Comm'n on Human Rights, 376 A.2d 777, 784 (D.C. 1977), quoted in Voltz v. Pinnacle Realty Mgmt. Co., TP 25,092 (RHC Sept. 28, 2001).

The Commission cannot conduct its review because, contrary to the provisions of the DCAPA and precedent set by the DCCA, the decision and order contained no findings of fact or conclusions of law. See Davis v. BARAC Co., TP 24,835 (RHC Oct. 27, 2000). The Commission must follow the DCAPA and DCCA when conducting its review. "When a decision and order does not contain findings of fact, the Commission is

compelled to remand the matter, because the record is insufficient for review.” Thorpe v. Independence Fed. Sav. Bank, TP 24,271 (RHC Aug. 19, 1999) at 9 (citing Hedgman v. District of Columbia Hackers’ License Appeal Bd., 549 A.2d 720, 723 (D.C. 1988)). The Commission must remand this case to the hearing examiner.

IV. ISSUE RAISED IN THE NOTICE OF APPEAL

Whether the hearing examiner erred by dismissing the tenant petition without prejudice. The dismissal without prejudice was contrary to the statute, arbitrary and capricious, and without substantial evidence in the record of these proceedings.

The hearing examiner indicated in the decision and order that there was record evidence that the tenants asked for a continuance. He stated:

In the instant case, the Petitioners filed an untimely request for continuance dated November 13, 2002 which did not reach the Hearing Examiner until after the 11:00AM [sic] scheduled hearing on November 19, 2002. The request was for a continuance to allow the Petitioner’s [sic] to obtain counsel for possible settlement discussions with the Housing Provider. This request was not made within the time requirements set forth in 14 DCMR [§] 4008.6 [1991] nor was the basis of the request within the criteria for granting a continuance as set forth in 14 DCMR [§] 4014 [1991]. Accordingly, the request would have been denied. However, in as much as the Petitioner’s [sic] did make an attempt to contact the office and this case has been in the system for over a year without any movement the matter shall be dismissed without prejudice.

2400 Tenant Ass’n v. Envoy Assoc. Ltd. P’ship, TP 27,312 (RACD Nov. 22, 2002) at 2.

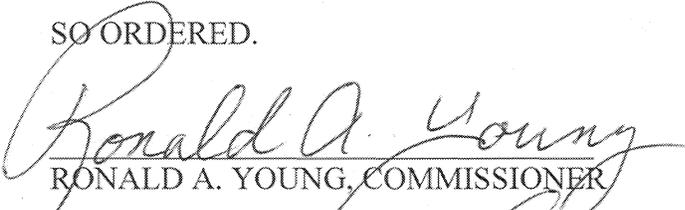
Without findings of fact and conclusions of law, there is no foundation for the conclusions determined by the hearing examiner. These elements would either support or not support the hearing examiner’s conclusion that the “matter shall be dismissed without prejudice.” Id. Since the decision and order does not have these elements, the Commission cannot review the hearing examiner’s evaluation of the facts and the application of the law.

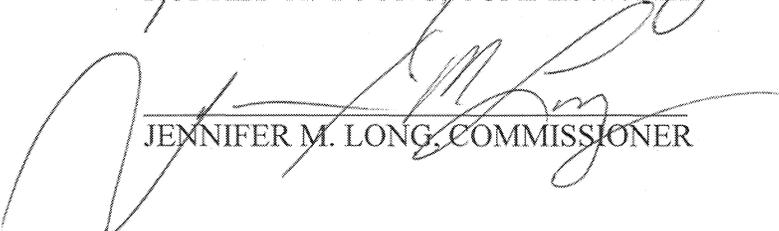
In the instance of prejudice, findings of fact and conclusions of law are important because prejudice deprives a party of the right to bring the case again. Because of the severity associated with prejudice, it is important for the hearing examiner to explain, through findings of fact and conclusions of law, the reasoning used to reach the decision. Without findings of fact and conclusions of law, the Commission cannot review the issue raised in the notice of appeal regarding prejudice.

V. CONCLUSION

The Commission must follow the DCAPA and the DCCA. "When the examiner fails to issue findings of fact in accordance with the DCAPA, the reviewing body ordinarily remands the case with instructions to issue findings of fact and conclusions of law on the existing record." Thorpe v. Independence Fed. Sav. Bank, TP 24,271 (RHC Aug. 19, 1999) at 9. The decision and order in the instant case does not contain findings of fact and conclusions of law. Therefore, the Commission remands the case to the hearing examiner for findings of fact and conclusions of law on the dismissal and whether prejudice attaches.

SO ORDERED.


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 phone number:

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

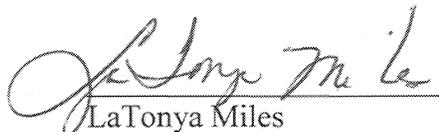
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,312 was mailed by priority mail with delivery confirmation, postage prepaid, on this **15th day of July, 2004** to:

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