

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,362

In re: 531 Florida Avenue, N.W.

Ward One (1)

GLENN McCUTCHEN
Housing Provider/Appellant

v.

GEORGE MONROVIA SILVERS
Tenant/Appellee

ORDER ON MOTION FOR RECONSIDERATION

February 27, 2004

BANKS, CHAIRPERSON. Glenn McCutchen, the Housing Provider filed on February 17, 2004, a motion requesting reconsideration of the Commission's decision and order issued on January 28, 2004. The issues stated by, the Housing Provider, pro se, follow:

First, Nichols

I was given the wrong information regarding the definition of four units. [R]ecently, there was an artic[le] in the Wash [sic] Post where a church locate[d] on 13th and Rhode Island ave. [sic] n.e. [sic] was given the wrong information, a permit to erect a sign that exceeds the limits.

Mr. Nicholes told me [that] one unit was one building. He assist [sic] me in filling that form out. I find that government forms are n't [sic] user friendly[.] I for one almost always need help in translation or interpreting them. I was misinformed.

Second

If I believed (based on the wrong information) that I am exempt at the time I was doing the paper work for 505 (the last one) [,] then I would have been acting on this same wrong information when doing the paper work for 531 (the earlier one).

Third

Operating a rooming house without a license is a \$500.00 fine. It's unreasonable that an honest mistake in the license process could be penalized ten times the penalty for no license (\$5000.00)[.]

Motion for reconsideration at 3.

After consideration of the text of the motion for reconsideration, the Commission determined that the Housing Provider raised two issues: 1) whether the Housing Provider's alleged reliance on misinformation from an employee of the agency excused his wrongful claim of exemption from rent control, and 2) whether the fines were proper.

1. Whether the Housing Provider's reliance on misinformation from an employee of the agency excused the Housing Provider's wrongful claim of exemption from rent control.

The Housing Provider asserted in the motion for reconsideration, "I was given the wrong information regarding the definition of four units. ... Mr. Nicholes told me [that] one unit was one building. He assist [sic] me in filling that form out." Motion for Reconsideration at 3. Unfortunately, the Housing Provider did not testify at the hearing that Mr. Nichols gave him misinformation. In fact, the Housing Provider, in response to the questions of the hearing examiner, testified that he had fourteen units distributed among four housing accommodations. Based on that testimony, the hearing examiner made findings of fact numbered 7 through 11:

Mr. McCutchen also owns three other rental properties within the District of Columbia. They are located at 811 11th Street, N.E., 18 Florida Avenue, N.E., and 505 Florida Avenue, N.E.

Respondent filed a Registration/Claim of Exemption Form on April 22, 1999, for 811 11th Street, N.E. This property, which contains 3 units, was assigned Registration Number 29908496 by RACD.

Respondent filed a Registration/Claim of Exemption Form on May 25, 1999 for 18 Florida Avenue, N.E. This property, which contains 4 units, was assigned Exemption Number 526065 by RACD.

Respondent filed a Registration/Claim of Exemption Form on May 24, 2001, for 505 Florida Avenue, N.E. This property, which contains 3 units, was assigned Exemption Number 529150 by RACD.

Respondent has not filed a Registration/Claim of Exemption Form for 531 Florida Avenue, N.W. This property contains four units that are available for rental.

Silvers v. McCutchen, TP 27,362 (OAD Sept. 25, 2002) (Decision) at 5 & 6.

In addition, the hearing examiner determined that the Housing Provider did not register the housing accommodation at 531 Florida Avenue, N.E., where the Tenant lived. See the last finding of fact quoted above. Consequently, the hearing examiner concluded:

The Respondent violated Subchapter II of the Act, by willfully failing to file with the Rent Administrator a Registration/Claim of Exemption form for the property at 531 Florida Avenue, N.W, and as required by D.C. Code § [sic] 45-2515(f), and a civil fine in the amount of Five Hundred Dollars (\$500.00) should be imposed for such conduct, pursuant to D.C. Code § 45-2591(b)(4)[.] (emphasis added.)

Conclusion of law numbered 4, Decision at 14. Therefore, the fine for failure to register the housing accommodation in this case is identical to the fine of \$500.00 stated in the motion for reconsideration by the Housing Provider for failure to obtain a license for a rooming house. Motion at 3.

Moreover, the alleged misinformation from Mr. Nichols did not prevent the Housing Provider from registering the property. In this issue, the property was not wrongfully registered, because no effort was made to register the property, and that violated the Rental Housing Act of 1985, D.C. OFFICIAL CODE § 42-3502.05 (2001). The burden of proof is on the Housing Provider to prove an exemption from the Act, Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293, 1297 (D.C. 1990); Revithes v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1007 (D.C.

1987); The Vista Edgewood Terrace v. Rasco, TP 24,585 (RHC Oct. 13, 2000) at 12-13; Best v. Gayle, TP 23,043 (RHC Nov. 21, 1996) at 5. Accordingly, based on the Housing Provider's failure to file a registration form for 513 Florida Avenue, N.E., this issue is denied.

2. Whether the fines were proper.

The Commission determined in issue numbered one above that the fine for failure to register the property was proper, and similar to the fine for failure to obtain a rooming house license.

There were three other fines, for the following reasons:

The Respondent violated Subchapter IX of the Act by willfully filing with the Rent Administrator, on July 20, 2001, a Notice to Vacate pursuant to D.C. Code § 45-2551(a), which contained false information and a civil fine in the amount of One Thousand Dollars[sic] Five Hundred Dollars (\$1500.00) should be imposed for such conduct, pursuant to D.C. Code § 45-2591 (b)(2);

The Respondent violated Subchapter IX of the Act, by willfully filing with the Rent Administrator, on January 31, 2001, a Notice to Vacate pursuant to D.C. Code § 45-2551(a), which contained false information, and a civil fine in the amount of One Thousand Dollars[sic] Five Hundred Dollars (\$1500.00) should be imposed for such conduct, pursuant to D.C. Code 45-2591(b)(2); and

The Respondent violated Subchapter IX of the Act, by willfully filing with the Rent Administrator, on April 11, 2002, a Notice to Vacate pursuant to D.C. Code § 45-2551(a), which contained false information, and a civil fine in the amount of One Thousand Dollars[sic] Five Hundred Dollars (\$1500.00) should be imposed for such conduct, pursuant to D.C. Code § 45-2591(b)(2).

Conclusions of law numbered 5-7, Decision at 14.

The above conclusions of law show the Housing Provider was fined \$1500.00 for providing false information on three (3) separate Notices to Vacate. See OAD Decision at 12 & 13. The Housing Provider not only failed to register the unit where the Tenant

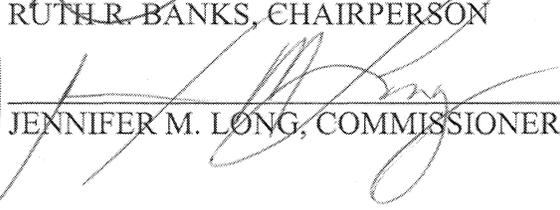
lived, but also placed false registration information on each of the Notices to Vacate from McCutchen v. Silvers, TP 27,362 (RHC Feb. 27, 2004)
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other housing accommodations which he had registered. Id. Accordingly, under these facts, the fines were proper. This issue is denied.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



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 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

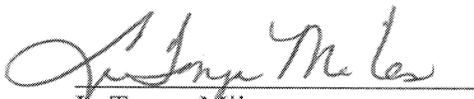
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion for Reconsideration in TP 27,362 was mailed by priority mail, with confirmation of delivery, postage prepaid this 27th day of February, 2004, to:

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