

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,364

In re: 513 10th Street, S.E., Unit 3

Ward Six (6)

FRANCIS KRAEMER
Housing Provider/Appellant

v.

AMY E. WILSON
Tenant/Appellee

DECISION AND ORDER

June 1, 2004

LONG, COMMISSIONER. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), 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

Amy Wilson, acting as a representative for the Tenants of 513 10th Street, S.E., filed Tenant Petition (TP) 27,364 with the Rental Accommodations and Conversion Division (RACD) on November 28, 2001. The petition contains the signatures of Jennifer Koch, Unit 1, Wm. Paul Meehan, Unit 2, Amy Wilson, Unit 3, and Spencer Perlman, Unit 4. The tenants alleged that the housing provider, Francis Kraemer, failed

to file the proper rent increase forms with RACD. In addition, they alleged that the rent ceiling filed with the RACD is improper and the building was not properly registered. The tenant attached several typewritten sheets to the petition and raised additional “regulatory issues” and “building issues,” which included several complaints relating to the reduction of services and facilities.

The Office of Adjudication (OAD) scheduled the matter for a hearing on June 3, 2002. The tenants, Amy Wilson and Jennifer Koch,¹ appeared for the hearing. However, the housing provider did not appear. Administrative Law Judge (ALJ) Lennox Simon reviewed the official record and noted that the delivery confirmation report from the United States Postal Service showed that the postal service delivered the hearing notice to the housing provider’s address on April 23, 2002. As a result, the ALJ held the hearing and received evidence from the tenants.

On September 20, 2002, ALJ Simon issued the decision and order, which contained the following findings of fact and conclusions of law.

Findings of Fact

After careful evaluation of the evidence, the ALJ finds, by a preponderance of the evidence, the following facts:

1. The subject property is located at 513 –10th Street, S.E., Washington, D.C, and consists of five (5) rental units.
2. The subject property is owned by Respondent, Francis Kraemer.
3. The instant dispute concerns rental unit #3 of the property, a one bedroom rental unit, which the Petitioner rented from the Respondent pursuant to a written lease entered into by the parties on September 5, 1997.

¹ The decision and order reflects that Jennifer Kotch appeared as a witness for Amy Wilson.

4. The terms of the lease for the rental of unit #3 provided for a rental period of one year commencing September 1, 1997, at a rate of \$595.00 a month, and ending on August 31, 1998.
5. On November 20, 1999, Petitioner received a letter from Respondent informing her that her rent would increase from \$595.00 to \$650.00 effective January 1, 2000. Petitioner agreed to pay Respondent \$625.00.
- 5.² Petitioner resided in rental unit #3 for 1997 through 2001 {approximately four and one half years) [sic] then moved out of the unit on December 15, 2001.

Wilson v. Kraemer, TP 27,364 (RACD Sept. 20, 2002) at 2-3.

Conclusions of Law

1. Petitioner is entitled to a refund of the increased rent as a result of Respondent's failure to properly register his rental property with RADC [sic], failure to file the proper rent increase forms with RACD, and his failure to file the proper rent ceiling with RACD.
2. The rent refund is in the amount of \$1,320.00, as a result of Respondent's unlawful attempt to implement a rent adjustment in Petitioner's rent charged, by demanding a rent increase from \$595.00 to \$660.00 effective January 1, 2000 through December 15, 2001, when Respondent was not entitled to such rent increase.
3. A civil fine in the amount of \$9,000 (\$3,000.00 for each violation) is imposed on Respondent, pursuant to D.C. Code Sec. 42-3509.01(b)(3), for failing to properly register his rental property with RACD, failing to file the proper rent increase forms with RACD, and failing to file the proper rent ceiling with RACD.
4. Although the Petitioner only paid half of the increased rent, and elected to file a petition with RACD, the Respondent attempted to implement a rent adjustment in the petitioner's rent charged, from \$595.00 to \$660.00 effective January 1, 2000, a civil fine in the amount of \$2,000.00 is imposed on Respondent pursuant to D.C. Code, Sec. 42-3509.01(b)(3), for unlawfully attempting to implement said rent increase while his property was not properly registered.

Id. at 6-7.

² The ALJ used the number 5 two times in the decision.

The housing provider, through counsel, filed an affidavit and motion for reconsideration on October 9, 2002. The ALJ did not respond to the motion for reconsideration. As a result, the motion was denied by operation of law.

On October 30, 2002, the housing provider's attorney filed a notice of appeal with the Commission. The Commission held the appellate hearing on March 11, 2003.

II. ISSUES ON APPEAL

The housing provider, through counsel, filed a notice of appeal that contained the following issues:

- A. Respondent contends that the ALJ's decision was in error as to his determination that "[t]he testimonial and documentary proof in this case persuades the ALJ that the Respondent's failure to register the rental property with RACD, and to file the proper rent ceiling and rent increase forms with RACD was done knowingly and willfully in violation of the act."
- B. Respondent also contends that the ALJ's determination and imposition of a civil fine in the amount of \$9,000.00 was in error and/or excessive with respect to Respondent's alleged failure to properly register the property in question, to file the provider rent increase forms, and failing to file the proper rent ceiling with RACD. Similarly, the fine imposed of \$2,000.00 for allegedly attempting to implement a rent increase in violation of the law is both unjustified and disproportionate to the alleged violation.
- C. The ALJ's reliance on the hearsay testimony of the Petitioner as to the results of Petitioner's review of the RACD files, as opposed to actual documentation of the existence or lack of existence of any particular required filings or forms was in error.
- D. It was error for the ALJ to assess a refund and penalties for the rental increase demanded but never paid by the tenant in response to Respondent's letter, even if it were determined that the letter itself was initially an unlawful demand for an increase.

Notice of Appeal at 2-4.

III. PRELIMINARY ISSUES

A. Whether the housing provider has standing to appeal the ALJ's decision and order.

In the notice of appeal, the housing provider raised several issues that challenge the result of the evidentiary hearing, which he failed to attend. Since the housing provider failed to attend the hearing, he does not have standing to challenge the results on appeal. For the following reasons, the Commission dismisses the appeal and affirms the Rent Administrator's decision and order.

When the ALJ convened the evidentiary hearing, the housing provider did not appear. After reviewing the record and determining that the housing provider received notice of the hearing, the ALJ received evidence from the tenants. The ALJ evaluated the evidence and rendered a judgment against the housing provider. The housing provider, through counsel, filed a motion for reconsideration. When the motion for reconsideration was denied by operation of law, because the ALJ did not decide it within ten days,³ the housing provider's attorney filed a notice of appeal with the Commission.

The notice of appeal contained several issues that alleged error in the decision and order. However, the notice of appeal was devoid of any reference to the housing provider's failure to appear for the evidentiary hearing. Moreover, the housing provider, who acknowledged receipt of the notice of hearing,⁴ did not ask the Commission to vacate the default judgment. As a result, the notice of appeal did not contain any reference to Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478 (D.C.

³ See 14 DCMR § 4013.5 (1991).

⁴ In a sworn affidavit, the housing provider stated: "Due to a scheduling conflict and error in my personal recordkeeping [sic], I failed to appear at the June 3, 2002 hearing. I do not contest that notice was provided, but assert that my failure to attend the hearing was not intentional, and that I wished to and fully intended to appear and defend myself at the hearing." Respondent's Affidavit at 1.

1996) or the four factors that the court has identified as relevant to a determination of whether to set aside a default judgment.

The Commission confronted an identical scenario in Jenkins v. Cato, TP 24,487 (RHC Feb. 15, 2000). In Jenkins, the housing providers, who acknowledged that they received the hearing notice, failed to attend the evidentiary hearing. When the housing providers filed the notice of appeal, they raised several issues that challenged the resulting decision. In Jenkins, the Commission held the following:

A party who fails to appear for an adjudicatory hearing does not have standing to challenge the results on appeal. The Commission has applied an exception to this general rule when a party files a notice of appeal and moves the Commission to vacate a default judgment, because the party did not receive notice of the hearing. John's Properties v. Hilliard, TPs 22,269 & 21,116 (RHC June 24, 1993).

When assessing the issue of standing, the Commission's review is limited to the issues raised in the notice of appeal. The notice of appeal contained no reference to the housing providers' failure to appear at the OAD hearing, nor the resulting default judgment. In the notice of appeal, the housing providers attacked the hearing examiner's findings of fact and conclusions of law on the substantive issues. ... The housing providers did not raise an appeal issue concerning the default judgment, and they did not include a motion to vacate the default judgment in the notice of appeal.

Moreover, the housing providers did not raise or apply the Radwan factors in the notice of appeal. The District of Columbia Court of Appeals identified four factors that are relied upon when the party subject to a default judgment asks an agency to set aside the judgment. Those factors are, "(1) whether the movant had actual notice of the proceeding; (2) whether he acted in good faith; (3) whether the moving party acted promptly; and (4) whether a prima facie adequate defense was presented. Against these factors, prejudice to the non-moving party must be considered." Radwan v. District of Columbia Rental Housing Comm'n, 683 A.2d 478, 481 ([D.C.] 1996) (quoting Dunn v. Profitt, 408 A.2d 991, 993 (D.C. 1979)). In Radwan, the housing provider filed an appeal and asked the Commission to vacate the default judgment. In the instant case, there was no request to vacate the default judgment before the Commission.

A party who received notice of an agency's proceeding, but failed to participate in the proceeding, does not have standing to challenge the result on appeal. Lenkin Management Co. v. District of Columbia Rental Housing Comm'n, 642 A.2d 1282 (D.C. 1994); Proctor v. District of Columbia Rental Housing Comm'n, 484 A.2d 542 (D.C. 1984); DeLevey v. District of Columbia Rental Housing Comm'n, 411 A.2d 354 (D.C. 1980). In addition, when a party fails to appear before the Rent Administrator, the Commission cannot review the merits of the appeal. See Turner v. Ellison, TP 21,160 (RHC Mar. 22, 1990); Keys v. Jones, TP 20,314 (RHC Feb. 8, 1990); Wofford v. Willoughby Real Estate, HP 10,687 (RHC Apr. 1, 1987) (where the Commission affirmed the hearing examiner's decision and order, because the defaulting housing provider lacked standing to challenge the merits of the appeal). In Turner, Keys, and Wofford, the Commission noted 14 DCMR 4017, Relief from Judgment or Order, was a means by which a defaulting party could seek relief. The housing provider in the instant case did not file a motion for relief from judgment.

Jenkins v. Cato, TP 24,487 (RHC Feb. 15, 2000) at 4-6.

Similarly, the housing provider in the instant case, who did not participate in the evidentiary hearing, does not have standing to challenge the results on appeal. Since the housing provider did not raise or satisfy any of the Radwan factors,⁵ the Commission cannot vacate the default judgment.⁶ See Sydnor v. Johnson, TP 26,123 (RHC Nov. 1,

⁵ The Commission notes that the housing provider could not satisfy the Radwan factors. The record reflects that the United States Postal Service delivered the hearing notice on April 23, 2002. The housing provider, who received the notice more than thirty days before the hearing, failed to appear. In addition, the housing provider did not demonstrate good faith or act promptly after the hearing. The OAD held the hearing on June 3, 2002, but did not issue the decision and order until September 20, 2002. The housing provider received notice of the hearing on April 23, 2002 and failed to attend the hearing on June 3, 2002. However, the housing provider did not act until October 9, 2002, when he filed the Affidavit and Motion for Reconsideration in response to the adverse decision and order. Finally, in the post-hearing memorandum counsel stated: "Respondent here does not claim or attempt to assert 'any defense to the allegations of overcharging in the tenant's complaint.'" Respondent's Memorandum at 2. Consequently, the housing provider did not meet the four Radwan factors. The housing provider, who received notice of the hearing, failed to act in good faith, failed to act promptly, and failed to present an adequate defense.

⁶ During the Commission's hearing, the Commission questioned the housing provider's attorney concerning Radwan. In a post-hearing memorandum, Attorney Loots argued that his client's case was distinguishable from Radwan, because "the contested ALJ's decision was not the result of [a] [d]efault [j]udgment, but rather an error of law on the part of the ALJ." Respondent's Memorandum at 2. Counsel posits that the Commission can review the errors of law, notwithstanding the fact that the housing provider failed to participate in the proceedings. The Commission disagrees.

2002; Miller v. William C. Smith Co., TP 24,663 (RHC Apr. 20, 2001). Accordingly, the Commission affirms the ALJ's decision and order.

B. Whether the hearing examiner made a numerical error in one of the fines that he imposed on the housing provider.

The Commission's review is limited to the issues raised in the notice of appeal. However, the Commission may correct plain error in the ALJ's decision and order. 14 DCMR § 3807.4 (1991). The Commission's power to correct plain error exists whether or not there has been a default judgment. Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000).

When the ALJ issued the decision and order, he imposed a fine in the amount of \$9000.00. The \$9000.00 fine represented three fines in the amount of \$3000.00 each, for failing to properly register the rental property with RACD, failing to file the proper rent increase forms with RACD, and failing to file the proper rent ceiling with RACD. Conclusion of Law 3, OAD Decision at 6. In the section of the decision entitled "Order," the ALJ ordered the housing provider to pay the \$9000.00 fine. There was no numerical error in the fine. As a result the Commission affirms the \$9000.00 fine.

In addition to imposing the three fines described above, the ALJ imposed an additional fine against the housing provider for unlawfully attempting to increase the tenant's rent. In Conclusion of Law 4, the ALJ imposed "a civil fine in the amount of \$2000.00" for unlawfully attempting to increase the tenant's rent. However, he ordered the housing provider to pay a fine in the amount of \$3000.00 for unlawfully attempting to increase the tenant's rent. Since the ALJ stated that the fine was \$2000.00 in the conclusion of law, but stated that the fine was \$3000.00 in the Order, this constituted a plain numerical error. See Alexandra Corp., at 9 (remanding for the correction of a

numerical error when the hearing examiner imposed a fine in the amount of \$75.00 but ordered the housing provider to pay a fine in the amount of \$750.00).

The Commission remands this matter to the ALJ for the limited purpose of correcting the numerical error created when he concluded that the housing provider shall pay \$2000.00 for unlawfully increasing the tenant's rent, but ordered him to pay \$3000.00 for unlawfully increasing the tenant's rent.

IV. ISSUES RAISED IN THE NOTICE OF APPEAL

- A. Whether the ALJ erred when he determined that the testimonial and documentary proof persuades him that the housing provider's failure to register the rental property with RACD, and to file the proper rent ceiling and rent increase forms with RACD was done knowingly and willfully in violation of the act.
- B. Whether the ALJ's determination and imposition of a civil fine in the amount of \$9000.00 was in error and/or excessive with respect to housing provider's alleged failure to properly register the property in question, to file the provider rent increase forms, and failing to file the proper rent ceiling with RACD and whether the fine imposed of \$2000.00 for allegedly attempting to implement a rent increase in violation of the law is both unjustified and disproportionate to the alleged violation.
- C. Whether the ALJ's reliance on the hearsay testimony of the tenant as to the results of tenant's review of the RACD files, as opposed to actual documentation of the existence or lack of existence of any particular required filings or forms was in error.
- D. Whether it was error for the ALJ to assess a refund and penalties for the rental increase demanded but never paid by the tenant in response to housing provider's letter, even if it were determined that the letter itself was initially an unlawful demand for an increase.

In each of the issues raised in the notice of appeal, the housing provider challenges the findings of facts and conclusions of law reached during the evidentiary hearing, which the housing provider did not attend. Since the housing provider failed to participate in the hearing, he does not have standing to challenge the results on appeal.

See discussion supra. See also Sydnor v. Johnson, TP 26,123 (RHC Nov. 1, 2002).

Accordingly, the Commission dismisses Issues A-D.

V. CONCLUSION

For the foregoing reasons, the Commission dismisses the issues raised in the notice of appeal.

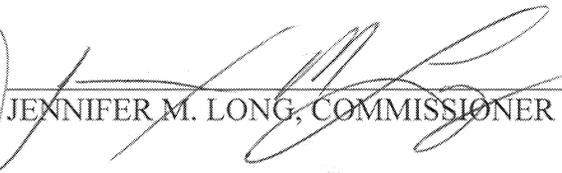
The Commission remands this matter to the ALJ for the limited purpose of correcting the numerical error created when he concluded that the housing provider shall pay \$2000.00 for unlawfully increasing the tenant's rent, but ordered him to pay \$3000.00 for unlawfully increasing the tenant's rent.

The Commission affirms the fine in the amount of \$9000.00, the rent refund in the amount of \$1320.00, and all other aspects of the decision and order.

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 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:

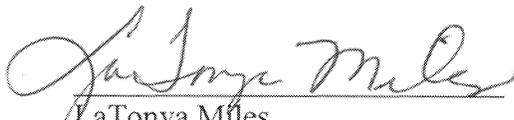
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,364 was mailed by priority mail with delivery confirmation, postage prepaid, this 1st day of June 2004 to:

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