

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,370

In re: 1118 Girard Street, N.W.

Ward One (1)

JONATHAN POLANIN

Tenant

v.

MAURICE WHITE

Housing Provider

**DECISION AND ORDER**

June 13, 2003

**PER CURIAM:** This matter is before the District of Columbia Rental Housing Commission (Commission) pursuant to 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, 14 DCMR §§ 3800-4399 (1991) also govern the proceedings. In accordance with D.C. OFFICIAL CODE § 42-3502.16(h) (2001), the Commission initiated review of the Rent Administrator's decision issued by Administrative Law Judge (ALJ) Smith on August 2, 2002.

**I. PROCEDURAL BACKGROUND**

Jonathan Polanin filed Tenant Petition (TP) 27,370 with the Rental Accommodations and Conversion Division (RACD) on December 3, 2001. In the petition, he alleged that the housing provider, Maurice White, failed to file a Registration/Claim of Exemption Form with RACD, failed to provide proper 30-day notice of rent increase, and imposed a rent increase which was larger than the amount

permitted under the Act. The ALJ convened the hearing on June 10, 2002. The tenant and the housing provider appeared pro se. On August 2, 2002, the ALJ issued a decision and order requiring that the housing provider file a Registration/Claim of Exemption Form and dismissed the tenant's claim of improper 30-day Notice of Rent Increase. Polanin v. White, TP 27, 370 (OAD Aug. 2, 2002) at 7. In the decision and order, the ALJ found that the housing provider failed to file the Registration/Claim of Exemption Form with the RACD. He concluded, however, that the property was exempt because the requirements for the small landlord exemption were met.

On September 9, 2002, the Commission initiated review of the ALJ's decision and order pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001)<sup>1</sup> and 14 DCMR § 3808 (1991).<sup>2</sup> In accordance with 14 DCMR § 3808.2 (1991), the Commission notified the parties of its reason for initiating review and informed the parties of their right to present arguments on the issue identified by the Commission. On October 1, 2002, the Commission issued its hearing notice by priority mail with delivery confirmation. The

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<sup>1</sup> "[T]he Rental Housing Commission may review a decision and order of the Rent Administrator on its own initiative." D.C. OFFICIAL CODE § 42-3502.16(h) (2001).

<sup>2</sup> The regulation, 14 DCMR § 3808 (1991), provides:

3808.1 Not later than twenty (20) days after the deadline for the parties to file an appeal, the Commission may initiate a review of any decision of the Rent Administrator.

3808.2 The Commission shall serve the parties who appeared before the hearing examiner with its reasons for initiating a review and shall inform them of their right and opportunity to present arguments on the issues identified by the Commission.

3808.3 All due process rights afforded parties in a review commenced by a notice of appeal shall also be provided when the review is initiated by the Commission.

3808.4 In appeals initiated pursuant to this section, the provisions of §§ 3802.10, 3802.11 and 3805.5 shall not apply.

Commission scheduled the hearing on its initiated review for November 7, 2002. On October 30, 2002 the Commission rescheduled the hearing for November 14, 2002.

## II. ISSUE ON APPEAL

In its notice of initiated review, the Commission identified the following issue as the basis of review:

Whether the Administrative Law Judge erred when he took official notice of information found in the Washington City Paper (July 26, 2002 ed.), for the purpose of determining a rent range for rental units in the Columbia Heights area.

Notice of Commission Initiated Review (RHC Sept. 9, 2002) at 2.

## III. DISCUSSION OF THE CASE

**Whether the Administrative Law Judge erred when he took official notice of information found in the Washington City Paper (July 26, 2002 ed.), for the purpose of determining a rent range for rental units in the Columbia Heights area.**

The Act, D.C. OFFICIAL CODE § 42-3502.05 (a) (3),<sup>3</sup> provides for an exemption under the provision of the Act for small housing providers of 4 units or fewer. If a housing provider claims that a rental unit is exempt, but has not filed a Registration/Claim of Exemption Form with RACD, he must prove special circumstances existed. In order to qualify for a special circumstances exemption, a housing provider must show: 1) that he was reasonably unaware of the requirement of filing a Registration/Claim of Exemption Form; 2) he was not a housing provider regularly; and

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<sup>3</sup> The Act, § 42-3502.05, 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.

3) that the rent charged was reasonable. See Hanson v. District of Columbia Rental Hous. Comm'n, 584 A.2d 592, 596 (D.C. 1991).

In the instant case, the housing provider met his burden of proof to produce evidence that he was reasonably unaware of the requirement of filing a Registration/Claim of Exemption Form, and he was not a housing provider regularly. However, the housing provider failed to meet his burden of proof that he charged a reasonable rent.

Official notice of reasonable rent was taken by the ALJ from the Washington City Paper, July 26, 2002 edition. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either: 1) generally known within the territorial jurisdiction of the trial court or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Renard v. District of Columbia, 673 A.2d. 1274,1276 (D.C. 1996) (citing FED. R. EVID 201(b)). Reasonable rent for the property in question is not generally known within the jurisdiction. It is necessary to obtain the information from other sources. The ALJ chose the Washington City Paper as the source to provide proof of reasonable rent; a source, Washington City Paper, which could reasonably be questioned. It is reasonable to find that other comparable sources to the Washington City Paper would present differences in rental fees in the same area. Therefore, the ALJ erred in taking official notice of reasonable rent from the Washington City Paper.

The ALJ introduced the evidence of reasonable rent into the record. In Remin v. District of Columbia, 471 A.2d 275, 279 (D.C. 1984) (citing Bernstein v. Lime, 91 A.2d 841, 843 (D.C. 1952)), the court found the landlord has the burden of establishing that an

exemption applies. Remin at 279. In the process of writing the decision and order in this case, the ALJ obtained the Washington City Paper and introduced it into the record as evidence of reasonable rent. The housing provider did not introduce this evidence during the hearing. Therefore, the housing provider failed to meet his burden of proof, because the evidence was provided by the ALJ.

In the event that evidence is introduced into the record by an administrative agency, any party to the proceeding must have the opportunity to rebut the facts. “Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the record, any party to such a case shall on timely request be afforded an opportunity to show the contrary.” D.C. OFFICIAL CODE § 2-509 (2001). In addition, the court in Carey v. District of Columbia, 304 A.2d 18 (D.C. 1973), found “The agency must notify the parties that a material fact is being officially noticed so that the parties have an opportunity to rebut the fact.” Id. at 20. In the instant case the ALJ did not give the tenant the opportunity to rebut the facts officially noticed. The evidence of reasonable rent was introduced and officially noticed after the hearing, and the tenant was not given the opportunity to rebut the facts. Therefore, the decision of the ALJ is reversed and remanded.

**IV. CONCLUSION**

The Commission reverses the ALJ's decision and order and remands TP 27,370 to the Rent Administrator. The Rent Administrator shall conduct a hearing to receive evidence from the housing provider of reasonable rent, and the tenant shall have the opportunity to rebut such evidence.

SO ORDERED.

  
RUTH R. BANKS, CHAIRPERSON

  
RONALD A. YOUNG, COMMISSIONER

  
JENNIFER M. LONG, COMMISSIONER

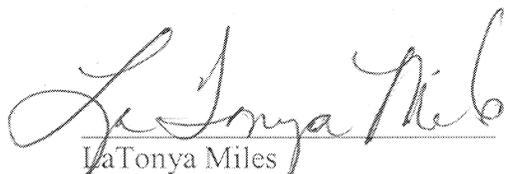
## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,370 was mailed by priority mail with delivery confirmation, postage prepaid, this 13<sup>th</sup> day of June 2003 to:

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