DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,371

In re: 801 Euclid Street, N.W.

Ward One (1)

LYNN HARPS
Tenant

v.

LAWRENCE ROBERTSON
Housing Provider

DECISION AND ORDER

May 30, 2003

LONG, COMMISSIONER. 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 Simon on June 11, 2002.

I. PROCEDURAL HISTORY

Lynn Harps filed Tenant Petition (TP) 27,371 with the Rental Accommodations and Conversion Division (RACD) on December 3, 2001. In the petition, he alleged that the housing provider, Lawrence Robertson, directed retaliatory action against him and failed to properly register the housing accommodation.

The ALJ convened the hearing on June 5, 2002. The tenant and the housing provider appeared pro se. According to the decision and order, the tenant presented a joint motion to withdraw the petition based on a settlement agreement. In the agreement, the parties expressed their desire to make mutual concessions to settle their dispute, without a hearing. The housing provider agreed to pay $100.00 to the tenant by June 12, 2002, in full satisfaction of the tenant's claims. Through the agreement, the parties stated that they carefully reviewed the agreement, found the terms to be satisfactory, signed the agreement without coercion or duress, and agreed to the dismissal of the petition with prejudice. On June 11, 2002, the ALJ issued a decision and order, accepting the settlement agreement and dismissing the petition. Harps v. Robertson, TP 27,371 (OAD June 11, 2002) at 2.

On July 12, 2002, the Commission initiated review of the ALJ's decision and order pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001)[1] and 14 DCMR § 3808 (1991).[2] 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 August 7, 2002, the

---

[1] "[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).

[2] 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 issued its hearing notice and reissued its notice of initiated review, by priority mail with delivery confirmation. The Commission reissued the notice of initiated review, because the Commission inadvertently placed an incorrect address on the housing provider's notice. The Commission scheduled the hearing on its initiated review for August 29, 2002. Neither party appeared for the Commission's hearing. However, the record reflects that the United States Postal Service delivered the hearing notice and the reissued notice of initiated review to the parties' record addresses on August 8, 2002.

II. ISSUE

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

> Whether the Administrative Law Judge erred when he failed to make findings of fact or conclusions of law regarding the settlement agreement as required by the DCCA in Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542 ([D.C.] 1984).

Reissued Notice of Commission Initiated Review (RHC Aug. 7, 2002) at 2.

III. DISCUSSION

Whether the Administrative Law Judge erred when he failed to make findings of fact or conclusions of law regarding the settlement agreement as required by the DCCA in Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542 (D.C. 1984).

To ensure uniform, efficient, and fair proceedings that are sufficient for judicial review, all hearings must be held in accordance with the DCAPA, D.C. OFFICIAL CODE §§2-501-510 (2001). See 14 DCMR § 4000.2 (1991). In addition, the written decision

issued after the hearing must satisfy the requirements of the DCAPA.[3] In order to meet the requirements of § 2-509, "(1) the decision must state findings of fact on each material, contested, factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings." Perkins v. District of Columbia Dep't of Employment Servs., 482 A.2d 401, 402 (D.C. 1984) quoted in King v. District of Columbia Dep't of Employment Servs., 742 A.2d 460, 465 (D.C. 1999).

The decision and order in the instant case did not contain findings of fact or conclusions of law. The ALJ merely recounted the procedural history and incorporated the terms of the settlement agreement into the decision and order.

In Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542, 548 (D.C. 1984), the court held that the agency must consider proposed settlement agreements under the strictures of the DCAPA.

> In determining whether to adopt a ... compromise proposal ..., the [agency] shall consider (1) the extent to which it enjoys support among the affected tenants, (2) its potential for finally resolving the dispute, (3) the fairness of the proposal to all affected persons, (4) the saving of litigation costs to the parties, and (5) the difficulty of arriving at a prompt, final evaluation of the merits, given the complexity of the law and the delays inherent in the administrative and judicial processes. The [agency's] decision, adopting or rejecting the compromise proposal, shall contain findings of fact and conclusions of law sufficient for this court's review.

(emphasis added).

The ALJ cited Proctor and noted his responsibility to review settlement agreements in accordance with Proctor. However, the ALJ did not satisfy the dictates of

---

[3] D.C. OFFICIAL CODE § 2-509(e) (2001) states in relevant part:

> 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.

Proctor, because the decision and order did not contain findings of fact and conclusions of law. The ALJ merely incorporated the terms of the settlement agreement into the decision and stated, "[I]t appears that the parties ... entered into the agreement without coercion or under any duress ... [and] all the parties' rights were adequately protected." Harps v. Robertson, TP 27,371 (OAD June 11, 2002) at 2.

The agency's responsibility to issue findings of fact and conclusions of law is well settled in this jurisdiction. The District of Columbia Court of Appeals has repeatedly "discussed the need for sufficient findings and conclusions as required by the [DC]APA and remanded ... case[s] for lack of sufficient findings. ... [The Court and the Commission] must enforce all provisions of the [DC]APA. Therefore we will continue to order that [the Rent Administrator's hearing officers] specify the precise findings and conclusions which support their decisions. ... 'The need for articulation of findings requires the decision-making body to focus on the value to be served by its decision and to express the considerations which must be the bases of decision.'" Brewington v. District of Columbia Bd. of Appeals and Review, 287 A.2d 532, 534 (D.C. 1972) (citations omitted).[4]

The ALJ erred when he failed to follow the court's clear mandate, which requires the agency to issue findings of fact and conclusions of law in every decision and order. The court's mandate is equally applicable to cases that involve proposed settlement agreements. When a decision and order does not contain findings of fact, the reviewing body is compelled to remand the matter, because the record is insufficient for review.

---

[4] In Brewington, the Court rejected counsel's argument that the failure to issue findings was harmless error because the court could infer the basis of the agency's decision. The court stated, "Such an argument finds no support in either law or logic and evidences disregard for the clear and often repeated mandate of this court." Id.

See Hedgman v. District of Columbia Hackers' License Appeal Bd., 549 A.2d 720 (D.C. 1988); Nursing Servs. v. District of Columbia Dep't of Employment Servs., 512 A.2d 301 (D.C. 1986). Accordingly, the Commission reverses the decision and order and remands this matter to the ALJ.

IV. CONCLUSION

For the foregoing reasons, the Commission reverses the ALJ's decision and order and remands TP 27,371 to the ALJ. The Commission directs the ALJ to consider the settlement agreement, utilizing the factors enunciated in Proctor.

The ALJ shall issue a decision and order that contains findings of fact and conclusions of law on the existing record. The ALJ shall not conduct a hearing or receive additional evidence. See Wire Properties v. District of Columbia Rental Hous. Comm'n, 476 A.2d 679 (D.C. 1984).

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 27,371 was mailed by priority mail with delivery confirmation, postage prepaid, this 30th day of May 2003 to:

Lynn Harps
5057 1st Street, N.W.
Washington, D.C. 20011

Lawrence Robertson
524 Whittier Street, N.W.
Washington, D.C. 20012

Dorothy Cromwell
Commission Assistant