

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,442

In re: 3206 Wisconsin Avenue, N.W., Unit 62

Ward Three (3)

**GELMAN MANAGEMENT COMPANY**  
Housing Provider/Appellant

v.

**RIDVAN HAKA**  
**ANILA KUKA**  
Tenants/Appellees

**DECISION AND ORDER**

**September 26, 2003**

**BANKS, CHAIRPERSON.** This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator. 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 (DCMR), 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

**I. THE PROCEDURES**

On February 15, 2002, Ridvan Haka and Anila Kuka, the Tenants, filed tenant petition (TP) 27,442. The petition alleged: 1) a rent increase larger than the amount allowed by the Act; 2) a rent increase while the housing accommodation was not in compliance with the housing code; and 3) services and facilities provided in connection with the rental unit were substantially reduced. Hearing Examiner Desmond P. Brown

held the hearing on June 28, 2002. He issued the decision and order on September 26, 2002. In the decision the hearing examiner stated:

After a careful evaluation and analysis of the evidence, the Examiner finds, as a matter of fact:

1. The subject property is the Alto Towers building, 3206 Wisconsin Avenue, N.W., apartment 62, Washington, D.C.
2. On December 22, 1998, Petitioners, Ridvan Haka and Anila Kuka, entered into a Lease Agreement for the rental of apartment 62. The lease provided for monthly rent of Seven Hundred Dollars (\$700.00). Petitioners have resided in apartment 62 of the subject premises, at all relevant times.
3. Respondent, the Gelman Company, was the property manager and agent of lessor at all relevant times.
4. On January 13, 2000, Respondent filed a Certificate of Election of Adjustment of General Applicability with the RACD. Petitioners received a Tenant Notice of Increase of General Applicability, giving notice of a rent increase from \$700 to \$740, effective February 1, 2001.
5. Respondent did not file a Certificate of Election of Adjustment of General Applicability with the RACD in 2001. Petitioners received a Tenant Notice of Increase of General Applicability, giving notice of a rent increase from \$740 to \$780, effective February 1, 2001.
6. On January 10, 2002 Respondent filed a Certificate of Election of Adjustment of General Applicability with the RACD. Petitioners received a Tenant Notice of Increase of General Applicability, giving notice of a rent increase from \$780 to \$880, effective February 1, 2002
7. Respondent filed an Amended Registration Form with the RACD on October 26, 1990.
8. Respondent filed an Amended Registration Form with the RACD on December 11, 1991.
9. Respondent filed an Amended Registration Form with the RACD on or about March 23, 1993.
10. Respondent did not file an Amended Registration Form with the RACD in January, February or March 1999.

11. The walls in the Petitioners' rental unit have been affected by excessive moisture. On or around June 20, 2000, Petitioners complained to Respondent about the dampness. After receiving the complaint, Respondent offered to have a maintenance person repair the wall, but Petitioners elected to make the repairs themselves with materials that they obtained from Respondent.
12. There are two elevators in the subject premises that are available for use by the tenants. The elevators are old and subject to sporadic mechanical failure. The outages have forced Petitioners to use the stairs, and sometimes carry their young child and a stroller. In order to resolve these problems, Respondent has hired a contractor to install new microprocessors in the elevators.
13. There are problems during the winter months with the availability of hot water in the building.
14. There is a problem with roaches in Petitioners' unit, and in the common areas of the trash chutes, hallways and basement. An exterminator visits the building every Wednesday and is available to tenants upon request.
15. A problem with improper fit and the weather stripping around the windows allows cold air and rain to enter the rental unit. Respondent has hired a contractor to replace all of the windows in the building, but this work was not completed as of the date of the hearing.
16. Respondent charges a seasonal fee, which is separate from the rent charge, for the installation and use of an air conditioner. The fee was Two Hundred Fifty Dollars (\$250.00), during the 2000 and 2001 air conditioning seasons. The fee was increased to Three Hundred Dollars (\$300.00) in 2002. An air conditioner is listed on the Amended Registration Form as one of the services and facilities provided by Respondent.

OAD Decision at 3-5.

After a careful evaluation of the evidence and findings of fact, the Examiner concludes as a matter of law:

1. That the Respondent, Gelman Management Company, increased the rent ceiling applicable to unit 62 of the subject premises, February 1, 1999, in violation of D.C. Code § 42-3502.06(e);

2. That the Respondent, Gelman Management Company, increased the rent charge, effective February 1, 2001 in an amount larger than that allowed by the Act and Rules in violation of 14 DMCR § 4204.10(c);
3. Petitioners have failed to establish, by a preponderance of the evidence, that the rental unit was not in substantial compliance with the D.C. Housing Regulations, in violation of 14 DCMR 4205.5 (a) [sic], when Respondent increased the rent charge in 2000, 2001, and 2002;
4. Petitioners have proven, by a preponderance of the evidence that there was a substantial reduction in services and/or facilities provided in connection with the rental unit, in violation of 14 DCMR § 4211.6; and
5. Petitioners failed to establish that Respondent have [sic] taken any retaliatory action against them for exercising rights, in violation of D.C Code § 42-3505.02.

OAD Decision at 13.

The hearing examiner assessed a fine of \$1,000.00 against the Housing Provider.

## **II. THE ISSUES**

The Housing Provider filed its notice of appeal on October 10, 2002, which contained the following issues:

1. The Decision and Order is contrary to the evidence presented at the hearing on Tenant Petition 27,442 by stating that the Housing Provider was unable to produce a file stamped copy of the Amended Registration Form (Respondent's Exhibit 1).
2. The Decision and Order is contrary to the evidence presented at the hearing on Tenant Petition 27,442 on the Housing Provider charged an impermissible fee to cover the electrical expense of the Tenants operating an air conditioner.
3. The Decision and Order is contrary to the evidence presented at the hearing on Tenant Petition 27,442 on the Housing Provider, Gelman, provided a Certificate of Election signed January 2, 2001, which was not date stamped.
4. The Hearing Examiner improperly calculated the damages awarded to Petitioner.

5. The Hearing Examiner erred in determining that a rent increase was larger than allowed.
6. The Rent Administrator erred in determining that the fee associated with the air conditioner was included as part of the mandatory rent.
7. The assessment of a fine by the Hearing Examiner was arbitrary, capricious and clearly erroneous.

The Commission held its appeal hearing on December 11, 2002.

### III. THE COMMISSION'S DECISION

#### A. Whether the Decision and Order is contrary to the evidence presented at the hearing on Tenant Petition 27,442 by stating that the Housing Provider was unable to produce a file stamped copy of the Amended Registration Form (Respondent's Exhibit 1).

This issue relates to whether the Housing Provider produced a file stamped copy of the Amended Registration Form dated February 26, 1999.<sup>1</sup> The brief states:

The Examiner concluded that because the Housing Provider was unable to produce a file stamped copy of the Amended Registration Form (Respondent's Exhibit 1) the rent ceiling should be adjusted downward from \$1,177.00 to \$1,061.00.

Housing Provider Brief at 2.

The Hearing Examiner wrote in the decision:

One of the Amended Registration Forms, however, does not contain a date-stamp. This Form, dated 2/26/99, indicates that the rent ceiling for unit 62 shall be increased by twelve percent (12%), from Nine Hundred Sixty-Nine Dollars (\$969.00) to One Thousand Eighty-five (\$1085.00), effective February 1, 1999.<sup>2</sup>

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<sup>1</sup> This is the date next to the signature of the Housing Provider's agent on page 2 of Exhibit 1. There is no agency date stamp on this exhibit.

<sup>2</sup> This increase in the rent ceiling appears to be improper, since the Amended Registration Form on page 2 has a signature dated February 26, 1999, which is after the effective date of February 1, 1999. See 14 DCMR § § 4103.1(e), 4204.10 & 4207.5 (1991), which require filing the amended registration form within thirty (30) days of being first eligible to take the vacancy rent ceiling adjustment, and notice pursuant to § 4101.6 for completion of perfection. There is nothing in the record, which shows notice pursuant to § 4101.6, nor when the vacancy occurred. However, these issues were not raised by the tenants and not decided by the Commission.

Because the Tenant Petition was filed on February 15, 2002 the filing date falls within the three year statute of limitations and is therefore subject to direct attack by petitioners. D.C. [Official] Code § 42-3502.06(e); Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995); Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990). (emphasis added.)

OAD Decision at 6-7.

In finding of fact number ten (10) the hearing examiner stated: "Respondent did not file an Amended Registration Form with the RACD in January, February or March 1999." OAD Decision at 4.

The Commission reviewed the certified record, which shows that Respondent's Exhibit (Exh.) 1 (Amended Registration Form) does *not* have a RACD date stamp on it. Nevertheless, this Amended Registration Form, p. 1, states for the Tenants' rental unit:

Current Rent Ceiling	Rent Charged	Date of Change	Previous Rent Ceiling	Percentage of Increase	Authorizing Sec. of RHA
1085.00	700.00	2-1-99	969.00	12%	213

Exhibit 1 shows a rent ceiling increase of \$116.00, which is the difference between the previous rent ceiling, \$969.00, and the current rent ceiling, \$1085.00, shown on that exhibit and stated above in the chart. The hearing examiner decreased the rent ceiling by the identical amount, \$116.00, because of the lack of an official date stamp on the Amended Registration Form.

The Housing Provider argued to the Commission that the hearing examiner erred in the decision, because he confused Respondent's Exhibit 4 with Exhibit 1. Exhibit 4 states:

Current Rent Ceiling	Rent Charged	Date of Change	Previous Rent Ceiling	Percentage of Increase	Authorizing Sec. of RHA
638.00	638.00	9-1-90	462.00	Highest Comparable	213

The increase in the rent ceiling on Exhibit 4 was \$176.00. The hearing examiner did not decrease the rent ceiling by \$176.00 as stated in Exhibit 4, rather he decreased it by \$116.00, as stated on Exhibit 1. Moreover, Exhibit 4 was date-stamped October 26, 1990. Therefore, Exhibit 4 was beyond the three-year statute of limitations for the tenant to challenge in the petition, which was filed on February 15, 2002, and not subject to attack by the Tenants, and consequently the hearing examiner could not make a determination that affected the validity of Exhibit 4. D.C. OFFICIAL CODE § 42-3502.06(e) (2001), Kennedy v. District of Columbia Rental Hous. Comm'n, 709 A.2d 94 (1998). The brief does not give a reason for finding the hearing examiner erred, other than the Amended Registration Form (Exh. 1) did not have a file stamp on it. The hearing examiner noted that Exhibit 1 was within the three-year statute of limitations for the Tenants to attack. Therefore, the hearing examiner properly reduced the rent ceiling based on the absence of a RACD date stamp on Exhibit 1.

The Commission's certified file shows that the Amended Registration Form (Exh. 1) did not have a file date stamp on it<sup>3</sup> and therefore, the hearing examiner did not commit an error by stating that Exhibit 1, did not have a date stamp on it. The RACD date stamp would have shown that the Amended Registration Form was properly filed and perfected, in accordance with 14 DCMR § 4205.7, 45 D.C. Reg. 688 (Feb. 6, 1998), which requires that the rent ceiling be perfected, although not implemented by the

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<sup>3</sup> This document was signed and executed by the Housing Provider's agent on February 26, 1999, which is within the three-year statute of limitations period, before the tenant petition was filed on February 15, 2002.

housing provider.<sup>4</sup> The hearing examiner is affirmed. This issue is remanded for a determination of whether the Tenants are entitled to a rent refund, based on the invalid rent ceiling increase in Exhibit 1.

**B. Whether the Decision and Order is contrary to the evidence presented at the hearing on Tenant Petition 27,442 on the Housing Provider charged an impermissible fee to cover the electrical expense of the Tenants operating an air conditioner.**

The second inaccuracy in the decision alleged by the Housing Provider is that the hearing examiner stated that the Housing Provider charged an impermissible fee to cover the electrical expense of the Tenants operating an air conditioner. The Housing Provider argued that the fee was an optional charge and relies on Brookens v. Hagner Mgmt Corp., TP 3788 (OAD Aug. 30, 1995); Borger Mgmt., Inc. v. Warren, TP 23,909 (RHC July 22, 1998).<sup>5</sup> According to the Housing Provider, “[t]he fee is not for the air conditioner itself, but rather to cover the electrical expense associated with its use, is an optional service, and any such fees have been charged for over a decade and therefore any challenge is barred by the applicable statute of limitations.... In fact, the Tenants themselves testified that when they did not use air conditioning because they were out of the country, they did not pay the air conditioning charge.”<sup>6</sup> Housing Provider Brief at 2.

The hearing examiner wrote in finding of fact number 16:

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<sup>4</sup> See Sawyer Property Mgmt. v. Mitchell, TP 24,991 (RHC Oct. 31, 2002) (where the majority of the Commission discussed the need for proper filing to perfect rent ceiling adjustments, citing Williams v. Ellis, TP 23,313 (RHC June 19, 1997)).

<sup>5</sup> This case has no authority or discussion about fees, optional charges, electrical expense, or air conditioners.

<sup>6</sup> This statement, “[i]n fact, the Tenants themselves testified that when they did not use air conditioning because they were out of the country, they did not pay the air conditioning charge” is an accurate summary of the Tenants’ testimony.

Respondent charges a seasonal fee, which is separate from the rent charge, for the installation and use of an air conditioner. The fee was Two Hundred Fifty Dollars (\$250.00), during the 2000 and 2001 air conditioning seasons. The fee was increased to Three Hundred Dollars (\$300.00) in 2002. An air conditioner is listed on the Amended Registration Form as one of the services and facilities provided by Respondent.

OAD Decision at 5.

The OAD certified record, contained Respondent's exhibits (Exhs.) 2, 3, & 4, which showed the air conditioner was listed as a service or facility provided by the Housing Provider. In addition, the Tenants' lease provided for the extra charge above their rent. The Tenant's lease at paragraph 29 states:

29A. Tenant shall not install air conditioners in the premises without first obtaining Landlord's written consent, which consent may be withheld or denied in Landlord's sole discretion. In the event Tenant installs air conditioners in the said premises then Tenant shall pay to the Landlord, as additional rent, the current charge established by Landlord for each air conditioner so installed. In the event Tenant installs air conditioners in the Premises without Landlord's consent, Landlord may remove same without notice to Tenant.<sup>7</sup>

The Tenants admitted at the Commission's hearing that they purchased their own air conditioning unit and did not pay the fee for electricity while they were abroad one month. However, they objected to the payment of the fee for electricity for the air conditioning, because of the most recent rent ceiling and rent increase.

The Commission holds that the lease is controlling. That is, the Tenants agreed in the lease, "[i]n the event Tenant installs air conditioners in the said premises then Tenant shall pay to the Landlord, as additional rent, the current charge established by Landlord

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<sup>7</sup> The Tenants' lease was admitted into evidence by official notice, as a document filed by the Tenants with the tenant petition. OAD Decision at 2. The hearing examiner also advised the parties that any party may show upon timely request evidence to the contrary, citing DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001). Id. No request was filed by either party.

for each air conditioner so installed.” Lease at ¶ 29A quoted above. Therefore, the additional fee or rent for air conditioning was in addition to the rent authorized under the Act. See Weaver Bros., Inc. v. District of Columbia Rental Hous. Comm’n, 473 A.2d 384 (D.C. Mar. 1984). The hearing examiner is affirmed on this issue.<sup>8</sup>

**C. Whether the Decision and Order is contrary to the evidence presented at the hearing on Tenant Petition 27,442 on the Housing Provider, Gelman, provided a Certificate of Election signed January 2, 2001, which was not date stamped.**

The Housing Provider’s third alleged inaccuracy in the decision was:

[T]he Examiner also stated that Gelman provided a Certificate of Election signed January 2, 2001, which was not date stamped. On that basis, the Examiner stated that the rent adjustment implemented on February 1, 2001, was improper. This is incorrect. The Certificate provided was clearly date-stamped January 5, 2001, and timely filed. More importantly, however, the \$40.00 rent adjustment which was implemented on February 1, 2001, was not based on the ceiling adjustment reflected in the Certificate. Mr. Nicholas Pitsch testified that the increase was based on Respondent’s Exhibit 4, a vacancy adjustment registered in 1990.

Housing Provider Brief at 3.

The Hearing Examiner wrote:

Similarly, Petitioners submitted a Certificate of Election, executed 1/2/01, which was not date-stamped. This form implemented a rent change from Seven Hundred Forty Dollars (\$740.00) to Seven Hundred Eighty Dollars (\$780.00). This increase is invalid, since 14 DCMR § 4204.10(c) requires that the housing provider shall file the certificate of election ‘within thirty

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<sup>8</sup> Counsel for the Housing Provider raised the issue whether the Tenants properly pleaded their issue about the air conditioning fee in the tenant petition. The Commission reviewed the tenant petition, and noted that at the bottom of Section V, where the petition states, “PLEASE USE THE SPACE BELOW TO DESCRIBE IN DETAIL THE EVENTS, DATES, EXPERIENCES AND OBSERVATIONS ON WHICH YOU BASE THE ALLEGATIONS CHECKED ABOVE,” the Tenants responded by typing the following, “PLEASE REFER TO OBSERVATIONS DESCRIBED IN THE ATTACHED LETTER TO THE MANAGER DATED 01/24/2002.” Record (R.) at 19. The attached Tenants’ letter states, “I would also like to point out that tenants are using their own window air conditioning units and pay \$250/per air conditioner each summer. This adds us to our cost of living in this apartment building.” R. at 13. Thus, based on the review of the documents quoted, the Commission determines that the Tenants properly raised the issue of the air conditioning fee in the petition.

(30) days following the date when the housing provider is first eligible to take the adjustment.’ As a result of the failure to file the certificate, the Respondent is precluded from maintaining any rent adjustment in the periods that they failed to file. See Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990). Thus, the current rent charge of Eight Hundred Eighty Dollars (\$880.00) should be reduced by Forty Dollars (\$40.00) to Eight Hundred Forty Dollars (\$840.00). See Lincoln Property Management v. Chibambo, TP 24,801 (RHC November 29, 2000). (emphasis added.)

OAD Decision at 7.

The Housing Provider accurately repeated what the hearing examiner stated in the decision. The Housing Provider stated, “the Examiner also stated that Gelman provided a Certificate of Election signed January 2, 2001, which was not date stamped.” Brief at 3. The hearing examiner stated, “Similarly, Petitioners submitted a Certificate of Election, executed 1/2/01, which was not date-stamped.” Decision at 7. A review of the documents in the record showed that the Certificate of Election of Adjustment of General Applicability signed or executed on January 2, 2001, did not have a date stamp. It was submitted post hearing as an attachment to Attorney Richard Luchs’ letter dated July 8, 2002. In the decision the hearing examiner noted that he considered the “[l]etter from attorney Richard Luchs, dated July 8, 2002, regarding TP 27,442 (with attachments).” OAD Decision at 2-3. This was after the hearing on June 28, 2002. Evidence may not be submitted after the hearing. Harris v. District of Columbia Rental Hous. Comm’n, 505 A.2d 66, 69 (D.C. 1986). Stitt v. Outten, TP 22,809 (RHC Aug. 8, 1996); Johnson v. Hughs, SF 20,040 (RHC Apr. 11, 1996); Tenants of the Winthrop Hous. v. Wm. Calomiris Investment Corp., TP 22,533 (RHC Apr. 7, 1994). Attorney Luchs’ letter was submitted after the hearing and attached to it was the Certificate of Election of General Applicability with the date of January 2, 2001 next to the signature on page 2.

Accordingly, the hearing examiner is reversed on the denial of the \$40.00 rent increase implemented by the Housing Provider as stated in the Certificate, because the Certificate was not introduced into evidence by the Tenants or the Housing Provider, during the hearing for consideration as evidence upon which the hearing examiner could make a finding of fact or conclusion of law.<sup>9</sup>

**D. Whether the Hearing Examiner improperly calculated the damages awarded to Petitioner.**

The Housing Provider did not explain in the brief what was improper about the damage award to the Tenants. However, the Commission noted that the hearing examiner did not make a rent refund, damage award, or order interest on a rent refund, or the damage award. Therefore, that issue is remanded for a determination whether a rent refund is due and the calculation of the damage award and interest based on the remand in issue A. See RECAP v. Powell, TP 27,042 (RHC Dec. 19, 2002) at 10, where the Commission remanded for a proper calculation of interest for each month the Housing Provider held the rent overcharge.

**E. Whether the Hearing Examiner erred in determining that a rent increase was larger than allowed.**

The Housing Provider did not explain this issue in its brief or at the Commission's hearing beyond its claim that the rent ceiling was improperly reduced, as explained in issues one A, and three C. This issue is denied as moot.

**F. Whether the Rent Administrator erred in determining that the fee associated with the air conditioner was included as part of the mandatory rent.**

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<sup>9</sup> This issue is noted under the Commission's power under 14 DCMR § 14 DCMR § 3807.4 (1991) to note plain error. See Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542, 550 (D.C. 1984). Brawner v. United States, 745 A.2d 354 (D.C. 2000).

In the brief, the Housing Provider argued that the fee charged the Tenants was not for air conditioning but for the electricity expense used to run the air conditioner, which is an optional service. Brief at 2. This issue was disposed of in issue B above. It is denied as moot.

**G. Whether the assessment of a fine by the Hearing Examiner was arbitrary, capricious and clearly erroneous.**

The hearing examiner ordered a fine of \$1,000.00, at the end of the decision without an explanation, analysis or a reason. Decision at 14. The Housing Provider asserts that was error, because the decision contained no finding of fact, conclusion of law, nor an explanation of how the hearing examiner determined to impose the fine. This was in violation of the DCAPA, D.C. OFFICIAL CODE § 2-501 et seq. (2001). The Housing Provider quoted the following from the Commission's decision in Ratner Mgmt. Co. v. Tenants of Shipley Park, TP 11,613 (RHC Nov. 4, 1988):

We do not find present the element of intent and conscious choice necessary to sustain a finding of willfulness. There is no doubt that the proof sustains the finding that the violations were 'knowing' as the word is used in § 901(a) of the Act, but no testimony was presented to meet the heavier burden imposed by § 901(b) of showing that the landlord's conduct was intentional, or deliberate or the product of a conscious choice.

Ratner at 5.

The Commission in RECAP v. Powell, TP 27,042 (RHC Dec. 19, 2002) stated:

The Act provides:

Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith)

and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

D.C. OFFICIAL CODE § 42-3509.01.01(a) (2001).

Any person who willfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation.

D.C. OFFICIAL CODE § 42-3509.01(b) (2001).

In Quality Mgmt v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73, 75-76 (D.C. 1986) the court quoted the legislative history of the penalty section of the Act to explain the distinction between a “knowing” violation of the Act under § 42-3509.01(a) as distinct from § 42-3509.01(b), which requires a housing provider to act “willfully” in violation of the Act. The court stated the distinction, “is further supported by the necessity to draw some independent meaning from the word “willfully,” as used in ... [§ 42-3509.01(b)].” Id. The Council created legislative history during debates on the distinctions, which states:

From the context it is clear that the word ‘willfully’ as it is used in [§ 42-3509.01(b)] demands a more culpable mental state than the word “knowingly” as used in [§ 42-3509.01(a)] .... There is a difference. ‘Willfully’ goes to intent to violate the law. ‘Knowingly’ is simply that you know what you are doing. A different standard. If you know that you are increasing the rent, the fact that you don’t intend to violate the law would be ‘knowingly.’ If you also intended to violate the law, that would In Quality Mgmt v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73, 75-76 (D.C. 1986) the court quoted the legislative history of the penalty section of the Act to explain the distinction between a “knowing” violation of the Act under § 42-3509.01(a) as distinct from § 42-3509.01(b), which requires a housing provider to act “willfully” in violation of the Act. The court stated the distinction, “is further supported by the necessity to draw some independent meaning from the word “willfully,” as used in ... [§ 42-3509.01(b)].” Id. The Council created legislative history during debates on the distinctions, which states:

From the context it is clear that the word ‘willfully’ as it is used in [§ 42-3509.01(b)] demands a more culpable mental

state than the word “knowingly” as used in [§ 42-3509.01(a)] .... There is a difference. ‘Willfully’ goes to intent to violate the law. ‘Knowingly’ is simply that you know what you are doing. A different standard. If you know that you are increasing the rent, the fact that you don’t intend to violate the law would be ‘knowingly.’ If you also intended to violate the law, that would be ‘willfully.’ Knowingly [is a] lower ... standard.

Id. n.6.

See also Webb v. District of Columbia Rental Hous. Comm’n, 505 A.2d 467

(D.C. 1986) for a discussion of knowingly. It quoted Qualtiy Mgmt. Inc. v. District of Columbia Rental Hous. Comm’n, 505 A.2d 78 (D.C. 1986) where the court stated:

‘[K]nowingly’ imports only a knowledge of the essential facts bringing petitioner’s conduct within the reach of [§ 42-3509.01.01(a)]; and, from such knowledge of the essential facts, the law presumes knowledge of the legal consequences arising from performance of the prohibited conduct. In other words... actual knowledge of the unlawfulness of the act or omission is not required.

Webb v. District of Columbia Rental Hous. Comm’n, 505 A.2d at 469 & 70.

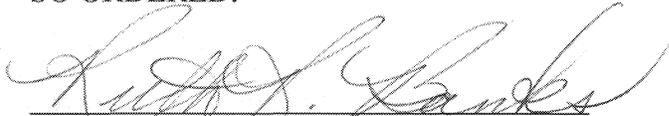
See Meyers v. Smith, TP 26,129 (RHC Mar. 17, 2003) (where the Commission followed Ratner and RECAP to reverse a fine, because the hearing examiner failed to make findings of fact and conclusions of law on whether the Housing Provider acted willfully in accordance with the terms of the Act). The Commission in the instant appeal disposes of this issue on the improper imposition of a fine in the identical manner in Ratner where the Commission stated, “[a]ccordingly, the fine will be vacated.” Ratner at 5.

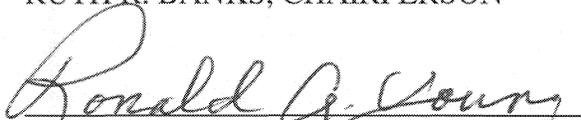
#### IV. CONCLUSION

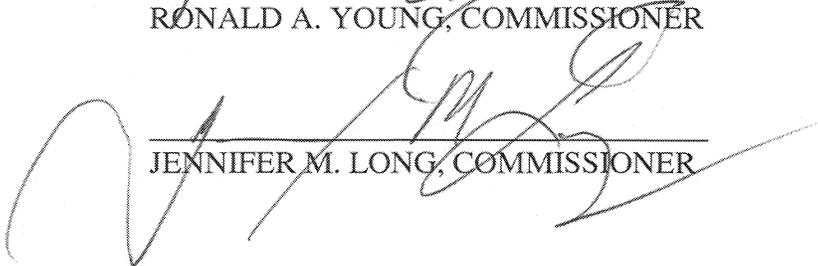
The Commission concludes that in issue A the hearing examiner properly reduced the rent ceiling in Exh. 1, because that Amended Registration Form did not have an

agency date stamp on it. On issues B and F the Commission's review showed the Housing Provider's air condition charges were allowed by the lease. The Commission reversed the hearing examiner for consideration and findings on the Certificate of Election of Adjustment of General Applicability signed January 2, 2001, because that document was submitted, after the close of the hearing. This case is remanded for consideration of whether the Housing Provider owes a rent refund based on the reduction of the rent ceiling allowed in issue A. The \$1,000.00 fine is vacated, because there was no analysis, finding of fact, or conclusion of law to support it.

SO ORDERED.

  
RUTH R. BANKS, CHAIRPERSON

  
RONALD A. YOUNG, COMMISSIONER

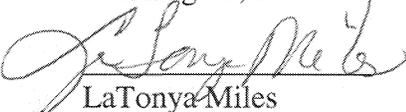
  
JENNIFER M. LONG, COMMISSIONER

## CERTIFICATE OF SERVICE

I certify that a copy of the decision and order in Gelman Management Company v. Haka, TP 27,442 was served by priority mail, with delivery confirmation, postage prepaid, this **26<sup>th</sup> day of September, 2003**, to:

Ridvan Haka  
Anila Kuka  
3206 Wisconsin Avenue, N.W.  
Apartment 62  
Washington, D.C. 20002

Richard Luchs, Esquire  
1620 L Street, N.W.  
Suite 900  
Washington, D.C. 20036-5605

  
LaTonya Miles  
Contact Representative