

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,565

In re: 5812 5th Street, N.W.

Ward Four (4)

BENJAMIN MEDLEY
Housing Provider/Appellant

v.

BARBARA JOHNSON
Tenant/Appellee

DECISION AND ORDER

July 23, 2004

PER CURIAM. This case is on appeal to the Rental Housing Commission (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 Regulation (DCMR), 14 DCMR §§ 3800-4399 (1991), govern the proceedings.

I. PROCEDURAL HISTORY

On July 24, 2002, the tenant Barbara Johnson, filed Tenant Petition (TP) 27,565. The petition alleged the rent charged by the housing provider exceeded the legally calculated rent ceiling for the unit. The Rent Administrator scheduled and held a hearing

on the petition on September 20, 2002. At the hearing, counsel for Benjamin Medley, housing provider, requested, and was granted, a continuance to October 21, 2003 [sic]¹.

Hearing Examiner Gerald J. Roper, on March 21, 2003, issued a decision and order which contained the following findings of fact:

1. The subject property, a single family house, is located at 5812-5th Street, NW, Washington, D.C.[,] and is owned by Benjamin Medley.
2. The RACD [Rental Accommodations and Conversion Division] official files and records shows [sic] Mr. Medley filed a Registration/Claim of Exemption Form dated September 17, 1987, listing the rent ceiling as \$475.00.
3. The RACD official files and records shows [sic] Mr. Medley filed a Certificate of Election of Adjustment of General Applicability dated June 1, 1989, listing the rent ceiling as \$552.00.
4. Mr. Medley leased the subject housing accommodation to the Petitioner, Barbara Johnson on June 1, 2001, at the monthly rent of \$1,300.00.
5. The RACD official files and records shows [sic] Mr. Medley filed a Registration/Claim of Exemption Form dated September 13, 2001, listing the rent ceiling as \$1,450.00.
6. The RACD official files and records shows [sic] Mr. Medley filed a Registration/Claim of Exemption Form dated December 4, 2001, listing the housing accommodation as exempt under Section 205(a)(3) of the Act.
7. The rent ceiling in effect prior to Petitioner taking possession in June 2001 was \$552.00.
8. Respondent charged and collected rent at \$1,300.00 for the period June 1, 2001 through December 30, 2001 when the rent ceiling was \$552.00.
9. The total rent overcharge due Petitioner is \$3,740.00. The interest equals \$83.77.

¹ Pursuant to 14 DCMR § 3807.4 (1991), the Commission noted plain error by the hearing examiner. The hearing was continued to October 21, 2002, not October 21, 2003. Tape Recording (OAD Oct. 21, 2002).

10. The trebled damages amount for the rent overcharge is \$11,220.00.

Johnson v. Medley, TP 27,565 (OAD Mar. 21, 2003) at 9-10.

The decision and order contained the following conclusions of law:

1. Based upon the evidence in this case and the application of D.C. [OFFICIAL] C[ODE] § 42-3502.06 [(2001)] and Regulation, 14 DCMR § 4201.5 [(1991)]; the rent ceiling for the subject rental unit is \$552.00.
2. Respondent has a rent ceiling on file with the RACD that is improper and in violation of D.C. [OFFICIAL] C[ODE] § 42-3502.06 [(2001)] and 14 DCMR § 4205.1 [(1991)].
3. Respondent has increased the rent charged in excess of the legally calculated rent ceiling in violation of 14 DCMR [§] 4205.1[(1991).] Therefore, the Petitioner is entitled to a rent roll back and refund pursuant to D.C. [OFFICIAL] C[ODE] § 42-3509.01 [(2001)].
4. Pursuant to D.C. [OFFICIAL] C[ODE] § 42-3509.01 [(2001)] Respondent is liable for treble damages for knowingly demanding rent in excess of the maximum allowable rent ceiling applicable to the rental unit.

Id. at 10.

In the decision and order dated March 21, 2003, Hearing Examiner Roper granted the tenant petition and ordered the housing provider to refund \$3740.00 rent to the tenant, plus interest. He further ordered that the refund be trebled as a result of the housing provider's bad faith by increasing the tenant's rent to a level higher than the established rent ceiling. Additionally, the hearing examiner ordered the tenant's rent rolled back and fined the housing provider. On April 8, 2003, the housing provider filed a motion for reconsideration with the Rent Administrator. Hearing Examiner Roper did not respond to the housing provider's motion for reconsideration. Therefore, it was denied by operation

of law, pursuant to 14 DCMR § 4013.5 (1991).² On April 25, 2003, the housing provider filed a notice of appeal with the Commission.

II. THE ISSUES

The housing provider filed a timely notice of appeal with the Commission from the Rent Administrator's decision and order. The following issues are raised in the housing provider's notice of appeal:

- A. The Hearing Examiner's finding that Medley[, the housing provider,] knowingly and in bad faith violated the Act is incorrect.
- B. The Hearing Examiner imposed a penalty against Medley ... that is overly draconian.
- C. The decision does not contain the requisite detailed factual findings of bad faith; therefore, the Hearing Examiner's award of treble damages should be reversed.

Notice of Appeal at 1-2.

The Commission held its hearing on the notice of appeal on December 16, 2003.

III. COMMISSION'S DECISION ON THE ISSUES

- A. Whether the hearing examiner's finding that Medley, the housing provider, knowingly and in bad faith violated the Act is incorrect.**

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)

² The regulation provides "[f]ailure of a hearing examiner to act on a motion for reconsideration within the time limit prescribed by § 4013.2[, ten (10) days after receipt,] shall constitute a denial of the motion for reconsideration." 14 DCMR § 4013.5 (1991).

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(a) (2001). The Commission has established a two-pronged test to determine if a housing provider has acted in bad faith, and is thus liable for treble damages. First, the housing provider must have knowingly violated the Act; second, the housing provider's behavior must be egregious enough to warrant a finding of bad faith. See Linen v. Lanford, TP 27,150 (RHC Sept. 29, 2003) at 5.

The hearing examiner found, as a matter of fact, that the housing provider rented the tenant the rental unit for \$1300.00 per month while the rent ceiling was \$552.00, and that the housing provider filed a Registration Form with RACD raising the rent ceiling to \$1450.00 three (3) months after renting the unit to the tenant. See Finding of Fact 8 (OAD Decision) at 9. The hearing examiner concluded as a matter of law: "Respondent is liable for treble damages for knowingly demanding rent in excess of the maximum allowable rent ceiling applicable to the rental unit." Id. at 10.

The substantial record evidence demonstrates that two Registration/Claim of Exemption (Registration) Forms filed with the RACD are relevant to this proceeding. The first, dated June 1, 1989, lists the rent ceiling for the tenant's unit as \$552.00. The second form, dated September 13, 2001, lists the rent ceiling for the tenant's unit as \$1450.00. The housing provider did not file any Registration Forms during the intervening twelve (12) year period from June 1989 through September 2001.

The housing provider rented the unit to the tenant in June 2001 for \$1300.00 per month. This amount is \$748.00 above the rent ceiling of \$552.00 recorded on the Registration Form for the unit filed with RACD June 1, 1989, as stated in Finding of Fact

3. The rent ceiling was not raised to \$1450.00 until September 2001, three (3) months after the tenant rented the unit. At that time, the housing provider filed a "correction" to the 1989 Registration form. See OAD Tape Recording. The record does not indicate the basis upon which this "correction" was made.

The two-prong test established by the Commission requires the finding of a knowing violation by the housing provider. Linen at 5. Knowing is defined as: "1. having or showing awareness or understanding; well informed; 2. deliberate; conscious." BLACK'S LAW DICTIONARY 876 (7th ed. 1999). The Commission has interpreted knowingly as an awareness of one's behavior without an intent to violate the law. See RECAP-Gillian v. Powell, TP 27,042 (RHC Dec. 19, 2002) at 5. In the instant case, the housing provider filed four different Registration Forms. The housing provider filed two Registration Forms before he rented the property to the tenant.

Furthermore, the housing provider testified that the Registration Form filed in September 2001 was a correction to the Registration Form filed in June 1989. Particularly, in September 2001, the housing provider sought to correct the rent ceiling which was recorded, in error, as \$552.00. OAD Tape Recording. These actions by the housing provider are evidence that he was aware of the requirement to register the property; but more importantly, the housing provider's behavior indicates that he was aware of the laws that controlled the amount of rent that he was allowed to charge for a registered unit.

In Reid v. Quality Mgmt. Co., TP 11,307 (RHC Feb. 7, 1985), the Commission held, "a landlord is imputed to have knowledge of a reasonable, prudent man involved in the business of renting properties in the District of Columbia." The housing provider is

in the business of offering rental property in the District of Columbia. Specifically, he has rented the property at issue in this case to the tenant. Thus, knowledge that the rent demanded exceeded the maximum allowed by the Act is imputed to the housing provider in this case, and the first prong of the test is satisfied.

“Bad faith” does not relate to improper registration; it relates to reduction of services and facilities, and rent overcharges.” Assalaam v. Lipinski, TP 24,726 & TP 24,800 (RHC Aug. 31, 2000) at 22 (emphasis added). The second prong of the two-part test may only be satisfied if the housing provider’s behavior is so flagrant that it rises to the level of bad faith. In the instant case, the hearing examiner imposed treble damages upon the housing provider after briefly stating, “[t]he facts in this case warrant the imposition of treble damages. Here, the Respondent knowing [sic] demanded a rent charge from the Petitioner based upon an improper the [sic] rent ceiling. ... Accordingly, the Examiner trebles the refund for the rent overcharge.” OAD Decision at 9 (citations omitted).

The hearing examiner’s decision does not contain any findings of fact about how the housing provider’s behavior evidenced bad faith. Without such a discussion, it is impossible for the Commission to determine whether the housing provider’s behavior rises to the level of egregiousness that warrants a finding of bad faith. As such, the second prong on bad faith is not met, and the hearing examiner is reversed in Conclusion of Law 4. The issue of bad faith is remanded to the Rent Administrator for findings of fact and conclusions of law.

B. Whether the hearing examiner imposed a penalty against Medley that is overly draconian.

Hearing Examiner Roper fined the housing provider \$2500.00 for violating the Act by charging the tenant rent that was higher than the legally calculated rent ceiling for the unit.³ The Act provides:

(b) 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). Accordingly, if the hearing examiner found that the housing provider's violations were willful, he was authorized to assess fines up to \$5000.00 for each violation.

In Quality Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986), the District of Columbia Court of Appeals (Court) discussed the difference between 'knowingly' and 'willfully,' finding that 'willfully' invoked a higher standard. The Court cited the transcript of a debate in the Council of the District of Columbia regarding the distinction. The Court concluded that "willfully as used in § 45-1591(b)⁴ demands a more culpable mental state than the word knowingly as used in § 45-1591(a)⁵ ... Willfully goes to intent to violate the law." Id. at 75.

³ The hearing examiner failed to explicitly state a reason for imposing the fine on the housing provider in the decision and order. See OAD Decision at 10.

⁴ Currently, D.C. OFFICIAL CODE § 42-3509.01(b) (2001).

⁵ Currently, D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

Careful review of the record and the hearing examiner's decision reveals no analysis that supports an imposition of fines under the Act. The hearing examiner failed to make specific findings of fact concerning the housing provider's willful intent to violate the law. The Commission has reversed and remanded cases concerning fines where the hearing examiner failed to make findings of fact that the housing provider's conduct demonstrated willfulness. See Schauer v. Assalaam, TP 27,084 (RHC Dec. 31, 2002); RECAP-Gillian v. Powell, TP 27,042 (RHC Dec. 19, 2002); Ratner Mgmt. Co. v. Tenants of Shipley Park, TP 11,613 (RHC Nov. 4, 1988).

The Act requires the hearing examiner to make specific findings of fact regarding willfulness before fining the housing provider. As such findings of fact are absent in the present case, the decision of the Rent Administrator is reversed, and the fine is vacated. The issue is remanded for specific findings of fact regarding willfulness.

C. Whether the decision contains the requisite detailed factual findings of bad faith to support the hearing examiner's award of treble damages.

The hearing examiner failed to make detailed findings of fact regarding bad faith by the housing provider. The DCAPA states:

(e) 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. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence."

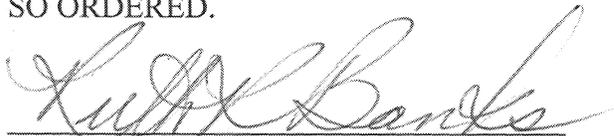
D.C. OFFICIAL CODE § 2-509(e) (2001) (emphasis added). Additionally, the regulations require that detailed findings of fact be made concerning the issue of bad faith where the rent refund to the tenant is to be trebled. 14 DCMR § 4217.2 (1991).

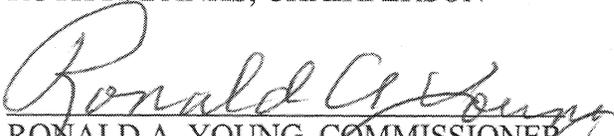
The Court has stated, “[w]e will continue to order that administrative agencies specify the precise findings and conclusions which support their decisions.” Braddock v. Smith, 711 A.2d 835, 838 (D.C. 1998). Absent the requisite findings of fact, the Rent Administrator lacks the authority to treble the rent refund. The hearing examiner failed to make findings of fact concerning bad faith on the part of the housing provider. When a decision does not contain findings of fact on the contested issues, the Commission must remand the matter to the Rent Administrator. See Hedgman v. District of Columbia Hacker’s License Appeal Bd., 549 A.2d 720, 723 (D.C. 1988). Accordingly, the Commission remands the case to the Rent Administrator for detailed findings of fact on the issue of bad faith.

IV. CONCLUSION

Careful review of both the record and the hearing examiner’s decision reveal circumstances that require reversal and remand. Accordingly, the hearing examiner is reversed in Conclusion of Law 4. The order fining the housing provider is vacated. The case is remanded to the Rent Administrator for detailed findings of fact concerning the issues of willfulness and bad faith.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER


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 hereby certify that a copy of the foregoing Decision and Order in TP 27,565 was mailed by priority mail with confirmation of delivery, to the persons noted below this **23rd day of July 2004.**

Richard Link, Esquire
8601 Georgia Avenue
Suite 905
Silver Spring, MD 20910

Shaun M. Palmer, Esquire
Samuel Heywood, Esquire
Bread for the City
1525 7th Street, N.W.
Washington, D.C. 20001



LaTonya Miles
Contact Representative
(202) 442-8949