

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,583

In re: 2934 Bellevue Terrace, N.W.

Ward Three (3)

**OXFORD HOUSE-BELLEVUE**  
Tenant/Appellant

v.

**BLAINE ASHER**  
Housing Provider/Appellee

**DECISION AND ORDER**

May 4, 2005

**YOUNG, COMMISSIONER.** This case is on appeal from the District of Columbia 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 these proceedings.

**I. PROCEDURAL HISTORY**

Oxford House-Bellevue, the tenant/appellant, filed Tenant Petition (TP) 27,583, with the RACD on August 12, 2002. In its petition the tenant, which occupied the single family house located at 2934 Bellevue Terrace, N.W., alleged that the housing provider/appellee, Blaine Asher: 1) took a rent increase larger than the amount of

increase permitted by the Act; 2) failed to file the proper rent increase forms with RACD; 3) filed a rent ceiling with RACD which was improper; and 4) failed to properly register the building in which its rental unit was located with RACD.

A hearing on the petition was held on February 24, 2003, with Hearing Examiner Carl Bradford presiding. The hearing examiner issued the decision and order on March 27, 2003. The decision contained the following findings of fact:

1. The subject property is located at 2934 Bellevue Terrace, N.W.
2. Petitioner Oxford House-Bellevue leases the subject housing accommodation.
3. The subject property is owned and managed by Blaine H. Asher.
4. Oxford House, Inc., [sic] mission is to educate individuals and private and public entities on the benefits of the Oxford House concept of group homes for recovering substance abusers.
5. Petitioner leased the property from Respondent on February 27, 1988.
6. Respondent filed the claim of exemption on July 28, 1987.
7. The property is exempt from [T]itle II provision [sic] of the Rental Housing Act pursuant to D.C. Official Code § 42-3502.05.

Oxford House-Bellevue v. Asher, TP 27,583 (RACD Mar. 27, 2003) at 3-4. The hearing examiner concluded as a matter of law:

1. Respondent did sustain his burden of proof pursuant to D.C. Official Code § 42-3502.05 to establish that the property 2934 Bellevue Terrace, N.W. is exempt from rent control.
2. All other issues are dismissed.

Id. at 5.

The tenant filed a timely notice of appeal with the Commission. The tenant filed its Brief in Support of Appeal on September 30, 2003, and the housing provider filed a

Reply Brief on October 8, 2003.<sup>1</sup> The Commission held the appellate hearing on November 18, 2003.

## II. ISSUES ON APPEAL

On appeal, the tenant raised the following issues:

1. Respondent offered no evidence to meet its burden of proof, and the Rent Administrator erroneously relied on the RACD record, namely the claim of exemption itself, to conclude that the property was continuously vacant for the statutory period.
2. The Rent Administrator abused its discretion in denying Petitioner's request to serve subpoenas which would have allowed Petitioner to challenge Respondent's exemption.

Notice of Appeal at 1-3.

## III. DISCUSSION OF THE ISSUES

### A. Whether the hearing examiner erred when he relied on the RACD record, namely the claim of exemption itself, to conclude that the housing accommodation was continuously vacant for the statutory period.

In its notice of appeal, the tenant, Oxford House-Bellevue, asserts that the evidence of record did not support the hearing examiner's conclusion that the housing accommodation located at 2934 Bellevue Terrace, N.W. was properly registered as exempt from Title II of the Act. The tenant further argued that the housing provider failed to present evidence showing that the housing accommodation was, in fact, vacant during the period claimed by the housing provider. Finally, the tenant argued that the housing provider failed to carry his burden of proof regarding his claim of exemption.

The testimony at the RACD hearing included the following exchange between the tenants' counsel, Evan Davis and the housing provider, Blaine Asher:

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<sup>1</sup> In his Reply Brief the housing provider argues that the tenant petition should be barred by the doctrine of laches. However, the housing provider failed to affirmatively set forth this defense at the hearing below. See Feldman v. Gogos, 628 A.2d 103 (D.C. 1993).

Attorney Davis: You claim that the property was continuously vacant and not rented from January 1, 1985 to July 17, 1985 is that correct?

Mr. Asher: I am not really positive but I guess that's what I put there yes. I don't know the answer to that.

Attorney Davis: It's a pretty important question, so if you need to look at some documents or confer with counsel, feel free.

...

Mr. Asher: It's pretty difficult for me to remember all these dates and so forth. So, you know, rather than give an erroneous answer, I'd like to tell you what I remember right now, that's the best I can do.

...

Attorney Davis: Looking around the time of January 1, 1985 through July 17, 1985, what are the exact dates that the property was vacant that include that period of time?

Mr. Asher: I'm afraid that I just wouldn't be able to recall that.

Attorney Davis: Do you have any documentary evidence that would show that?

Mr. Asher: I probably do.

Attorney Davis: Probably. Do you have any evidence here today that would show that?

Mr. Asher: No, I didn't bring anything with me today.

Attorney Davis: So you don't have just—I want to make sure I am getting your testimony right—you don't have any evidence other than your recollection...

Mr. Asher: With me today?

Attorney Davis: With you today.

Mr. Asher: Right.

RACD Hearing Tape (Feb. 24, 2003).

In response to questions put to him by his attorney, Mr. Brodsky, the housing provider, Blaine Asher, reviewed his Registration/Claim of Exemption Form and testified that he believed that the information on the form was accurate when he filed the form. He further testified that he would not have put false information on the Registration/Claim of Exemption Form. The evidence of record also contained the testimony of Margaret Hunter Pierce, a resident of the neighborhood where the housing accommodation is located. Mrs. Pierce testified that she was unaware of any period when the housing accommodation was vacant during her over 40 years of residence in the area.

In the section of his decision and order entitled *Evaluation and Analysis*, the hearing examiner concluded the following regarding the evidence adduced at the hearing, stating:

In the case at bar, the Examiner makes a credibility determination in favor of the Respondent. In spite of the fact that there is conflicting testimony the Examiner accepts the Respondent's testimony over the testimony of the Petitioner.

Oxford House-Bellevue v. Asher, TP 27,583 (RACD Mar. 27, 2003) at 4.

The District of Columbia Court of Appeals (DCCA) has determined that, “[t]he burden of proof for a claim of exemption from the Act is with the person seeking the exemption, the housing provider.” Goodman v. District of Columbia Rental Hous. Comm’n, 573 A.2d 1293 (D.C. 1990); Revithes v. District of Columbia Rental Hous. Comm’n, 536 A.2d 1007 (D.C. 1987); Montgomery v. Offurum, TP 27,676 (RHC Apr. 18, 2005); Davis v. BARAC Co., TP 24,835 (RHC Oct. 27, 2000); Best v. Gayle, TP 23,043 (RHC Nov. 21, 1996) at 5; Rosenboro v. Askin, TP 3991 (RHC Feb. 26, 1993)

(which held that a party must provide evidence to carry or satisfy the burden of proof on its claim.). In the instant appeal, the housing provider, Blaine Asher, had the burden of proof regarding his claim of exemption.<sup>2</sup> The standard for satisfying a housing provider's burden of proof of exemption is "credible, reliable evidence." See Revithes, 536 A.2d at 1017, citing Bernstein v. Lime, 91 A.2d 841, 843 (D.C. 1952). The Court has held that statutory exemptions in the Act are to be narrowly construed. See Goodman, *supra*, cited in Charles E. Smith Residential Realty, L.P. v. Filippello, TP 24,401 (RHC July 30, 1999).

The housing provider in the instant case relied upon the information he placed on his Registration/Claim of Exemption Form to satisfy his burden of proof regarding the validity of his claim of exemption. However, the court has stated: "A landlord's mere assertion [of exemption] ... contained in a claim of exemption will be insufficient to satisfy a landlord's burden of proof of exemption." Goodman, 573 A.2d at 1297.

Accordingly, because the housing provider failed to establish by credible, and reliable evidence that the housing accommodation was exempt, the decision of the hearing examiner finding that the housing accommodation was exempt from Title II of the Act is reversed for lack of substantial evidence in the record to support that finding. This case is remanded for findings of fact and conclusions of law on all the issues raised in the tenant's petition not decided by the hearing examiner.

**B. Whether the Rent Administrator abused her discretion in denying Petitioner's request to serve subpoenas which would have allowed Petitioner to challenge the housing provider's exemption.**

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<sup>2</sup> See D.C. OFFICIAL CODE § 2-509(b) (2001), "[i]n contested cases, ... the proponent of a rule or order shall have the burden of proof."

The Commission does not decide this issue, B, because it is moot, based on the Commission's decision on issue A, wherein the Commission reversed the hearing examiner's finding of fact that the housing provider carried his burden of proof regarding the exempt status of the housing accommodation. See McChesney v. Moore, 76 A.2d 389 (D.C. 1951) (where the court stated, "it is not within the province of appellate courts to decide abstract, hypothetical or moot questions, disconnected with the granting of actual relief or from the determination of which no practical relief can follow). Id. at 390, cited in Tenants of 2480 16<sup>th</sup> St., N.W. v. Dorchester Hous. Tenants Assocs. Ltd. P'ship, CI 20,768 (RHC Aug. 31, 2004). Here, there is no further relief the Commission may grant after reversing the hearing examiner's determination that the housing accommodation was exempt from Title II of the Act, and directing the hearing examiner to decide all issues raised in the tenant petition.

#### **IV. CONCLUSION**

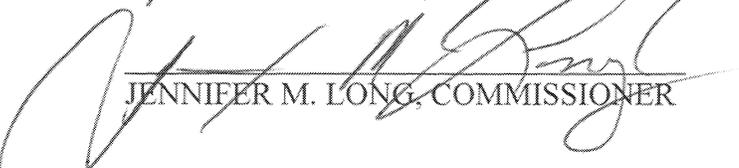
The decision of the hearing examiner finding that the housing provider met his burden of establishing that the housing accommodation is exempt from Title II of the Act is reversed and remanded for findings of fact and conclusions of law on the other issues raised in the tenant's petition but were dismissed.

The hearing examiner shall issue a remand decision and order that contains findings of fact and conclusions of law on the existing record. The hearing examiner 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

#### 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 may be contacted at the following address and telephone number:

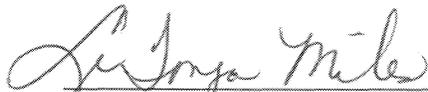
D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W., 6th Floor  
Washington, D.C. 20001  
(202) 879-2700

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Decision and Order** in TP 27,583 was mailed postage prepaid by priority mail, with delivery confirmation on this **4<sup>th</sup> day of May, 2005** to:

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