DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,631

In re: 1648 Park Road, N.W., Unit 4

Ward One (1)

JOHN H. WADE
Tenant/Appellant

v.

PARK ROAD ASSOCIATES & MORRIS MANAGEMENT
Housing Providers/Appellees

DECISION AND ORDER

December 21, 2005

YOUNG, COMMISSIONER. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), 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 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On September 30, 2002, John H. Wade, the tenant of unit 4 at the housing accommodation located at 1648 Park Road, N.W., filed Tenant Petition (TP) 27,631 with RACD. In his petition, the tenant alleged that the housing providers, Park Road Associates and Morris Management: 1) charged him rent which exceeded the legally

calculated rent ceiling for his unit; 2) failed to file the proper rent increase forms with RACD; 3) took a rent increase while his unit was not in substantial compliance with the District of Columbia housing regulations; 4) increased his rent while a written lease was in effect which prohibited an increase; 5) permanently eliminated services or facilities provided in connection with his rental unit; 6) substantially reduced services or facilities provided in connection with his rental unit; 7) failed to provide services and or facilities as set forth in a Voluntary Agreement filed with and approved by the Rent Administrator under § 215 of the Rental Housing Act; and 8) used coercion by the manager or other tenants to obtain his signature on a Voluntary Agreement, which was filed with the Rent Administrator.

An RACD hearing on the petition was held on October 28, 2002, with Hearing Examiner Saundra McNair presiding. The hearing examiner issued a decision and order on April 7, 2004. The decision contained the following findings of fact:

1. The subject housing accommodation, 1648 Park Road, N.W., Washington, D.C. 20010, is not properly registered with the RACD.

2. The subject housing accommodation is not exempt from the provisions of Title II of the Act.

3. The current rent ceiling for Petitioner's rental unit is $515.00 per month. The rent charged Petitioner during the period of September 1999 through August 2000 was [$]515.00 a month.

4. The Petitioner is not permitted to challenge the current rent ceiling because the three (3) year statutory time limit for disputing these charges has lapsed.

5. The Petitioner did not have either actual or constructive notice that the Housing Accommodation is exempt from the rent stabilization provisions of the Act. The Petitioner's lease did not contain a clause which would have put him on actual notice, nor did the Respondent provide evidence that the Registration/Claim of Exemption form was posted in a public place within the housing accommodation or that the Respondent mailed a copy of the Registration/Claim of Exemption form to each of the tenants,

placing them on notice of the alleged exempt status of the subject property.

6. The Petitioner took possession of apartment # 4 on January 1, 1987, and has resided at the subject premises at all relevant times, without interruption.

7. The Respondent, Park Road Associates, owns the subject property.

8. The Respondent, Morris Management, manages the subject property.

9. The Examiner has jurisdiction to address the Petitioner's claims concerning the rental increases and the substantial reduction of services or facilities of the unit, since the housing accommodation is not exempt from Title II of the Act.

10. The Petitioner was not adversely affected by the existence of housing code violations in that many of the violations were not substantial and did not affect the health, safety, or welfare of the Petitioner. However, with regard to the malfunctioning of the air conditioning unit in Petitioner's apartment, and the malfunctioning of the intercom system, the Petitioner was adversely affected and the reduction in service was substantial.

11. The Petitioner provided notice to the Respondent or the Respondent's agent, Mr. Jerry Morris, of the maintenance and repairs needed to the interior of his unit and exterior common areas. Additionally, the Respondent was served a copy of the Housing Deficiency Notice indicating housing code infractions in July 2002.

12. The Respondent failed to provide maintenance and repairs to the interior and certain common areas of the subject property once notified of the need for maintenance and repairs by the Petitioner and a Housing Deficiency Notice.

Wade v. Park Rd. Assocs. & Morris Mgmt., TP 27,631 (RACD Apr. 7, 2004) (Decision) at 4-5. The hearing examiner concluded as a matter of law:

1. The Petitioner has proven by a preponderance of the evidence that the building in which his rental unit is located is not properly registered with the RACD, in violation of D.C. Official Code § 42-3502.05 (2001).

2. The Respondent substantially reduced Petitioner's facilities and other amenities service [sic] by failing to: (1) promptly repair electrical wiring in the common areas; (2) promptly repair the intercom system of the subject property; and (3) promptly repair the air conditioning unit in Petitioner's unit at the subject property and adversely affecting Petitioner's health, welfare, or safety.

3. The Petitioner has proven by a preponderance of evidence that the Respondent has knowingly, and willfully substantially reduced the services or facilities in his rental unit, in violation of D.C. Official Code §§ 42-3502.11 and 42-3901 (2001).

4. The Petitioner is entitled to a rent rollback and a rent refund for Respondent's substantial reduction in the services or facilities for the failure to repair the electrical wiring for two-days (2) days; failure to repair the damaged and inoperable intercom system for twenty-eight (28) months; and for the failure to repair the air conditioning unit in Petitioner's unit for four (4) months. The total amount due to the Petitioner is $7,267.10, including interest in the amount of $442.10 on the $6,825.00 overcharge amount, for Respondent's substantial reduction in his repair service, pursuant to D.C. Official Code §42-3502.11 (2001).

Id. at 24. The hearing examiner granted TP 27,631 in part, and ordered the housing provider to pay the tenant a rent refund of $6,825.00, plus interest in the amount of $442.10, for a total refund of $7,267.10. Further, the hearing examiner imposed a fine in the amount of $750.00 on the housing provider for violating the Act. Decision at 25-26.

The hearing examiner's decision informed the parties that they had until April 28, 2004, to file either a motion for reconsideration or an appeal in the Commission. The tenant and housing provider filed motions for reconsideration on April 21 and April 27, 2004, respectively. By order dated April 29, 2004 the hearing examiner denied the tenant's motion for reconsideration. By order dated April 30, 2004 the hearing examiner granted the housing provider's motion for reconsideration. The hearing examiner's order stated:

1. The Examiner after another review of the record, vacates the Decision and Order issued on April 7, 2004.

2. The Examiner grants the Respondent's Motion for Reconsideration.

Wade v. Park Rd. Assocs. & Morris Mgmt., TP 27,631 (RACD Apr. 29, 2004) at 4. The hearing examiner failed to provide any further explanation, findings of fact or

conclusions of law, regarding her decision to vacate Wade v. Park Rd. Assocs. & Morris Mgmt., TP 27,631 (RACD Apr. 7, 2004). The hearing examiner advised the parties that she would reissue the decision within 25 business days of her order vacating the decision. Wade v. Park Rd. Assocs. & Morris Mgmt., TP 27,631 (RACD Apr. 29, 2004) at 4. The parties were advised that motions for reconsideration with the Rent Administrator or appeals in the Commission should be filed on or before May 19, 2004.

On May 14, 2004, the tenant filed with the hearing examiner a Motion to Dismiss Without Prejudice, requesting that his tenant petition be dismissed. The tenant stated the following reasons for requesting dismissal of the petition:

1. All parties in the initial hearing or parties of Park Road Associates were not available (procedural error).
2. Other violations occurring during long period for decision [sic].
3. The rule says three years back for civil matters and not inside of a longer or unreasonable period.
4. This matter cannot be accurately decided from within a time frame.
5. For the above reasons, Please [sic] dismiss without prejudice.
6. Jerry Morris refuses to sign for anything [that] come[s] and Mr. Vondas and other members of Park Road Associates address unknown.

Motion to Dismiss at 1. On May 28, 2004 the hearing examiner, over the objection of the housing provider, issued an order dismissing TP 27,631, however, the hearing examiner dismissed the petition with prejudice. Wade v. Park Rd. Assocs. & Morris Mgmt., TP 27,631 (RACD May 28, 2004).

On June 17, 2004 the tenant filed a timely Notice of Appeal in the Commission. The Commission held its appellate hearing on August 12, 2004.

II. ISSUE ON APPEAL

In his notice of appeal, the tenant stated the following:

> Ms. McNair [sic] denial of my motion to dismiss without prejudice should be remanded and her attempt to reverse my motion should be criticized. I have committed no crimes but have worked in the best interest of the government and should not be treated otherwise by changing a motion of [d]ismissal without prejudice to a dismissal with prejudice to allow civil or criminal wrong doing to proceed without being contested. Therefore, please regard this appeal as a motion to dismiss without prejudice because petition TP 27,631 will not accurately cover the before and after issues perpetrated by the respondents.
>
> Finally, the issue is not whether I properly presented my case but whether or not after nearly two years, the petition was fairly executed. It is within my opinion that Ms. McNair did not. On the tape the question about who was Mr. Georgilakis and Mr. Vondas stated that he was a partner. On a contrast [sic] Mr. Vondas is the partner and C.S. Georgilakis is now and then the owner.
>
> The only reason I can see why an examiner find [sic] wrong doing and because not accepted with a right to motion for a dismissal without prejudice and to deny and change the motion to contrary to that of the petitioner is that she, Ms. McNair, is trying to cover-up something that is destined to come out of the dark or surface. I have not committed any wrong doing and I know of no law that will allow her, Ms. McNair, to dismiss a petition after having decided and reverse a motion to dismiss and inhibit further fact that are pertinent to the District Government.
>
> In Conclusion, this *bona fide* appeal comes to you for a reversed decision of motion to dismiss without prejudice denied and dismissed with prejudice, even though the motive was procedure [sic] error and all parties or the owner C. S. Georgilakis is the only party of Park Road Associates who raised my rent without exemption [n]umbers twice and who gave rise to the decision made (illegal Rent Increase) and who did not appear for the hearing Your prompt attention to this matter of urgency and importance is greatly appreciated.

Notice of Appeal at unnumbered pages 2-3.

III. DISCUSSION OF THE ISSUE

Whether the hearing examiner erred when she dismissed TP 27,631 with prejudice.

In her decision dismissing the tenant petition, the hearing examiner provided this explanation as her reason for dismissing the petition with prejudice:

> The Petitioner should not be allowed to potentially have a 'second bite at [sic] the apple,' when the Petitioner had ample opportunity to present his case and have necessary parties present at the administrative hearing. The parties presented evidence and testimony under oath, and each party had an opportunity to cross-examine the other party's witnesses.

Wade v. Park Rd. Assocs. & Morris Mgmt., TP 27,631 (RACD May 28, 2004) at 2. The hearing examiner, citing the Commission's decision in Wayne Gardens Tenant Ass'n v. H&M Enter., TP 11,845 (RHC Sep. 27, 1985), concluded: "The Examiner finds that the record contains sufficient facts and circumstances to constitute good cause why prejudice should attach." Id. at 3.

In JBG Prop., Inc. v. Van Ness S. Tenants Ass'n, Inc., TP 20,733 (RHC Mar. 25, 1987), the Commission stated that the Rent Administrator is to be guided by the rules of civil procedure of the Superior Court of the District of Columbia in settling procedural disputes. In Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478 (D.C. 1996), the District of Columbia Court of Appeals stated, "[a]bsent a regulation specifically governing the exercise of the Commission's discretion, it is not unreasonable for the agency to look to factors relied upon by the courts under similar rule and similar circumstances."

The hearing examiner did not cite a regulation in her decision to dismiss this petition with prejudice. In fact, there is no rule governing dismissal of a tenant petition in the procedural posture found in the instant case. The regulations do however provide

guidance where a specific procedural question is raised which is not addressed in the Rent Administrator's regulations. The Rent Administrator's rule, 14 DCMR § 4018.1 (2004), provides:

> When these rules are silent on a procedural issue before the Rent Administrator, such issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia.

In the instant case, the hearing examiner was permitted to apply the rules of the Superior Court of the District of Columbia, specifically, Superior Court Rule (Sup. Ct. R.) 41. Sup. Ct. R. 41 provides, in relevant part:

> (a)*Voluntary dismissal*: *Effect thereof.* ...
>
> (2) By Order of Court. Except as provided in paragraph (a)(1) of this Rule, the claimant may not dismiss an action or a counterclaim without order of the Court. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. The dismissal shall be subject to such terms and conditions as ordered by the Court, and unless otherwise specified in the order, the dismissal shall be without prejudice. (emphasis added.)

The Commission stated with regard to Sup. Ct. R. 41:

> It is settled that Rule 41(a) provides a plaintiff's remedy; a defendant may not initiate action under either paragraph (1) or (2) thereof. Boks v. Charles Smith Mgmt., Inc., 453 A.2d 113 (D.C. App. 1982). From its face (see n. 1, p. 2, supra), paragraph (1) of this subsection (a) applies where the plaintiff initiates dismissal before the issues are joined (a unilateral notice is filed) or when the dismissal is by consent (a joint stipulation is filed). Under paragraph (1), no order is required to be issued by the court. Paragraph (2), on the other hand, requires deliberate action (a non-ministerial order) by the Court, and applies whenever a plaintiff seeks dismissal after the issues are joined or when the motion for dismissal is opposed by the defendant. (emphasis added.)

JBG Prop. Inc. v. Van Ness S. Tenants Ass'n, Inc., TP 20,733 (RHC Mar. 25, 1987) at 3.

The Commission further held in JBG Properties:

> In Park Towers Tenant Association v. Jonathan Woodner Co., TP 3,418 (RHC Aug. 28, 1986), we held that the Rent Administrator's action on a motion for dismissal under the guidance of Rule 41(a)(2) was discretionary and would be reversed only upon a finding of some abuse of that discretion. Specifically, we stated that it would be 'an abuse of discretion for the Rent Administrator to permit the withdrawal of a petition without prejudice if that [would] cause the respondent legal prejudice or real and substantial detriment.' Id. at 9, citing D.C. Transit Systems, Inc. v. Franklin, 167 A.2d 357 (D.C. 1961).

Id. However, the case cited by the Commission in Park Towers, D.C. Transit Sys., Inc. v. Franklin, further states:

> The court's inquiry primarily concerns whether the defendant will be subjected to legal prejudice by the allowance [of dismissal without prejudice]. It is not enough that he may be forced to suffer the incidental annoyance of a second suit in another forum. To compel a favorable ruling the defendant must show a real and substantial detriment. While it is true the delay in question may have caused some inconvenience, the suit had not advanced beyond preliminary stages and there is no evidence that appellant was exposed to material hardship. (emphasis added.) (footnote omitted.)

D.C. Transit Sys., Inc. v. Franklin, 167 A.2d at 358-9.

In the instant case, the hearing examiner fully considered the procedural posture of the tenant's petition before dismissing it with prejudice. In her order the hearing examiner noted that the tenant had the benefit of a full evidentiary hearing, with an opportunity to testify, enter evidence, call witnesses and cross-examine the housing provider's witnesses. Sup. Ct. R. 41 permits the hearing examiner to place conditions on a dismissal, in this case, the condition placed on the tenant's motion for dismissal was dismissal with prejudice.

The regulations establish the standard of review by the Commission of decisions rendered by the Rent Administrator. In this instance, the applicable regulation, 14 DCMR § 3807.1 (2004) provides:

The Commission shall reverse final decisions of the Rent Administrator

> which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

The Commission finds no arbitrary action, capricious action or abuse of discretion in the Rent Administrator's dismissal of the tenant petition, with prejudice, because the tenant enjoyed the benefit of a full DCAPA evidentiary hearing. Therefore, the tenant's appeal of this issue is denied.

IV. CONCLUSION

The hearing examiner's dismissal of the tenant petition, with prejudice, is affirmed.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), 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 27,631 was mailed postage prepaid by priority mail, with delivery confirmation on this **21st day of December, 2005** to:

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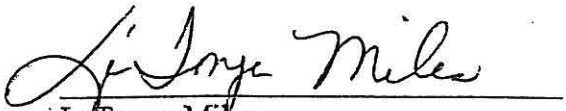

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