

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,676

In re: 1827 Q Street, S.E., Unit Three (3)

Ward Two (2)

KEITH MONTGOMERY
DEBRA MONTGOMERY
Tenants/Appellants

v.

CATENA OFFURUM
Housing Provider/Appellee

DECISION AND ORDER

April 18, 2005

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of 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 (DCMR), 14 DCMR §§ 3800-4399 (1991), govern the proceedings.

I. THE PROCEDURES

On November 8, 2002, Keith Montgomery and Debra Montgomery filed Tenant Petition, (TP) 27,676. It alleged: 1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Act; 2) a proper 30 day notice of rent increase was not provided before the rent increase became effective; 3) the

Housing Provider failed to file the proper rent increase forms; 4) the rent being charged exceeds the legally calculated rent ceiling; 5) a rent increase was taken while the rental unit was not in substantial compliance with the D.C. Housing Regulations; 6) the building in which the rental unit is located is not properly registered; 7) services and facilities provided in connection with the rental of the unit have been substantially reduced; 8) retaliatory action has been directed against us by our Housing Provider, manager or other agent for exercising our rights in violation of section 502 of the Act; and 9) the Housing Provider, manager or other agent of the Housing Provider have violated the provisions of Section 42-3502.05(d) & (h) of the Act.

Hearing Examiner Carl Bradford held the hearing on May 5, 2003, and issued the decision and order on August 7, 2003. The decision and order contained the following:

Findings of Fact

1. The subject housing accommodation 1827 Q Street, S.E. is owned by Catena N. Offurum.
2. Petitioners Keith and Debra Montgomery reside at 1827 Q Street, S. E. [,] Washington, D.C.
3. Petitioner's rent has been \$425.00 since she moved into the unit.
4. Petitioner's rent has not been increased since Respondent purchased the building.
5. The Respondent filed his claim of exemption form on July 18, [sic] 2001.¹
6. The subject housing accommodation located at 1827 Q Street, S.E. is exempt from rent control based on the Respondent's July 18, [sic] 2001 filing with RACD.
7. Petitioner did not present any evidence to rebut the claim of exemption filed July 18, [sic] 2001.

¹ The Housing Provider's Registration/Claim of Exemption Form was date stamped July 10, 2001 by RACD, not July 18, 2001.

8. Respondent did not retaliate against Petitioners.

Montgomery v. Offurum, TP 27,676 (RACD Aug. 7, 2003) at 6.

Conclusions of law

1. Subject housing accommodation is exempt from Title I of the Act pursuant to D.C. Official Code § 42-3502 (2001).
2. Petitioner has failed to prove by a preponderance of the evidence that Respondent was not registered or exempt in violation of D.C. Official Code, [sic] § 42-3502.05(g) (2001).
3. Respondent did not retaliate against Petitioner in violation of D.C. Official Code, [sic] § 42-3502.02 (2001).
4. All other issues are dismissed.

Id. at 6-7.

The Tenants filed a notice of appeal on August 25, 2003. An opposition to the notice of appeal was filed on September 10, 2003. The Commission held its appellate hearing on November 13, 2003.

II. THE APPEAL ISSUES

The notice of appeal raised the following issues:

- A. The evidence does not support findings of fact number 6.
- B. The evidence does not support findings of fact number 7.
- C. The evidence does not support conclusion of law number 1.
- D. The evidence does not support conclusion of law number 2.
- E. The evidence does not support conclusion of law number 4.
- F. The Examiner did not address each disputed fact and specifically the issue of notice under [§] 42-3502.05(d).
- G. The Examiner did not address each disputed fact and specifically the issue of notice under [42]-3502.05(h).

III. THE DISCUSSION OF THE DECISION ON THE ISSUES

A. The evidence does not support findings [sic] of fact number 6.

Finding of fact number six (6) states, “The subject housing accommodation located at 1827 Q Street, S.E. is exempt from rent control based on the Respondent’s July 18 [sic], 2001 filing with RACD.” Decision at 6.

At the hearing, the Housing Provider’s agent, Don Brodie, entered into evidence Exhibit (Exh.) 1, a copy of Registration/Claim of Exemption Form (registration form) filed on July 10, 2001. (OAD Hearing Tape May 5, 2003); Decision at 3. The Housing Provider and her agent, Brodie, testified that the owner of the housing accommodation owned only four (4) rental units, and that a copy of the registration form was posted in the housing accommodation in July 2001, but not mailed to the tenants.

The Act provides for registration of rental units at D.C. OFFICIAL CODE § 42-3502.05(f) (2001):

Within 120 days of July 17, 1985, each housing provider of any rental unit not exempted by this chapter and not registered under the Rental Housing Act of 1980, shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District for which the housing provider is receiving rent or is entitled to receive rent. Any person who becomes a housing provider of such a rental unit after July 17, 1985 shall have 30 days within which to file a registration statement with the Rent Administrator. No penalties shall be assessed against any housing provider who, during the 120-day period, registers any units under this chapter, for the failure to have previously registered the units.

The Act, D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001) provides for an exemption from rent control for:

Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not....

The proponent of a rule or order shall have the burden of proof, D.C. OFFICIAL CODE 2-509(b) (2001). “The 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, 1297 (D.C. 1990); Revithes v. District of Columbia Rental Hous. Comm’n, 536 A.2d 1007 (D.C. 1987); Best v. Gayle, TP 23,043 (RHC Nov. 21, 1996) at 5; Rosenboro v. Askin, TP 3991 (RHC Feb. 26, 1993) (held that a party must provide evidence to carry or satisfy the burden of proof on its claim.); Davis v. BARAC Co., TP 24,835 (RHC Oct. 27, 2000); The Vista Edgewood Terrace v. Rasco, TP 24,585 (RHC Oct. 13, 2000) at 12-13.

In this appeal, the owner of the housing accommodation, Catena N. Offurum, had the burden of proof on the claim of exemption. Goodman, supra. The Housing Provider’s testimony was that she owned only four (4) rental units. There was no contradictory evidence from the Tenants. Therefore, the Housing Provider was eligible for exemption from rent control provided she complied with all registration and notice requirements in the Act. See issue B.

B. The evidence does not support findings [sic] of fact number 7.

Finding of fact numbered seven (7) states, “Petitioner did not present any evidence to rebut the claim of exemption filed July 18, 2001.” Decision at 7.

1. The Tenants’ Cross-Examination

At the hearing, Attorney Bernard Gray, Sr., cross-examined Brodie, the Housing Provider’s agent, on the registration form he testified he filed on July 10, 2001, which was the identical date stamped on the form by RACD. Specifically, Attorney Gray cross-examined on the line numbered 10 on the registration form, which requests the name and

address of the owner of the building. Handwritten on the registration form on line 10 were the words, "Catena Offurum 410 Kennedy St [sic] NW [sic] WDC 20 [balance of the zip code not legible]." The owner, Ms. Offurum, was present and testified to a different address in Maryland, not the District address on the registration form. Moreover, the Housing Provider's agent testified that the address, 410 Kennedy Street, N.W., was his address, not the address of the owner, Ms. Offurum. Therefore, the registration form contained false information that the owner's address was 410 Kennedy Street, N.W.

Counsel for the Tenants also cross-examined Brodie, the Housing Provider's agent, on the fact the he failed to write in the date next to his signature, under the number 15, on the line on the registration form, which requested the date next to the words "owner/agent." The portion of the line for the date was blank.

As described above, on cross-examination by the Tenants' (Petitioners') attorney, the hearing record showed two problems with the registration form. The Tenants' attorney showed the owner's address was falsely stated as 410 Kennedy Street, N.W. on the registration form, and the date was missing next to the agent's signature.

2. The Commission's Official Notice

The Commission took official notice of the registration form.² On line one (1) the registration form requested the name of the applicant, and the Housing Provider's name "Cantena Offurum" was handwritten on that line. Line six (6) requested the home

² D.C. OFFICIAL CODE § 2-509(b) (2001) states, "Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary."

Accordingly, any party to this appeal has ten (10) days from the receipt of this decision and order to show the contrary of the facts officially noticed by the Commission.

address of the applicant. That line on the registration form was blank. Line seven (7) on the registration form requested, "Corporation and Non-D.C. Resident Applicant's Agent." That line was blank. Line eight (8) requested, "Signature of Agent to Receive Notices." That line was blank.

Related to the missing information on the blank lines 6, 7, and 8 of the registration form, are the rules, 14 DCMR § § 4104.1 -2 (1991), which state:

The Rent Administrator shall review each Registration/Claim of Exemption Form in order to determine if the form has been properly completed. If the form has not been properly completed, the Rent Administrator shall notify the housing provider in writing.

Any housing provider who has been notified of a defective registration and who does not correct the defects in thirty (30) days shall not be eligible for and shall not take or implement the following:

...

(c) Any of the benefits which accrue to the housing provider of rental units exempt from the Rent Stabilization Program.

The Commission holds the rules require the Rent Administrator to notify the Housing Provider to provide the missing information requested on the blank lines on the registration form. The Housing Provider and agent are required to file within 30 days from the date of delivery of the Rent Administrator's notice an amended and completed registration form with all of the missing information identified in this decision, including the correct address of Ms. Offurum, the owner of the housing accommodation. See Kornblum v. Zegeye, TP 24,338 (RHC Aug. 19, 1999), citing Gantt v. Waggaman & Brawner, TP 10,104 (RHC May 3, 1983) (both cases require the Rent Administrator to notify the Housing Provider of defects in the registration form).

The Commission's next official notice of a false address was on the back page of the registration form where it stated:

You indicated in section B on page One that the property is exempt. Please provide the following information. In accord with provisions of Section 205 of the Rental Housing Act of 1985, this property is exempt for the following reasons:

- A. Unit(s) whose owner(s) hold and operate four (4) or fewer rental units.

At the end of the list of options, A to K, to check, the registration form stated: “[i]f you checked A or K above, list the names of each natural person(s) having DIRECT or INDIRECT interest in the housing accommodation.” Under the above quoted text, were columns with the headings, “Name, Address, Telephone Number” For the second time, on the line under the word “Name” was “Catena Offurum,” on the lines under the word “Address” was “410 Kennedy Street, N.W., Washington, DC [sic] 20011,” and on the line under the words “Telephone Number” was “7236133.” Based on the testimony at the hearing, the record shows that Ms. Offurum’s address was not 410 Kennedy Street, N.W. In fact, she testified that she lived at another address in Maryland.

The Commission also notes from the record that Ms. Offurum is married, because her husband was present at the hearing and testified. Her husband has an indirect interest in her property, but his name, address, and telephone number are not listed as a person with indirect interest in her property. See Remin v. District of Columbia Rental Hous. Comm’n, 471 A.2d 275, 278 (D.C. 1984) (where the court held the husband had an indirect interest in the units in his wife’s name). This issue was not specifically raised in the Tenants’ notice of appeal, and therefore, the Commission will not rule on it. Id. at 278-9.

3. Conclusion

The false addresses for the Housing Provider caused the lack of proper registration of the housing accommodation as exempt. Therefore, the hearing examiner is reversed on finding of fact number seven (7), stating the “Petitioner did not present any evidence to rebut the claim of exemption filed July 18, [sic] 2001,” because the false addresses were substantial evidence in the record that rebutted the claim of exemption. The cumulative effect of the statements of false addresses for the Housing Provider was that the registration form stated false information. It was not a proper registration of the housing accommodation. See Tenant’s of 104 58th St., S.E. v. Vijon Realty, TP 20,810 (RHC Aug.14, 1989) (where the Commission determined as a matter of law that a registration form without a legible date stamp, undated, unsigned, and lacking other supporting documentation, was not substantial evidence sufficient to prove proper registration.)

The lack of proper registration based on false information merits a fine. D.C. OFFICIAL CODE § 42-3509.01(b)(2) (2001). See McCutchen v. Silvers, TP 27,362 (RHC Jan. 28, 2004); Assalaam v. Lipinski, TP 24,726 (RHC Aug. 31, 2000). See also Johnson v. Moore, TP 23,705 (RHC Feb. 29, 2000) at 6, where the Commission stated:

The court stated in Revithes v. District of Columbia Rental Housing Commission, 536 A.2d 1007, 1021 (D.C. 1987):

This court, however, has previously determined that the RHC is authorized to impose fines under subsection (b) of the 1975 Act. Smith v. District of Columbia Rental Accommodations Commission, 411 A.2d 612 (D.C. 1980). Since the fine provision was not amended in any relevant manner in the 1977 or 1980 Acts, we are bound by this court’s prior determination. M.A.P. v. Ryan, 285 A.2d 310 (D.C. 1971).

...

It has long been established that administrative agencies may be authorized to impose penalties in the form of fines to enforce public rights created by statutes. (citations omitted).

Johnson v. Moore, TP 23,705 (RHC Feb. 29, 2000) at 6.

D.C. OFFICAL CODE § 42-3901.01(b) (2001) states, “[a]ny person who willfully ... (2) makes a false statement in any document filed under this chapter ... shall be subject to a civil fine of not more than \$5,000 for each violation.” See also the Commission’s rule, 14 DCMR § 3827.1, 45 D.C. Reg. (Feb. 6, 1998) at 687, “[t]he Commission may impose fines not exceeding \$5,000.00 for each violation.”

The fact that the agent used his address rather than the address of the owner that was requested on the registration form, without an excuse, is evidence of willfulness. The registration form requests four different addresses. The first address is the billing address on line 5, the second address is the owner’s address on line 10, the third address is the agent’s address in box C, and the fourth address is for the person with indirect interest. Mr. Brodie, the agent, used his address for all requests for four (4) different addresses. The use of the agent’s address for all the different addresses shows the agent formed a specific intent not to reveal the Housing Provider’s address, as requested on line 10. That was a deliberate and willful act to mislead any person reading the registration form to believe that the owner’s address was 410 Kennedy Street, N.W. in the District, rather than another address in Maryland. See Miller v. District of Columbia Rental Hous. Comm’n, No. 04-AA-282 (D.C. App. Mar. 24, 2005) (where the court discusses fines and the difference between “knowingly” and “willfully” violating the Act). In Charles E. Smith Mgmt. v. District of Columbia Rental Hous. Comm’n, 492 A.2d 875 (D.C. 1985)

the court held that the Commission could require strict compliance with the reporting requirements of the Act. In this appeal, the name and address of the owner is one of the reporting requirements for proper registration. Even clerical error could not excuse compliance with the registration requirements. Id. Ignoring the reporting requirements would render the registration regulations meaningless. See Tenants Council of Tiber Island-Carrollsbury Square v. District of Columbia Rental Accommodations Comm'n, 426 A.2d 868, 874 (D.C. 1981). Therefore, the Commission imposes a fine of \$1500.00 for failure to accurately complete the registration form, as evidenced by the false address for the owner. See McCutchen v. Silvers, TP 27,362 (RHC Jan. 28, 2004) (where the Commission affirmed a fine of \$1500.00 due to false information on a registration form.)

C. The evidence does not support conclusion of law number 1.

D. The evidence does not support conclusion of law number 2.

Conclusion of law numbered 1 states, "Subject housing accommodation is exempt from Title II of the Act pursuant to D.C. OFFICIAL CODE § 42-3502 (2001)." Decision at 6. Conclusion of law number 2 states, "Petitioner has failed to prove by a preponderance of the evidence that Respondent was not registered or exempt in violation of D.C. Official Code, [sic] § 42-3502.05(g) (2001)." ³ Decision at 6.

The Commission reversed the hearing examiner in issue B, which states, "Petitioner did not present any evidence to rebut the claim of exemption filed July 18, [sic] 2001." Finding of fact 7; Decision at 6. The Commission determined in issue B, that there was substantial evidence in the record, which rebutted the claim of exemption in issue A. The Tenants' evidence showed that the registration form contains false information about the address of the owner. Therefore, conclusions of law numbered 1

³ The burden of proof of exemption is on the Housing Provider, not the Tenants. Goodman, supra.

and 2 do not rationally flow from the reversed findings of fact numbers 6 and 7.

Accordingly, the hearing examiner is reversed on conclusions of law 1 and 2, as stated in issues C and D.

E. The evidence does not support conclusion of law number 4.

A hearing examiner is required to make findings of fact and conclusions of law on each contested issue. See Perkins v. District of Columbia Dep't of Employment Servs., 482 A.2d 401, 402 (D.C. 1984). When a decision does not contain findings of fact and conclusions of law on each contested issue, the Commission must remand for them to be made by the hearing examiner. See Hedgeman v. District of Columbia Hacker's License Appeals Bd., 549 A.2d 720, 723 (D.C. 1988).

Conclusion of law number 4 states, “[a]ll other issues are dismissed.” Decision at 7. The hearing examiner decided two issues: the first was the finding of exemption and the second was the finding of no retaliation. The Commission reversed the finding of exemption in issue B, subject to the filing of an amended registration form to cure the defects in it. Therefore, all the dismissed issues must be decided by the hearing examiner, if the amended registration form is not filed timely. The hearing examiner is reversed in conclusion of law 4, which does not rationally flow from the reversed findings of fact. This issue is reversed and remanded for findings of fact and conclusions of law on the issues the hearing examiner did not decide.

F. The Examiner did not address each disputed fact and specifically the issue of notice under 42-3502.05(d).

G. The Examiner did not address each disputed fact and specifically the issue of notice under 42-3502.05(h).

The Tenants raised the lack of proper notice of the exempt status of the housing accommodation as issues in the tenant petition and the Tenants' attorney cross-examined the Housing Provider's agent, Brodie, on notice to the Tenants of the claim of the exempt status of the housing accommodation.

D.C. OFFICIAL CODE § 42-3502.05(d) states:

Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program. (emphasis added.)

D.C. OFFICIAL CODE § 42-3502.05(h) states:

Each registration statement filed under this section shall be available for public inspection at the Division, and each housing provider shall keep a duplicate of the registration statement posted in a public place on the premises of the housing accommodation to which the registration statement applies. Each housing provider may, instead of posting in each housing accommodation comprised of a single rental unit, mail to each tenant of the housing accommodation a duplicate of the registration statement. (emphasis added.)

The DCAPA, D.C. OFFICIAL CODE § 2-509(e) (2001), states, “[e]very 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 DCAPA requires findings of fact on each contested and material factual issue. Braddock v. Smith, 711 A.2d 835, 838 (D.C. 1998); Daro Realty, Inc. v. District of Columbia Zoning Comm’n, 581 A.2d 295 (D.C. 1990). Since the Commission is a reviewing body, assuming findings of fact and conclusions of law are outside the jurisdiction of the Commission. Goodman v. District of Columbia Rental Hous. Comm’n, 573 A.2d 1293 (D.C. 1990); Meir v. Rental Accommodations Comm’n, 372 A.2d 566, 568 (D.C. 1977).

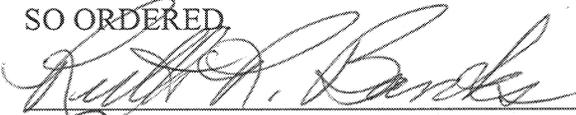
The hearing examiner did not make findings of fact on notice, either by writing, posting or mailing, as stated in issues F and G. Those issues are remanded to the hearing examiner for findings of fact and conclusions of law. See Tenants of 104 58th St., S.E. v. Vijon Realty, TP 20,810 (RHC Aug. 14, 1989) at 6.

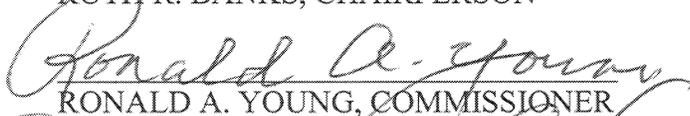
III. THE CONCLUSION

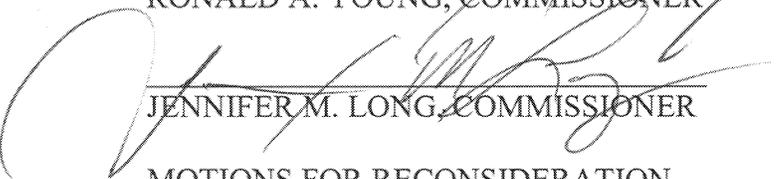
The hearing examiner is reversed on findings of fact 6 and 7, and reversed on conclusions of law numbered 1, 2, and 4. This appeal is remanded for findings of fact and conclusions of law on all issues in the tenant petition not decided by the hearing examiner, including issues F and G, if the amended registration form is not timely filed.

Within 30 days from the date of delivery of this decision and order, the Housing Provider shall: 1) remit \$1500.00 payable to the District of Columbia Treasurer at the Office of the Chief Financial Officer, Accounting Division, 941 North Capitol Street, N.E., Suite 9607, Washington, D.C. 20002, and 2) file proof of payment of the fine with the Commission.

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

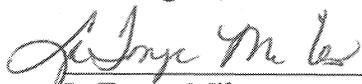
I certify that a copy of the foregoing Decision and Order in TP 27,676 was mailed by priority mail, with confirmation of delivery, postage prepaid this 18th day of April, 2005, to:

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