

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,718

In re: 1933 – 37<sup>th</sup> Street, N.W.

Ward Three (3)

**GREGORY DALY**  
Tenant/Appellant

v.

**JAMES T. TIPPETT**  
Housing Provider/Appellee

**DECISION AND ORDER**

June 1, 2007

**EDWARDS, 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 DCMR, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

**I. PROCEDURAL HISTORY**

On January 7, 2003, Gregory Daly, tenant of the housing accommodation located at 1933 37<sup>th</sup> Street N.W., filed Tenant Petition (TP) 27,718. The tenant made the following claims in his petition: 1) the rent increase exceeded the amount of increase permitted by the Act; 2) the time between rent increases did not comport with the Act; 3) the housing

provider failed to give proper notice concerning the proposed rent increase; 4) the housing provider failed to file the proper rent increase forms with RACD; 5) the rent charged exceeded the legally calculated rent ceiling for his unit; 6) the rent increase was taken while the unit was not in substantial compliance with the D.C. Housing Regulations; 7) the housing accommodation is not properly registered with the RACD; and 8) an additional security deposit was demanded.

Hearing Examiner Sandra McNair convened the RACD hearing on April 22, 2004. The hearing examiner heard argument on the housing provider's Motion to Dismiss. Specifically, the housing provider's counsel argued that the accommodation was exempt from the provisions of Title II of the Act because of the exceptions pertaining to a "small landlord." Counsel for the tenant objected on the grounds that the accommodation is registered in the name of a trust and therefore was not entitled to the "small landlord exemption."

On August 27, 2004, the hearing examiner issued the decision and order, which contained the following:

**Findings of Fact**

1. The subject housing accommodation, 1933-37<sup>th</sup> Street N.W., is properly registered with the RACD.
2. The subject housing accommodation, 1933-37<sup>th</sup> Street N.W., is exempt from the provisions of Title II of the Act.
3. The Revocable Trust provided to the Petitioner meets the qualifications for entitlement to a claim of exemption, and thus put the Petitioner on actual or constructive notice of the claim of exemption. Furthermore, the Respondent provided evidence that absent the Revocable Trust, the Respondent would otherwise be entitled to the claim of exemption pursuant to a "small landlord" status. Counsel for the Respondent established that the Respondent qualified for an excuse from failing to comply with the requirements of the Act pursuant to the standards set forth

in *Hanson*. The Respondent's actions are in compliance with the requirements of the Act.

4. The Respondent, James T. Tippett, by and through the Revocable or Living Trust, owns, operates, and manages the subject property, in that the Respondent is both the Executor and Beneficiary of the Trust.
5. The Petitioner took possession of subject property in or around 1982, and has resided at the premises at all relevant times, without interruption.
6. The Examiner lacks jurisdiction to address the Petitioner's remaining claims, other than that of the security deposit, contained in the tenant petition, since the Housing Accommodation is exempt from the provisions of Title II of the Act.

Daly v. Tippett TP 27,718 (RACD Aug.27, 2004)(Decision) at 4-5.

#### **Conclusions of Law**

1. The building in which Petitioner's rental unit is located is properly registered with the RACD, in compliance with D.C. Official Code §42-3502.05(f) (2001).
2. The Petitioner failed to prove by a preponderance of the evidence that the Respondent is not properly registered and the Respondent would not otherwise be able to establish entitlement to a Claim of Exemption.
3. The Respondent's failure to file the claim of exemption on July 1, 2001, after the Petitioner's tenancy began, is excused based on evidence that "special circumstances" existed, namely, that the Respondent: 1. is a rental property professional; 2. is not a landlord regularly; 3. was reasonably unaware of the requirement of filing a claim of exemption; and 4. the rent charged was reasonable, as set forth in *Hanson v. District of Columbia Rental Housing Comm'n*, 584 A.2d 592 (DC 1991) [sic] and later developed case law.
4. The Examiner lacks jurisdiction to adjudicate Petitioner's Title II claim of failure to file the proper rent increase forms with the RACD because the subject property is exempt from Title II of the Act, pursuant to D.C. Official Code §42-3502.05(a) (2001) and *Madison v. Clifton Terrace Ass'n. Ltd.*, TP 11,318 (RHC April 22, 1985).

Id. at 8.

On September 15, 2004, the Tenant filed a notice of appeal in the Commission, which held its appellate hearing on March 8, 2005.

## **II. THE ISSUES ON APPEAL**

In his timely filed notice of appeal, the tenant stated that the Decision and Order is arbitrary, capricious and argued:

1. The hearing examiner erred in dismissing the tenant petition.
2. The hearing examiner erred in determining that the housing accommodation is properly registered with RACD as the housing accommodation does not qualify as an exempt property, evidence submitted by the housing provider does not support a 'small landlord' status nor 'special circumstances,' and the claim of exemption was not properly executed by all interested parties.
3. The hearing examiner erred in finding that 'Petitioner was (put) on actual or constructive notice of the claim of exemption' as there was no evidence in the record to support this finding nor authority to support this conclusion.
4. The hearing examiner erred as a matter of law in ruling that the housing accommodation/housing provider, owned by/a living trust, is exempt from rent control.
5. The hearing examiner erred as a matter of law in ruling that a housing accommodation owned by a living trust qualifies as a 'small landlord' and for exemption from rent control.
6. The hearing examiner erred as a matter of law in ruling that the housing provider, a living trust, qualifies as a 'small landlord.'
7. The hearing examiner erred in finding that the housing provider provided evidence that absent the living trust, the housing provider would otherwise be entitled to exemption from rent control pursuant to a 'small landlord' status as the housing provider failed to submit such evidence and the finding was not supported by substantial evidence on the record and is an abuse of discretion.
8. The hearing examiner erred as a matter of fact and law in determining that the Respondent established that Respondent qualified for an excuse from failing to comply with the requirements of the Rental Housing Act pursuant to the 'special circumstance' test set forth in Hanson v. District of Columbia Rental Housing Comm'n, 584 A.2d 592 (D.C. 1991).

9. The hearing examiner erred in dismissing the tenant petition without adjudicating the Petitioner's security deposit overcharge claim(s), following her finding that the RACD lacked jurisdiction, based upon the property's exempt status, over all claims except the Tenant's claim for security deposit overcharge(s).

10. Any other bases determined following review of the record herein.

Notice of Appeal at 1-3.

### **III. THE DISCUSSION OF THE ISSUES**

#### **A. Whether the hearing examiner erred in dismissing the tenant petition.**

The hearing examiner erred when she dismissed the tenant petition. Her decision was based upon erroneous findings of fact and conclusions of law. The record evidence establishes that the premise upon which she based her decision to dismiss the tenant petition was fallacious. The record evidence established that the housing accommodation was owned by an entity, not a natural person. The property could not be exempt from rent control under any circumstances. See Discussion, at D, E, and F, *infra*.

#### **B. Whether the hearing examiner erred in determining that the housing accommodation is properly registered with RACD as the housing accommodation does not qualify as an exempt property, evidence submitted by the housing provider does not support a "small landlord" status nor "special circumstances," and the claim of exemption was not properly executed by all interested parties.**

The hearing examiner erred in determining that the housing provider is properly registered with RACD because her determination is based upon a finding that the housing provider was exempt pursuant to the "small landlord" status and met the "special circumstances" test set forth in Hanson, *supra*. Moreover, the evidence establishes that the exemption form initially filed by the housing provider was not properly executed by all interested parties. See Discussion, at D, E, and F, *infra*.

**C. Whether the hearing examiner erred in finding that “Petitioner was (put) on actual or constructive notice of the claim of exemption” as there was no evidence in the record to support this finding.**

There is no evidence in the record to support the hearing examiner’s finding that the Tenant was put on actual or constructive notice concerning the claim of exemption when the Housing Provider gave the Tenant a copy of the Revocable Trust. Even if evidence existed to support such a finding, it would be of no moment because the housing provider’s claim of exemption is not meritorious.

More importantly, contrary to the hearing examiner’s finding of fact three (3), providing a copy of the revocable trust did not satisfy the written notice requirement concerning exempt status. The Act at D.C. OFFICIAL CODE § 42-3502(d) (2001) 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.

The applicable regulation, 14 DCMR § 4101.6 (2004), provides:

Each housing provider who files a Registration/Claim of Exemption Form under the Act shall, prior to or simultaneously with the filing, post a true copy of the Registration/Claim of Exemption Form in a conspicuous place at the rental unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.

The Commission has determined that a housing provider’s failure to provide a tenant written notice of the exempt status of a housing accommodation renders the exemption void ab initio, because it violates the provisions of the Act, D.C. OFFICIAL CODE § 42-3502(d) 2001, 14 DCMR § 4101.6 (2004), which require written notice to tenants that their units are exempt from the Act. See Kornblum v. Zegeye, TP 24,338 (RHC Aug. 19, 1999); Stets v. Featherstone, TP 24,480 (RHC Aug. 11, 1999); Young v. Rybeck, TP

21,984 (RHC Jan. 28, 1992) citing Chaney v. Turner Realty Co., TP 20,347 (RHC Mar. 24, 1989). The hearing examiner is reversed on this issue.

- D. Whether the hearing examiner erred as a matter of law in ruling that the housing accommodation/housing provider, owned by/a living trust, is exempt from rent control.
- E. Whether the hearing examiner erred as a matter of law in ruling that a housing accommodation owned by a living trust qualifies as a “small landlord” and for exemption from rent control.
- F. Whether the hearing examiner erred as a matter of law in ruling that the housing provider, a living trust, qualifies as a “small landlord.”

The Housing Provider has the burden of proving that he is exempt from the Act. Statutory exemptions are to be narrowly construed. Goodman v. District of Columbia Rental Hous. Comm’n., 573 A.2d 1293 (D.C. 1990) Exemption from rent control laws should be narrowly construed. Cambridge Mgmt. v. District of Columbia Rental Hous. Comm’n., 525 A. 2d 721 (D.C. 1986)

The Act, D.C. OFFICIAL CODE § 42-3502.05(a) (3) (2001) states that an exempt status extends to:

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

- (A) the housing accommodation is owned by not more than 4 natural persons.

The evidence establishes that the housing accommodation in the instant case is owned by a revocable trust, not a natural person.

The Act, D.C. OFFICIAL CODE § 42-3501.03 (24) (2001) defines person as follows:

Person means an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals, and their respective successors and assignees.

These sections of the Act make it clear that there was legislative intent to differentiate the terms “person” and “natural person.” The term “natural person” is defined as:

A human being, as distinguished from an artificial person created by law.

Black’s Law Dictionary 1162 (7<sup>th</sup> ed. 1999). An artificial person is defined as:

[A]n entity, such as a corporation, created by law and given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being.

Black’s Law Dictionary 1162 (7<sup>th</sup> ed. 1999).

A “Trust” is defined as 1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary). For a trust to be valid, it must involve specific property, reflect the settlor’s intent, and be created for a lawful purpose. (emphasis added) 2. A fiduciary relationship regarding property and subjecting the person with title to the property to equitable duties to deal with it for another’s benefit; the confidence placed in a trustee, together with the trustee’s obligations toward the property and the beneficiary. \*A trust arises as a result of a manifestation of an intention to create it. 3. The property so held; TRUST FUND. 4. A business combination that aims at monopoly. ANTITRUST

Id. at 1513 (7<sup>th</sup> ed. 1999). The terms have distinct meanings. It is clear that there is a legislative intent to distinguish requirements for exemption through the use of the term “natural person.”

The Housing Provider, in his Supplemental Memorandum of Points and Authorities points to other District of Columbia statutes that define “person” to include “natural person.” He stated the following:

1. The District of Columbia Procurement Practices Act of 1985 (2DC Code Section 301.01 et seq.) [sic] defines person as follows:
  - (4) “person” includes any natural person, corporation, firm, Association, organization, partnership, business or trust.

See DC Code Title 2 Section 308.13(4) (2001 edition) [sic].

2. The Limited Liability Company Amendment act of 1995 (29 DC Code Section 1001 et seq.) [sic] defines person as follows:

(22) “Person” means a natural person (age 18 or older), partnership (whether general or limited and whether domestic or foreign), limited liability company, trust, estate, association, corporation, custodian, nominee, or any other individual or entity in its own or any representative capacity.

*See* DC Code Title 29 Section 1001 (22) (2001) edition). [sic]

3. The Insurers Rehabilitation and Liquidation Act of 1993 (31 DC code Section 1301, et seq.) [sic] defines person as follows:

(14) “Person means corporations, partnerships, associations, trusts, and individual natural persons.

*See* DC Code Title 31 Section 1301 (14) (2001 edition).[sic]

4. The Health Maintenance Organization Act of 1996 (31 DC Code 3401 et seq.) [sic] defines person as follows:

(29) “Person” means any natural or artificial person, including but not limited to, individuals, partnerships, associations, trusts, or corporations.

*See* DC Code Title 31 Section 3401 (29) (2001 edition).[sic]

5. The Retail Service Station Act of 1976 (36 DC Code Section 301.01 et seq.) [sic] defines person as follows:

(10) “Person” means any natural person, firm, association, business trust, trust, estate, partnership, corporation, 2 or more persons having a common or joint interest, or other legal or commercial entity. In the case of an entity, the term “person” shall also include any other entity which is a parent company of the entity; has directly or indirectly, 30 per centum or more voting control over the entity; manages or effectively controls the entity, other than through a contractual relationship; or is under common control with the entity. In addition, in the case of an entity, the term “person” shall also include any other entity which is a subsidiary or affiliate of the entity; over which the entity has directly or indirectly, 30 per centum or more voting control; or which is managed or effectively controlled by the entity, other than through a contractual relationship.

*See* DC Code Title 36 Section 301.01 (10) (2001 edition). [sic]

6. The Uniform Trade Secrets Act of 1988 (36 DC Code Section 401 et seq. [sic] defines person as follows:

- (3) “Person means a natural person, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

*See* DC Code Title 36 Section 401(3) (2001 edition). [sic]

7. The Condominium Act of 1976 (42 DC Code Section 1901.01 et seq.) [sic] defines person as follows:

- (25) “Person” Shall mean a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination of any of the foregoing.

*See* DC Code Title 42 Section 1901.02 (25) (2001 edition). [sic]

Supplemental Memorandum at 3-5.

Each of the aforementioned statutes defines “person,” not “natural person.” In this regard, they do not differ from the Act, which only defines “person.” What is clearly established is that the term “person” can most assuredly include “natural person.” It is clear that the drafters of the Act inserted “natural person” to narrow the meaning, to human being. See Black’s, supra.

The tenant’s expert witness testified at length with respect to the proper characterization of a trust. She testified without rebuttal that the trust, created under the laws of the state of Maryland, was indeed an entity, not a natural person, irrespective of the fact that the one person was settlor, trustee and beneficiary. She noted that the daughter of Mr. Tippet was a co-trustee charged with the authority and power to operate independently of the initial trustee.

The hearing examiner's evaluation and analysis of the evidence included the following summary of the expert testimony:

Attorney Fox testified that in her extensive research on this case, nothing in the Maryland Code, the state where the Trust was created, defines a trust as a 'natural person;' and that the D.C. Official Code is silent as to whether a Trust is either an entity or a 'natural person.' Attorney Fox testified that she defines a Trust as, 'an entity,' created by a natural person...and that it must be limited to the Rule Against Perpetuities. Attorney Fox further testified that a Trust is created for [including, but not limited to,] the following purposes (1) a vehicle to avoid probate – by placing all property in a trust, probate in each jurisdiction is unnecessary; (2) to leave property to children,(3) to protect grantor (maker) of the Trust if he or she becomes disabled and needs someone to care for him or her; (4) to provide for property management or avoid personal liability for property management, and (5) to supplement Medicaid. Attorney Fox testified that the Trust goes beyond the life of the beneficiary.

Decision at 6-7.

The expert's testimony comports with the definitions in Black's with respect to distinguishing "natural person" and "person." She characterized the trust as a "creation." This comports with the aforementioned definitions. While her testimony was relevant, material and not refuted, the hearing examiner summarized the testimony, and then totally ignored it in her findings of fact and conclusions of law. The hearing examiner erred when she ignored the expert witness's testimony.

The hearing examiner is reversed on these issues.

**G. Whether the hearing examiner erred in finding that the housing provider provided evidence that absent the living trust, the housing provider would otherwise be entitled to exemption from rent control pursuant to a "small landlord" status as the housing provider failed to submit such evidence and the finding was not supported by substantial evidence on the record and is an abuse of discretion.**

This finding is based upon erroneous application of a statutory requirement. The evidence clearly establishes that the subject property is owned by a revocable trust. There is no need to examine what the finding would be "absent the living trust." Careful

examination of the record discloses the fact that the property was owned by a revocable trust since 1996. The tenant submitted a copy of the deed executed on September 4, 1996. See Petitioner's Exhibit 1. The housing provider submitted a copy of the Revocable Trust. See Respondent's Exhibit 2. These documents establish that the subject housing accommodation was owned by a revocable trust. The hearing examiner is reversed on this issue.

**H. Whether the hearing examiner erred as a matter of fact and law in determining that the Respondent established that Respondent qualified for an excuse from failing to comply with the requirements of the Rental Housing Act pursuant to the "special circumstance" test set forth in Hanson as the housing provider failed to submit evidence to satisfy the criteria of Hanson v. District of Columbia Rental Hous. Comm'n., 584 A.2d 592 (D.C. 1991)**

In the instant case, the standard cannot be applied because the housing accommodation is not owned by a natural person. The examiner could not properly reach the test in the Hanson case because, ab initio, the housing provider cannot be considered exempt with respect to its form of ownership. It is not necessary to reach the issue of "special circumstances." Accordingly, the hearing examiner erred when she found as a matter of fact and law that the housing provider qualified for an excuse from failing to comply with the requirements of the Rental Housing Act pursuant to the "special circumstance" test. The hearing examiner is reversed on this issue.

**I. Whether the hearing examiner erred in dismissing the tenant petition without adjudicating the Petitioner's security deposit overcharge claim(s), following her finding that the RACD lacked jurisdiction, based upon the property's exempt status, over all claims except the Tenant's claim for security deposit overcharge(s).**

The hearing examiner erred in dismissing the tenant petition without adjudicating the Petitioner's security overcharge claim. The RACD did have jurisdiction over this matter because the finding that the housing provider was exempt was erroneous as to fact and

law. All facts and conclusions flowing from that initial error make the finding of lack of jurisdiction erroneous. The hearing examiner is reversed on this issue.

**J. Whether there are any other bases determined following review of the record herein.**

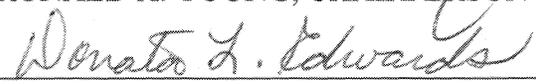
In this issue on appeal to the Commission, the tenant states: “any other bases determined following review of the record herein;” however, the tenant has failed to provide the Commission with specific instances of the errors in the hearing examiner’s decision. The Commission has previously held that appeal issues which fail to provide the Commission with a clear and concise statement of alleged errors in the decision of the hearing examiner, as required by 14 DCMR § 3802.5(b) (2004), will be dismissed. See Tenants of 829 Quincy St., N.W. v. Bernstein Mgmt. Co., TP 25,072 (RHC Sept. 22, 2004); Battle v. McElvene, TP 24,752 (RHC May 18, 2000); Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000). Accordingly, this appeal issue is dismissed.

#### IV. CONCLUSION

For the foregoing reasons, the Commission reverses the decision and order of the hearing examiner and remands this matter to the Office of Administrative Hearings<sup>1</sup> for a hearing de novo and any further action consistent with this decision.

SO ORDERED.

  
RONALD A. YOUNG, CHAIRPERSON

  
DONATA L. EDWARDS, COMMISSIONER

#### MOTIONS FOR RECONSIDERATION

Pursuant to 14DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14DCMR § 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. 6<sup>th</sup> Floor  
Washington, DC 20001  
(202) 879-2700

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<sup>1</sup>This case is remanded to the Office of Administrative Hearings pursuant to the Office of Administrative Hearings Establishment Act of 2001, D.C. OFFICIAL CODE § 2-1831.01, which provides in relevant part:

(a) Section 6(b-1) (D.C. Official Code § 2-1831.03(b-1)) is amended as follows:

...

(1) In addition to those agencies listed in subsections (a) and (b) of this section, as of January 1, 2006, this chapter shall apply to adjudicated cases under the jurisdiction of the Rent Administrator in the Department of Consumer and Regulatory Affairs.

## CERTIFICATE OF SERVICE

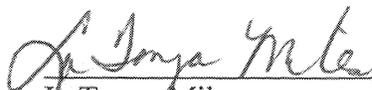
I certify that a copy of the foregoing Decision and Order in TP 27,718 was mailed postage prepaid by priority mail, with delivery confirmation on this 1<sup>st</sup> day of June, 2007 to:

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