

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,782

In re: 4403 Quarles Street, N.E., Unit 12

Ward Seven (7)

KENILWORTH PARKSIDE RMC & DENISE YATES¹
Housing Providers/Appellants/Cross Appellees

v.

STACCATO JOHNSON
Tenant/Appellee/Cross Appellant

DECISION AND ORDER

June 22, 2005

PER CURIAM. This case is on appeal to the Rental Housing Commission (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

Staccato Johnson, tenant, filed Tenant Petition (TP) 27,782 on March 18, 2003.

¹ The hearing examiner's decision and order indicates "Kenilworth Park RMC" as the housing provider; however, registration documents reflect that the housing provider is properly referred to as "Kenilworth Parkside RMC." Pursuant to 14 DCMR § 3905.2 (1991), the Commission shall refer to the housing provider as its name appears in the agency's registration records.

In the petition, the tenant alleged that: 1) rent being charged exceeds the legally calculated rent ceiling for the unit; 2) the building in which the rental unit is located is not properly registered with the Rental Accommodations and Conversion Division; 3) the services and facilities provided in connection with the rental of the unit have been permanently eliminated; 4) the services and facilities provided in connection with the rental of the unit have been substantially reduced; and, 5) the services and facilities as set forth in a Voluntary Agreement filed with and approved by the Rent Administrator under § 215 of the Rental Housing Act of 1985 have not been provided as specified.

An RACD hearing was held on April 25, 2003 with Hearing Examiner Sandra M. McNair presiding. On December 16, 2003, the hearing examiner issued her decision and order. The decision and order contained the following:

Findings of Fact:

1. The subject housing accommodation, 4403 Quarles Street, N.E., Apartment # 12, Washington, D.C. 20019, is not properly registered with the RACD.
2. The subject housing accommodation, 4403 Quarles Street, N.E., Apartment # 12, Washington, D.C. 20019, is exempt from the provisions of Title II of the Act.
3. The Petitioner had either actual or constructive notice that the Housing Accommodation is exempt from the rent stabilization provisions of the Act in that the Petitioner is aware that he receives rental assistance under the District of Columbia Housing Authority Section 8 Rental Assistance Program. In the Petitioner's lease agreement there are several paragraphs containing language that should or would have put the Petitioner on notice that the property was either federally or District owned or subsidized. Despite the absence of a renewed Registration/Claim of Exemption form for the years 1994 – present, the Petitioner either knew or should have known that at the time of signing the lease, [sic] the property was not subject to the provisions of Title II of the Act.

4. The Petitioner took possession of apartment # 12 on February 20, 1998, and has resided at the subject premises at all relevant times, without interruption.
5. The Respondent, Kenilworth-Parkside RMC, owns the subject property.
6. The Respondent, Denise Yates, is the agent and manager of the subject property.
7. The Examiner lacks jurisdiction and is therefore barred from considering the Petitioner's claim concerning the rent increases, rent charged, rent ceilings, and substantial reduction of services or facilities with respect to the rental unit or the subject property, in that the property is exempt from Title II of the Act.
8. The Petitioner withdrew his claim that services or facilities, as set forth in a Voluntary Agreement filed with and approved by the Rent Administrator under § 215 of the Act, have not been provided as specified.
9. All other findings of fact made by the Examiner in this Decision and Order are incorporated by reference into this section of Findings of Fact.

Kenilworth Parkside RMC v. Johnson, TP 27,782 (RACD Dec. 16, 2003) at 4.

The decision contained the following:

Conclusions 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 Rental Accommodations and Conversion Division, in violation of D.C. OFFICIAL CODE § 42-3502.05(f).
2. The Rent Administrator lacks the jurisdiction to adjudicate Petitioner's Title II claims of reduction in services or facilities 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).
3. The Respondent violated D.C. OFFICIAL CODE § 42-3502.05 (2001) by failing to obtain and pay the Registration fees for operating rental property in the District of Columbia. The Respondent failed to obtain a Registration/Claim of Exemption Form permitting Respondent to

have a certificate of occupancy, a property claim of exemption number, or a landlord registration number. Respondent also failed to obtain a current Master Business License. Each of the above are [sic] required in order to be in compliance and to operate a rental property business in the District of Columbia.

4. All other conclusions of law made by the Examiner in this Decision and Order are incorporated by reference into this section of Conclusion of Law.

Id. at 12 – 13.

On January 5, 2004, the housing provider filed a notice of appeal with the Commission, and on January 7, 2004, the tenant filed a notice of cross appeal. A Commission hearing was held on November 9, 2004.

II. THE ISSUES

The housing provider's notice of appeal states the following issues:

1. Whether it was error for the Hearing Examiner to fail to review the records of the agency to determine whether Petitioner had a valid registration for the subject real property, a valid Business License and valid Certificate of Occupancy?
2. Whether remand is necessary so that the record can be reopened and cleared, [to] show that Petitioner is in full compliance with the law by maintaining a valid Certificate of Occupancy for 4403 Quarles Street, NE [sic] to operate 12 units ... , a Master Business License for the period of 11-1-01 to 10-31-03 [sic] ... and Claim of Exemption ... ?
3. Whether it was error to issue a fine against Petitioner because Petitioner has, and has had a valid certificate of Occupancy, valid RACD Claim of Exemption, and valid housing Business License to operate rental housing at 4403 Quarles Street, NE, Washington, DC?
4. Whether a small claims settlement in SC 2168-03 ... between these same parties attached collateral *estoppel* or *res judicata* effect to the issues in this case[?]

Notice of Appeal at 2.

The tenant's notice of cross appeal states the following issues:

1. Pursuant to the zoning regulations Title II, Section 3203.1, no person shall use any structure, land or part of any structure or land until a Certificate of Occupancy has been issued to that person stating that the use complied with the zoning and D.C. Building Code (Title 12 DCMR) failure to obtain a valid certificate of occupancy.
2. Respondent failed to obtain a valid housing business license pursuant to DCMR-14 [sic].
3. Respondent failed to register the property at 4403 Quarles St. NE Apartment #12, Washington, D.C. 20019 with the D.C. Rent Control Office [sic] (RACD).
4. Reduction in related services.

Notice of Cross Appeal at 1.

III. PRELIMINARY ISSUES ON APPEAL

- A. **Whether the housing provider, who had notice of the Rent Administrator's hearing but failed to appear, has standing to appeal the decision of the Rent Administrator to the Rental Housing Commission.**
- B. **Whether the hearing examiner erred when she fined the housing provider for its failure to obtain a business license pursuant to § 42-3502.11.**

IV. DISCUSSION OF THE PRELIMINARY ISSUES

- A. **Whether the housing provider, who had notice of the Rent Administrator's hearing but failed to appear, has standing to appeal the decision of the Rent Administrator to the Rental Housing Commission.**

If a default judgment is rendered against the housing provider, the housing provider can move to set aside that judgment or file an appeal. There are four factors involved in determining whether a default judgment should be set aside: 1) whether the movant had actual notice of the proceeding; 2) whether he acted in good faith; 3) whether the moving party acted promptly; and 4) whether a *prima facie* adequate defense was presented. Dunn v. Proffitt, 408 A.2d 991 (D.C. 1979), cited in Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478, 481 (D.C. 1996).

Applying the standards set forth in Dunn, the housing provider in the instant case has not met the first factor requiring the housing provider to show it did not have proper notice. The issue of notice is not addressed in the housing provider's notice of appeal, and counsel for the housing provider conceded that the housing provider received proper notice during the Commission's hearing. Having failed to demonstrate that notice was improperly served in order to have the default judgment set aside, the housing provider lacks standing to appeal the default judgment. Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000) at 5.

Given that the housing provider has conceded to receiving proper notice of the Rent Administrator's hearing and that it subsequently failed to appear for that hearing, the housing provider does not have standing to appeal the decision of the Rent Administrator to the Commission. Accordingly, the housing provider's appeal issues are denied.

B. Whether the hearing examiner erred when she fined the housing provider for its failure to obtain a business license pursuant to § 42-3502.11.

While the housing provider did not specifically appeal the amount of the fine imposed by the hearing examiner, 14 DCMR § 3807.4 (1991) provides: "Review by the Commission shall be limited to the issues raised in the notice of appeal; provided, that the Commission may correct plain error." Nezhadessivandi v. Ayers, TP 25,091, 5 n.2 (RHC Nov. 1, 2002). Here, the hearing examiner's imposition of the fine is justified, but we find error in her reasoning.

The hearing examiner's Decision and Order states, "[t]he Respondent shall pay a fine in the amount of Five Hundred Dollars (\$500.00) for willful violation of the Rental

Housing Act of 1985, i.e. D.C. OFFICIAL CODE § 42-3502.11, by failing to have a valid housing business license and certificate of occupancy to operate rental property in the District of Columbia.” Johnson v. Kenilworth Park RMC, TP 27,782 (RACD Dec. 16, 2003) at 13. The Act at § 42-3502.11, however, relates to services and facilities supplied by a rental housing provider.² Clearly, failing to have a valid housing business license and certificate of occupancy to operate rental property in the District of Columbia is not mentioned in § 42-3502.11. Additionally, the hearing examiner states in her Decision and Order that the housing provider violated § 42-3502.05 “by failing to obtain and pay both the Registration and Master Business License fees for operating rental property in the District of Columbia[.]” Id. at 10. However, § 42-3502.05(f), to which the hearing examiner refers in her analysis, does not apply to the housing provider in the instant case because the housing provider is exempt from its application under § 42-3502.05(a)(1).³

The applicable section of the statute in the instant case is D.C. OFFICIAL CODE § 42-3502.08(a)(1)(C) (2001) which states, “the rent for any rental unit shall not be increased above the base rent unless ... [t]he housing provider of the housing accommodation is properly licensed under a statute or regulations if the statute or regulations require licensing[.]” According to D.C. OFFICIAL CODE § 47-2828(a) (Supp. 2004), “owners of residential buildings in which one or more dwelling units or rooming units are offered for rent or lease shall obtain from the Mayor a license to operate such

² Section 42-3502.11 states that “If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.”

³ Section 42-3502.05(a)(1) provides exemption from § 42-3502.05(f) through § 42-3502.19, except § 42-3502.17, to “[a]ny rental unit in any federally or District-owned housing accommodation or in any housing accommodation with respect to which the mortgage or rent is federally or District-subsidized[.]”

business.” The type of license required for an apartment is a residential endorsement on a basic business license. D.C. OFFICIAL CODE § 47-2828(c) (Supp. 2004).

The record in this case does not reflect that the housing provider has a valid business license. The failure of the housing provider to obtain a valid business license clearly violates § 47-2828(a); accordingly, the subsequent increase in rent for the tenant’s unit violates § 42-3502.08(a)(1)(C). D.C. OFFICIAL CODE § 42-3509.01 (2001) provides:

(a) 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) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

(b) Any person who wilfully (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.

While the hearing examiner erred in her statement of which section of the Act was violated, her analysis of the violation itself was accurate. The hearing examiner determined that since the housing provider entered into the housing business and originally registered the property, it was aware of its obligation to obtain and renew its business license. Therefore, its failure to do so was knowing. The hearing examiner also determined that failing to renew the registration and obtain a valid business license for a period of thirteen (13) years constituted an intentional, voluntary, and deliberate act; therefore, the hearing examiner concluded, the housing provider acted willfully in its

failure to renew its registration of the property and to seek a valid business license. This analysis, while not illustrating violations of § 42-3502.05 and § 42-3502.11 as the hearing examiner states, demonstrates a violation of § 42-3502.08(a)(1)(C); such a violation is punishable by a fine of up to \$5,000 pursuant to § 42-3509.01 of the Act, and this appeal issue is accordingly denied.

V. DISCUSSION OF THE TENANT'S ISSUES

- A. **Pursuant to the zoning regulations Title II, Section 3203.1, no person shall use any structure, land or part of any structure or land until a Certificate of Occupancy has been issued to that person stating that the use complied with the zoning and D.C. Building Code (Title 12 DCMR) failure to obtain a valid certificate of occupancy.**

The hearing examiner states in the Decision and Order that she reviewed not only the testimony and evidence presented at the hearing, but also took official notice of the registration records of the agency for the subject property. Johnson v. Kenilworth Park RMC, TP 27,782 (RACD Dec. 16, 2003) at 3. Pursuant to D.C. OFFICIAL CODE § 2-509(b) (2001), the hearing examiner provided the parties notice of the opportunity to “show to the contrary why the Examiner should not take official notice of the [records]” within 10 days. Id. The record reflects that neither party in the instant case objected to the examiner’s taking official notice of the agency’s records.

The agency’s record, the RACD file, reflects that the housing provider did in fact have a Certificate of Occupancy dated January 13, 1993 and valid indefinitely, contrary to the hearing examiner’s finding that there was no valid Certificate of Occupancy.⁴

⁴ The Commission takes official notice of the Certificate of Occupancy filed with the RACD on January 13, 1993. The Commission takes this action pursuant to D.C. OFFICIAL CODE § 2-509(b) (2001), which provides that where the decision of an agency in a contested case rests upon official notice of a material fact not appearing in the evidence in the record, any party to such a case, upon timely request, shall be afforded an opportunity to show the contrary. In accordance with D.C. OFFICIAL CODE § 2-509(b) (2001), the parties have fifteen (15) days from the date of this decision to show facts contrary to those found in the Certificate of Occupancy.

Therefore, the hearing examiner's conclusion that the housing provider did not have a valid Certificate of Occupancy is reversed, and this appeal issue is accordingly denied.

B. Respondent failed to obtain a valid housing business license pursuant to DCMR-14; Respondent failed to register the property at 4403 Quarles St., N.E. Apartment #12, Washington, D.C. 20019 with the D.C. Rent Control Office [sic] (RACD).

A notice of appeal shall contain a "clear and concise statement of the alleged error(s) in the decision of the Rent Administrator." 14 DCMR § 3802.5(b) (1991). The Commission has held that an appeal issue that is not a clear and concise statement of an alleged error is "violative of the Commission's rules on appeals." Pierre Smith v. Askin, TP 24,574 at 31 (RHC Feb. 29, 2000). Accordingly, such an appeal issue shall be dismissed by the Commission.

The hearing examiner's Decision and Order in the instant case states as a conclusion of law that the housing provider failed to obtain a valid business license and failed to properly register the property. Johnson v. Kenilworth Park RMC, TP 27,782 (RACD Dec. 16, 2003) at 12. Therefore, the tenant's appeal issue, which indicates the same conclusion, is not alleging any error on the part of the hearing examiner. Because this appeal issue is merely a restatement of the hearing examiner's conclusion of law, this appeal issue is denied.

C. Reduction in Related Services.

In the Notice of Cross Appeal, the tenant's fourth issue was stated as "reduction in related services." Notice of Cross Appeal at 1. Under the criteria set forth in 14 DCMR § 3802.5(b) (1991) above, this appeal issue is not a clear and concise statement of an alleged error in the decision of the Rent Administrator. An inference can be made that the tenant's issue indicates that he believes the hearing examiner *somehow* erred in her

analysis of the reduction of related services in her Decision and Order. However, there is no clear and concise statement as to what that error might be.

Because this appeal issue violates 14 DCMR § 3802.5(b) (1991) by not providing a clear and concise statement of alleged error, it is accordingly denied.

VI. CONCLUSION

The agency's record reflects that the housing provider did in fact have a Certificate of Occupancy dated January 13, 1993 and valid indefinitely. Therefore, the hearing examiner's conclusion that the housing provider did not have a valid Certificate of Occupancy is reversed, and this appeal issue is accordingly denied. The hearing examiner's Decision and Order states as conclusions of law that the housing provider failed to obtain a valid business license and failed to properly register the property. Therefore, the tenant's appeal issues, indicating the same conclusions, are not alleging any error on the part of the hearing examiner and are denied. Finally, because the tenant's issue as to reduction of related services is not a clear and concise statement of an alleged error in the decision of the Rent Administrator, this appeal issue is denied.

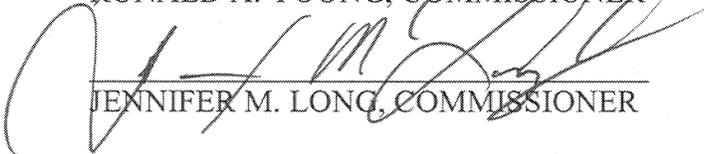
SO ORDERED.



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 issues 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 hereby certify that a copy of the foregoing Decision and Order in TP 27,782 was mailed by priority mail with delivery confirmation, postage prepaid, this 22nd day of June, 2005, to:

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Morris R. Battino, Esquire
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