

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,783

In re: 2500 Wisconsin Avenue, N.W., Unit 112

Ward Three (3)

TRUIT R. PROSPER
Tenant/Appellant

v.

PINNACLE MANAGEMENT
Housing Provider/Appellee

DECISION AND ORDER

JUNE 9, 2004

PER CURIAM. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission). 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. PROCEDURAL HISTORY

Truit R. Prosper filed Tenant Petition (TP) 27,783 on March 18, 2003 with the Rental Accommodations and Conversion Division (RACD). In the petition, the tenant alleged that the housing provider, Pinnacle Management (Pinnacle), increased the rent more than the amount allowed by any provision of the Act and that was improper notice of the increase as set forth by the Act.

Hearing Examiner Gerald J. Roper heard the petition on April 28, 2003. The tenant was not present at the hearing. Present at the hearing for Pinnacle were the Investment Manager, Myles Levin, the Property Manager, Doug Harper, the Maintenance Supervisor, James Delaney, and counsel Richard W. Luchs. At the hearing, counsel moved to dismiss the tenant petition with prejudice because the tenant failed to appear and for his failure to prosecute the tenant petition. This motion was granted by the examiner, because neither the tenant nor a representative for the tenant was present. On May 1, 2003, the examiner issued a Decision and Order detailing the dismissal of the petition with prejudice.

On May 20, 2003, the tenant filed a Notice of Appeal. On August 22, 2003, the tenant filed a Motion to Amend the Pleadings and it was denied by the Commission on September 3, 2003. The Commission heard the appeal on December 16, 2003.

II. ISSUE ON APPEAL

The tenant raised the following issue:

The notice of hearing was never received.... Due to not receiving the notice of a hearing date, the Petition[er] was unaware of the date, thus failed to show. At this time the Petitioner now Appellant, appeals to this body to vacate the order, and schedule another hearing to present the case.

Notice of Appeal at 1.

III. DISPOSITIVE ISSUE

It should be noted that the Commission's review is limited to the evidence contained in the record. Meir v. District of Columbia Rental Accomodation Comm'n, 372 A.2d 566 (D.C. 1977). If a part of the record is missing, there cannot be adequate review of an incomplete record. When the Commission reviewed the record, missing were essential components of the decision. Missing from the decision and order were

findings of fact and conclusions of law which are essential to the examiner's decision and order.

These parts of the decision and order are mandated by statute, "[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." D.C. OFFICIAL CODE § 2-509(e) (2001). The decision and order issued for TP 27,783 did not contain these components.

When faced with this deficiency, the Commission must follow precedent to correct the problem. The District of Columbia Court of Appeals (DCCA) addressed this situation and states:

In a contested case, whenever an administrative agency fails to make a finding on a material contested issue, the court cannot properly fill the gap itself by inferring findings on a party's objections through inspection of the record, the agency's other findings, and the ultimate decision. Thus the court is compelled to remand for findings on the issue.

Lee v. District of Columbia Zoning Com., 411 A.2d 635 (D.C. App., 1980). In the instant case, there were no findings by the examiner for the Commission to review. Since the Commission is a reviewing body, assuming findings of fact and conclusions of law are outside the jurisdiction of the Commission. Meir 372 A.2d 568.

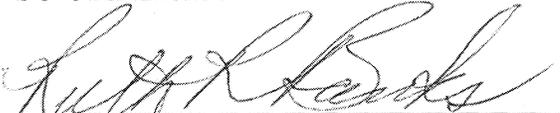
Without these elements, the Commission cannot review the record. Review of a complete record is essential to judicial fairness and to address the issue raised by the Appellant. The issue in the instant case was one pertaining to notice, and the hearing examiner indicated in the decision and order that there was adequate notice. When there was adequate notice, but the party did not appear, there was no standing for appeal.

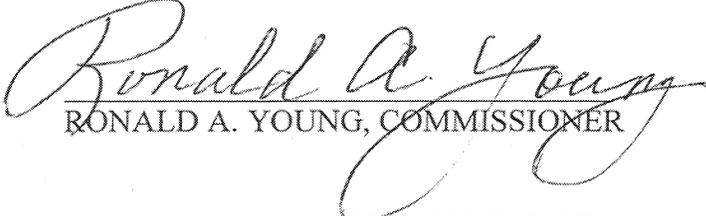
John's Properties v. Hilliard, TPs 22,269 & 21,116 (RHC June 24, 1993). However, for the reasons stated above, the Commission must remand the case to the hearing examiner.

IV. CONCLUSION

The Commission concludes from its review of the record, that the record is incomplete. The decision is, therefore, remanded to the hearing examiner for findings of fact and conclusions of law which are missing from the decision and order.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, 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 D.C. Court of Appeals. The Court's Rule, D.C. App. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is

given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk." The Court may be contacted at the following address and phone number:

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

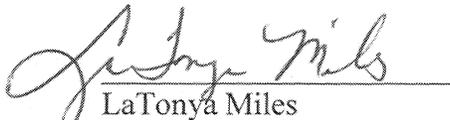
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,783 was mailed by priority mail with delivery confirmation, postage prepaid, on this 9th day of June, 2004 to:

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