

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 28,006

In re: 1115 12<sup>th</sup> Street, N.W., Unit 503

Ward Two (2)

DOUGLAS D. HAMMER  
Tenant/Appellant/Cross Appellee

v.

MANOR MANAGEMENT CORPORATION  
Housing Provider/Appellee/Cross Appellant

**DECISION AND ORDER**

May 17, 2006

**LONG, COMMISSIONER.** This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), 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 the proceedings.

**I. PROCEDURAL HISTORY**

Douglas Hammer, filed Tenant Petition (TP) 28,006 on December 2, 2003. The tenant made the following claims in the petition: 1) the housing provider implemented a rent increase that exceeded the amount of increase permitted by the Act; 2) the rent exceeded the legally calculated rent ceiling; 3) the housing provider filed an improper

rent ceiling with the RACD; and 4) the housing accommodation was not properly registered with the RACD.

The matter was initially scheduled for an adjudicatory hearing on January 12, 2004. However, the Rent Administrator continued the hearing to February 11, 2004 because the housing provider's attorney was not available on the initial hearing date. Hearing Examiner Gerald Roper convened the hearing on February 11, 2004. The tenant appeared pro se. George L. Hesse, the president of Manor Management Corporation, appeared with counsel, Marta Tanenhaus. On February 27, 2004 the housing provider's attorney filed a motion to dismiss the tenant petition for lack of jurisdiction. On April 6, 2004, Hearing Examiner Roper issued an order denying the motion to dismiss the tenant petition. In the order, the hearing examiner stated that the housing provider's attorney moved to dismiss the tenant petition at the February 11, 2004 hearing. The hearing examiner's order reflects that Mr. Hesse testified that he thought he registered the property by mail. However, he could not produce the registration form. The housing provider's attorney argued that the property was exempt pursuant to § 206(a)(4) of the Rental Housing Act of 1980, based on the Registration/Claim of Exemption Form filed by a previous owner on November 15, 1985. The hearing examiner rejected the attorney's argument, denied the motion to dismiss, and rescheduled the matter for a hearing on the merits of the tenant's claims. See Hammer v. Manor Mgmt. Corp., TP 28,006 (RACD Apr. 6, 2004).

Hearing Examiner Gerald Roper reconvened the hearing on April 22, 2004. The tenant pro se appeared and Marta Tanenhaus, Esquire appeared on behalf of the housing provider. The tenant offered testimony and arguments to support his claims. When the

tenant completed his case, the housing provider's attorney placed the motion to dismiss into evidence and rested the housing provider's case on the evidence from the hearing held on February 11, 2004 and the motion to dismiss. Thereafter, the hearing examiner granted the tenant's request to ask questions based on the motion to dismiss. In response, the housing provider's attorney withdrew the motion to dismiss from evidence. No witnesses appeared on behalf of the housing provider on April 22, 2004.

Following the April 22, 2004 hearing the hearing examiner issued the decision and order, which contained the following findings of fact and conclusions of law:

Findings of Fact

1. The building in which the rental unit is located is not properly registered with the RACD.
2. The current rent charged the petitioner, Douglas Hammer, for rental unit # 503 (\$750) is larger than the amount of increase, which was allowed by any applicable provision of the Act.
3. The rent charged the Petitioner from September 1, 2001 exceeds the legally calculated rent ceiling.
4. There is no rent ceiling on file for unit # 503 with the RACD.
5. The subject housing accommodation was last registered in the name S.B. Associates Limited Partnership on April 4, 1989.
6. George Keese [sic] purchased the S.B. Associates Limited Partnership in a foreclosure sale in 1990. The subject housing accommodation, 1115 12<sup>th</sup> Street, N.W., was part of the assets owned by the partnership when Mr. Keese [sic] acquired ownership of the partnership.
7. The Petitioner took possession of apartment # 503 on August 1, 2000. The rent charged was \$520 per month. The rent was increased to \$575 on September 1, 2001 and increased again to \$750 on January 1, 2004. The current rent charged is \$520.
8. The rent ceiling for apartment # 503 is \$520.
9. There is no rent ceiling on file with the RACD to make a

determination whether the rent ceiling is improper.

10. The Respondent has overcharged the Petitioner rent during the period September 1, 2001 through April 2004 and shall refund to the Petitioner \$2,765 plus \$126.70 interest for the overcharge.

#### Conclusions of Law

1. The Petitioner has proven by a preponderance of the evidence that the Respondent violated D.C. Official Code § 42-3502.05(f) (2001) by failing to file a Registration/Claim of Exemption Form for the subject housing accommodation after he acquired ownership of S.B. Associates Limited Partnership in 1990.
2. The Petitioner has proven by a preponderance of evidence that the Respondent implemented two rent adjustments larger than the law allows in September 2001 and January 2004 in violation of 14 DCMR § 4205.5 (1998).
3. The Petitioner has proven by a preponderance of the evidence that the Petitioner's rent charged between the periods September 1, 2001 and July 2004 exceeded the legally calculated rent ceiling in violation of D.C. Official Code § 42-3502.06(a) (2001).
4. The Respondent knowingly and willfully implemented two rent charged adjustments in violation of D.C. Official Code § 42-3502.06(a) (2001) and the Petitioner is entitled to a rent refund because the monthly rent charged by the Respondent was in excess of the allowable rent charge pursuant to D.C. Official Code § 42-3509.01(a) (2001).

Hammer v. Manor Mgmt. Corp., TP 28,006 (RACD July 16, 2004) at 11-13. The hearing examiner granted the petition and ordered the housing provider to refund \$2765.00 to the tenant and pay a fine in the amount of \$2500.00.

On July 23, 2004 the tenant filed a notice of appeal from the hearing examiner's decision and order. The housing provider filed a cross appeal on August 3, 2004. The Commission held the appellate hearing on September 28, 2004.

When the Commission reviewed the record, the Commission discovered that the hearing examiner completed the Rental Accommodations Office Case Docket and

indicated that there was only one tape for the hearing held on April 22, 2004. The record contained references to a hearing held on February 11, 2004; however, the tape was missing from the certified record. The Commission contacted the hearing examiner, who was initially unable to locate the tape. As a result, the Commission remanded the matter to the Rent Administrator to recapture the February 11, 2004 hearing. As an alternative to a hearing on the missing evidence, the Commission advised the parties that it would review their cross-appeals, if they agreed to proceed with less than a full record and submitted a written stipulation of facts. Hammer v. Manor Mgmt. Corp., TP 28,006 (RHC Mar. 23, 2006) at 9. Thereafter, the hearing examiner located the missing tape of the hearing held on February 11, 2004, and he delivered the tape to the Commission on March 29, 2006. Since the hearing examiner located the missing tape, the Commission vacated the decision and order issued on March 23, 2006.

## **II. ISSUES ON APPEAL**

The tenant filed a notice of appeal on July 23, 2004 and raised the following issues:

1. For the forgoing reasons I believe Gerald J. Roper, Senior Hearing Examiner for the Rental Housing and Conversion Division [sic] erred in not finding as a conclusion of law that Housing Provider/Respondent: Manor Management Corporation should be denied their claim of exemption. ... "Failure to file or failure to provide accurate information in accordance with the Act and this subtitle, may result in the denial of the claim of exemption ...."
2. As substantiated by my written closing statement submitted on April 22, 2004, Registration and Coverage under the Act applies to both exempt and non-exempt housing accommodations. ... The original claim form No. 13,423 dated October 5<sup>th</sup> 1983 is on record at the RACD and clearly states on page 2 that, "Any change in the owner's interest ... MUST BE REPORTED IN WRITING WITHIN THIRTY (30) DAYS OF SUCH CHANGE.

Tenant's Notice of Appeal at 1.

The housing provider filed a cross appeal on August 3, 2004 and stated the following:

1. The [h]earing [e]xaminer held that the subject housing accommodation was not properly registered in accordance with the Rental Housing Act, D.C. Code § 42-3502.05(f). However, the uncontradicted evidence shows that the housing accommodation is exempt from rent control as a previously vacant housing accommodation that has been restored to the rental market. Section 42-3502.05(f) expressly provides that it does not apply to rental units "exempted by this act."
2. The exemption under Section 42-3502.05(a)(4) is not conditioned on the filing of a claim of exemption. Nevertheless, in April 1989, the housing provider filed a claim of exemption (Respondent's Exh. No. 2), and no timely challenge to that claim was ever filed.
3. The hearing examiner erroneously held that a new registration or claim of exemption should have been filed when an individual acquired a controlling interest in the housing provider. Nothing in the Act or Regulations requires that a new registration or claim of exemption be filed under these circumstances.
4. Therefore, the Tenant Petition/Complaint should have been dismissed, with prejudice, on the ground that the housing accommodation and the Petitioner's rental unit therein are exempt from Rent Stabilization.
5. The hearing examiner erred and abused his discretion in establishing a rent ceiling for the subject exempt rental unit, in ordering a refund, and in imposing a fine.

Housing Provider's Notice of Appeal at 1-2.

### III. DISCUSSION

#### The Tenant's Appeal Issues

- A. Whether the hearing examiner erred in not concluding as a matter of law that the housing provider Manor Management Corporation should be denied their claim of exemption because failure to file or failure to provide accurate information in accordance with the Act and this subtitle may result in the denial of the claim of exemption.

When the hearing examiner issued the decision and order, he concluded as a matter of law that the housing provider violated D.C. OFFICIAL CODE § 42-3502.05(f) (2001) by failing to file a Registration/Claim of Exemption Form for the subject housing accommodation after he acquired ownership of S.B. Associates Limited Partnership in 1990. However, the hearing examiner did not err when he did not conclude as a matter of law that the housing provider should be denied the claim of exemption.

The Commission has held, “the language of [§ 205(a)(4)] does not indicate that an exemption for continuously vacant housing accommodations terminates upon transfer in ownership. The ... eligibility for an exemption does not change solely because the property is transferred to another person ... when the property was acquired through a valid transfer and otherwise met the requirements for a claim of exemption.” Cooper v. Bahry, TP 22,397 (RHC Aug. 16, 1993) (emphasis added). While it is possible for a housing provider to receive penalties and other sanctions for failing to file an amended registration form reflecting his ownership, the property does not necessarily lose its status as an exempt housing accommodation. 14 DCMR § 4106.6 (2004). Consequently, the hearing examiner did not err by failing to conclude, as a matter of law, that the housing provider should be denied the claim of exemption.

**B. Whether Registration and Coverage under the Act applies to both exempt and non-exempt housing accommodations as substantiated by the tenant’s written closing statement submitted on April 22, 2004 and whether any change in the owner’s interest must be reported in writing within thirty (30) days of such change.**

The registration and coverage provisions of the Act apply to exempt and non-exempt rental units and housing accommodations. The only units that are not subject to

the registration requirements are those units that the Act excludes from coverage.<sup>1</sup> In addition, each housing provider is required to report any change in the ownership or management of the housing accommodation within thirty days.

The registration requirements for exempt and non-exempt housing accommodations are found in D.C. MUN. REGS. tit. 14, § 4100 (2004)). The relevant provisions of the regulations identify the rental units that are covered by the Act and prescribe the registration requirements for exempt and non-exempt rental units and housing accommodations. The relevant provisions of the regulations provide the following:

Each rental unit in the District of Columbia is covered by the Act except those rental units excluded from coverage by § 205(e) of the Act; ....

14 DCMR § 4100.3 (2004).

The registration requirements of this section shall apply to each rental unit covered by the Act as provided by § 4100.3 and to each housing accommodation of which the rental unit is a part, including each rental unit exempt from the Rent Stabilization Program.

14 DCMR § 4101.1 (2004) (emphasis added).

The terms “to register” and “registration” shall be understood to include filing with the Rent Administrator the following:

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<sup>1</sup> D.C. OFFICIAL CODE § 42-3502.05(e) (2004), excludes the following housing accommodations from coverage:

(e) This chapter shall not apply to the following units:

(1) Any rental unit operated by a foreign government as a residence for diplomatic personnel;

(2) Any rental unit in an establishment which has as its primary purpose providing diagnostic care and treatment of diseases, including, but not limited to, hospitals, convalescent homes, nursing homes, and personal care homes;

(3) Any dormitory; and

(4) Following a determination by the Rent Administrator, any rental unit or housing accommodation intended for use as long-term temporary housing by families with 1 or more members that satisfies each of the following requirements: ....

- (a) For a rental unit covered by the Rent Stabilization Program, the information required to establish and regulate rent ceilings pursuant to § 205(f) of the Act and § 4202; or
- (b) For rental units exempt from the Rent Stabilization Program the information required to establish the claim of exemption pursuant to § 205(a) of the Act and § 4103.

14 DCMR § 4101.2 (2004) (emphasis added).

Each housing provider of a rental unit or units covered by the Act shall file an amendment to the Registration/Claim of Exemption form provided by the Rent Administrator in the following circumstances:

- (a) Within thirty (30) days after a person becomes the housing provider of a rental unit or housing accommodation covered by the Act;
- (b) Within thirty (30) days after the termination of the exempt status of a rental unit or housing accommodation;
- (c) Within thirty (30) days after any change in the ownership or management of a registered housing accommodation;
- (d) Within thirty (30) days after the implementation of any rent increase or decrease allowed pursuant to §§ 210, 212, 214 or 215 of the Act, or any substantial change in the related services or facilities pursuant to § 211 of the Act; or
- (e) Within thirty (30) days after the implementation of any vacant accommodation rent increase pursuant to § 213 of the Act.

14 DCMR § 4103 (2004) (emphasis added).

As illustrated by the regulations, the owners of exempt and non-exempt rental units must register the units and report any changes in ownership within thirty days.

### **The Housing Provider's Appeal Issues**

- A. **Whether the hearing examiner erred when he held that the subject housing accommodation was not properly registered in accordance with § 42-3502.05(f).**

The hearing examiner did not err when he held that the subject housing accommodation was not properly registered. The hearing examiner stated the following in the decision and order:

The District of Columbia Municipal Regulations, Title 14 (hereinafter 14 DCMR) § 4103, provides in part that each housing provider of a rental unit or housing accommodation covered by the Act shall file an amendment to the Registration/Claim of Exemption form within 30 days after a person becomes the housing provider of a rental unit or housing accommodation covered by the Act.

The evidence shows Respondent, Mr. George Hesse, became the new housing provider of 1115 12<sup>th</sup> Street, NW in 1990 when he acquired the S.B. Associates Ltd. Partnership at a foreclosure sale . . . . Respondent testified that he registered the property by mail with the RACD but he could not produce any evidence of the alleged registration.

The RACD records show no Amended Landlord Registration recorded or unrecorded by Mr. Hesse naming him as the new owner of S.B. Associates Limited Partnership or the registrant of 1115 12<sup>th</sup> Street, NW. Therefore, based on this evidence, the Hearing Examiner found that the rental unit is not properly registered in accordance with the Act.

Hammer v. Manor Mgmt. Corp., TP 28,006 (RACD July 16, 2004) at 3-4. The Commission agrees.

The hearing examiner's ruling that the rental unit was not properly registered is supported by the substantial evidence on the record of the proceedings. Mr. Hesse became a housing provider when he acquired S.B. Associates, which owned the tenant's rental unit. Pursuant to 14 DCMR § 4103.1 (2004), the housing provider was required to file an amended registration form "[w]ithin thirty (30) days after any change in the ownership or management of the housing accommodation." 14 DCMR § 4103.1 (2004) (emphasis added). Since there was no record evidence that the housing provider filed an amended registration form within thirty days after he acquired the housing accommodation, the housing provider failed to meet the registration requirements.

The housing provider's attorney maintains that the housing provider was not required to register the housing accommodation under § 42-3502.05(f) of the Act, because the "uncontradicted" evidence shows that the housing accommodation is exempt from rent control as a previously vacant housing accommodation pursuant to § 42-3502.05(a)(4) of the Act. As stated in Part II, Issue B supra, the "registration requirements ... apply to each rental unit covered by the Act as provided by § 4100.3 and to each housing accommodation of which the rental unit is a part, including each rental unit exempt from the Rent Stabilization Program." 14 DCMR § 4101.1 (2004). Consequently, the housing provider was required to register the housing accommodation. Accordingly, the Commission denies Issue A.

**B. Whether the exemption under § 42-3502.05(a)(4) is conditioned on the filing of a claim of exemption.**

The exemption under § 42-3502.05(a)(4) is conditioned upon the filing of a claim of exemption. "Moreover, the landlord has the burden of establishing that an exemption applies." Price v. District of Columbia Rental Hous. Comm'n, 512 A.2d 263, 267 (D.C. 1986) (citing Bernstein v. Lime, 91 A.2d 841, 843 (D.C. 1952)). The Registration/Claim of Exemption Form is the form that the Rent Administrator provides to housing providers who claim an exemption from the rent stabilization provisions of the Act, as illustrated by the following regulations:

Each housing provider who claims a rental unit is exempt from the Rent Stabilization Program of the Act shall file a Registration/Claim of Exemption form with the Rent Administrator.

14 DCMR § 4106.1 (2004) (emphasis added).

Each claim of exemption shall contain a properly executed oath or affirmation by the housing provider that the claim is valid.

14 DCMR § 4106.2 (2004) (emphasis added).

Failure to file or failure to provide accurate information in accordance with the Act and this subtitle, may result in the denial of the claim of exemption and/or the imposition of other penalties and sanctions.

14 DCMR § 4106.6 (2004).

A housing accommodation shall be exempt under § 205(a)(4) of the Act, where it meets the following requirements:

- (a) The housing accommodation was continuously vacant and not subject to a rental agreement for the period beginning on January 1, 1985, and continuing at least until the effective date of the Act; and
- (b) Upon re-rental, the housing provider certifies to the Rent Administrator that the housing accommodation fulfills the conditions set forth in subsection (a) and is in substantial compliance with the housing regulations when offered for rent.

14 DCMR § 4106.14 (2004).

The “Claim of Exemption Form,” which is the second page of the Registration/Claim of Exemption Form, contains a complete list of the statutory provisions under which a housing provider can claim an exemption from the rent stabilization provisions of the Act. The list mirrors D.C. OFFICIAL CODE § 42-3502.05(a) (2004). A blank box appears next to each statutory exemption, and the housing provider is instructed to select the provision under which he claims the exemption. A housing provider who claims an exemption pursuant to § 205(a)(4) can select the box which appears in front of the following option: “Building continuously vacant and not subject to a rental agreement since January 1, 1985. § 205(a)(4)” The form also contains a certification that the owner or his agent is required to sign to attest to the accuracy of the information, subject to a penalty of \$5000.00 for false statements.

In the notice of appeal, the housing provider’s counsel wrote: “The exemption under Section 42-3502.05(a)(4) is not conditioned on the filing of a claim of exemption.

Nevertheless, in April 1989, the housing provider filed a claim of exemption (Respondent's Exh. No. 2), and no timely challenge to that claim was ever filed." Housing Provider's Notice of Appeal at 2. This statement is not supported by the law or the record evidence. As illustrated by the regulations and the Registration/Claim of Exemption Form, the exemption under § 42-3502.05(a)(4) is conditioned on the filing of a claim of exemption. Moreover, Mr. Hesse, the housing provider in the instant case, acknowledged that he did not own S.B. Associates or the rental unit in April 1989, and he did not file Respondent's Exhibit 2.

Accordingly, the Commission denies Issue B.

**C. Whether the hearing examiner erroneously held that a new registration or claim of exemption should have been filed when an individual acquired a controlling interest in the housing provider, when nothing in the Act or regulations requires that a new registration or claim of exemption be filed under these circumstances.**

In accordance with 14 DCMR § 4103.1 (2004), the hearing examiner ruled that George Hesse was required to file an amended registration form when he acquired 1115 12<sup>th</sup> Street, N.W., unit 503 and became a housing provider. The controlling provisions of the regulation provide the following:

Each housing provider of a rental unit or units covered by the Act shall file an amendment to the Registration/Claim of Exemption form provided by the Rent Administrator in the following circumstances:

- (a) Within thirty (30) days after a person becomes the housing provider of a rental unit or housing accommodation covered by the Act;

...

- (c) **Within thirty (30) days after any change in the ownership or management of a registered housing accommodation;**

14 DCMR § 4103.1 (2004) (emphasis added). Since Mr. Hesse became the owner of the housing accommodation, he was required to file an amended registration form.

Therefore, the Commission denies Issue C.

**D. Whether the Tenant Petition/Complaint should have been dismissed, with prejudice, on the ground that the housing accommodation and the Petitioner's rental unit therein are exempt from rent stabilization.**

The tenant petition should not have been dismissed with prejudice on the ground that the housing accommodation and the tenant's rental unit are exempt from rent stabilization. "The landlord has the burden of proving that he is exempt from the coverage of the Rental Housing Act, and the statutory exemptions are to be narrowly construed." Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293, 1297 (D.C. 1990) (citing Revithes v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1007, 1017 (D.C. 1987); Remin v. District of Columbia Rental Hous. Comm'n, 471 A.2d 275, 279 (D.C. 1984)). The hearing examiner denied the housing provider's motion to dismiss the tenant petition because the housing provider, George Hesse, did not present proof that he met the registration requirements.

During the evidentiary hearing, the housing provider introduced two Registration/Claim of Exemption Forms. The first form, for 1115 12<sup>th</sup> Street, N.W., unit 503, was filed on November 15, 1985. The 12<sup>th</sup> & Mass Assoc. Ltd. Partnership was listed as the applicant and The March Company was cited as the President or General Partner. In addition, Frank Emmet Real Estate, Inc. was listed as the agent and F. X. Emmet, Jr. signed the Registration/Claim of Exemption Form. On page two of the form, the housing provider indicated that the claim of exemption was based on the fact that the building was previously exempted under § 205(a)(4) of the Rental Housing Act of 1980.

See Respondent's Exhibit 1. The second registration form was filed with the RACD on April 4, 1989. S.B. Associates Limited Partnership was listed as the applicant and owner of the housing accommodation, and S-C Management Company was cited as the management agent or company. The housing provider claimed the building was previously exempt under § 206(a)(4) of the Rental Housing Act of 1980, (D.C. Law 3-131). S.B. Realty Corporation, General Partner, executed the Registration/Claim of Exemption Form on March 28, 1989. See Respondent's Exhibit 2.

George Hesse, who purchased S.B. Associates in January 1990, did not introduce a registration form or an amended registration form which reflected his ownership of S.B. Associates or the tenant's rental unit. Mr. Hesse testified that he mailed the registration form to RACD; however, he presented no documentary evidence to meet his burden of proving that he met the registration requirements or that the property was eligible for the exemption. Goodman, 573 A.2d at 1297; see also Oxford House-Bellevue v. Asher, TP 27,583 (RHC May 4, 2005).

The tenant, who alleged that the housing accommodation was not properly registered, was entitled to a hearing and a decision on his claims. On the facts of this case, the hearing examiner did not err when he denied the housing provider's motion to dismiss the tenant's petition with prejudice. As a result, the Commission denies Issue D.

**E. Whether the hearing examiner erred and abused his discretion in establishing a rent ceiling for the subject exempt rental unit, in ordering a refund, and in imposing a fine.**

The hearing examiner did not err or abuse his discretion when he ordered a rent refund and imposed a fine. However, the hearing examiner erred when he established the rent ceiling for the rental unit.

As discussed in Issues C and D supra, “Each housing provider who claims a rental unit is exempt from the Rent Stabilization Program of the Act shall file a Registration/Claim of Exemption form ... contain[ing] a properly executed oath or affirmation ... that the claim is valid.” 14 DCMR §§ 4106.1 & 4106.2 (2004). Moreover, each housing provider of a rental unit that is covered by the Act is required to file an amendment to the Registration/Claim of Exemption Form within thirty (30) days after a person becomes the housing provider of a rental unit covered by the Act or within thirty (30) days after any change in the ownership or management of a registered housing accommodation. 14 DCMR § 4103.1 (2004). A housing provider who fails to file a registration form in accordance with the Act and the regulations may be subjected to the denial of the claim of exemption and/or the imposition of other penalties and sanctions. 14 DCMR § 4106.6 (2004). Furthermore, “Any housing provider who has failed to satisfy the registration requirements of the Act pursuant to §§ 4101.3 or 4101.4 shall not be eligible for and shall not take or implement the following:

- (a) Any upward adjustment in the rent ceiling for a rental unit authorized by the Act;
- (b) Any increase in the rent charged for a rental unit which is not properly registered; or
- (c) Any of the benefits that accrue to the housing provider of rental units exempt from the Rent Stabilization Program.”

14 DCMR § 4101.9 (2004).

The hearing examiner did not err or abuse his discretion when he imposed a fine and ordered a rent refund. The housing provider, who failed to satisfy the registration requirements, was subject to the denial of the claim of exemption and/or the imposition of other penalties and sanctions in accordance with 14 DCMR § 4106.6 (2004). In

addition, the housing provider was not permitted to increase the tenant's rent when the unit was not properly registered. Consequently, the hearing examiner did not err when he ordered a rent refund for the rent increases that the housing provider implemented when the tenant's unit was not properly registered. 14 DCMR § 4101.9 (2004). However, the hearing examiner did err when he established a rent ceiling for the rental unit. Once the housing provider satisfies the registration requirements, the unit may no longer be subjected to the denial of the claim of exemption.

#### IV. CONCLUSION

For the foregoing reasons, the Commission affirms the Rent Administrator's decision and order, subject to the ruling that the hearing examiner erred when he established a rent ceiling for the rental unit.

SO ORDERED.

  
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:

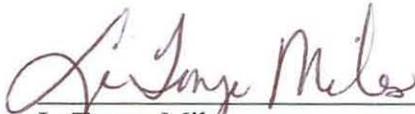
D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W.  
6th Floor  
Washington, D.C. 20001  
(202) 879-2700

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Decision and Order in TP 28,006 was mailed by priority mail with delivery confirmation, postage prepaid, this 17th day of May 2006 to:

Douglas Hammer  
1115 12<sup>th</sup> Street, N.W.  
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Washington, D.C. 20005

Eric Von Salzen, Esquire  
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