DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,006

In re: 1115 12th 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

March 23, 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

The tenant, Douglas Hammer, filed Tenant Petition (TP) 28,006 on December 2, 2003. The housing provider, Manor Management Corporation, owns 1115 12th Street, N.W., which is a multi-unit housing accommodation. 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 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 moved 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 12th 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.

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 5th 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 form 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

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.

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.

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) when 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 and § 42-3502.05(f) expressly provides that it does not apply to rental units "exempted by this act."

B. Whether the exemption under § 42-3502.05(a)(4) is conditioned on the filing of a claim of exemption; nevertheless, in April 1989, the housing provider filed a claim of exemption and no timely challenge to that claim was ever filed.

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.

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.**

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 tenant and the housing provider alleged error in the hearing examiner's rulings concerning the housing provider's registration and claim of exemption. The housing provider argues that the record contains uncontradicted evidence to support its contention that the housing accommodation is exempt from the rent stabilization provisions of the Act. The tenant argues that the hearing examiner erred when he failed to conclude as a matter of law that the housing provider's claim of exemption should be denied.

In order to properly evaluate the parties' claims, the Commission must review the record evidence to determine whether there is substantial evidence to support the hearing examiner's decision, or if the Commission must reverse the decision because it is arbitrary, capricious, an abuse of discretion or not supported by the law. D.C. OFFICIAL CODE § 42-3502.16(h) (2001). The Commission conducts its review by reviewing the documentary evidence and listening to the tape recordings of the hearings. When the Commission reviewed the tape recording from the RACD hearing held on April 22, 2004, the Commission heard references to a hearing held on February 11, 2004. During the hearing held on April 22, 2004, the housing provider's attorney did not present any evidence; she stated that she rested the housing provider's case on the evidence from the

February 11, 2004 hearing. References to the February 11, 2004 hearing were also found in the hearing examiner's April 6, 2004 order denying the housing provider's motion to dismiss. The hearing examiner discussed the oral and documentary evidence that the parties presented on the issue of the housing provider's claim of exemption, when they appeared for the hearing on February 11, 2004. Hammer v. Manor Mgmt. Corp., TP 28,006 (RACD Apr. 6, 2004). Unfortunately, the tape recording of the February 11, 2004 hearing was not transmitted to the Commission with the certified record.

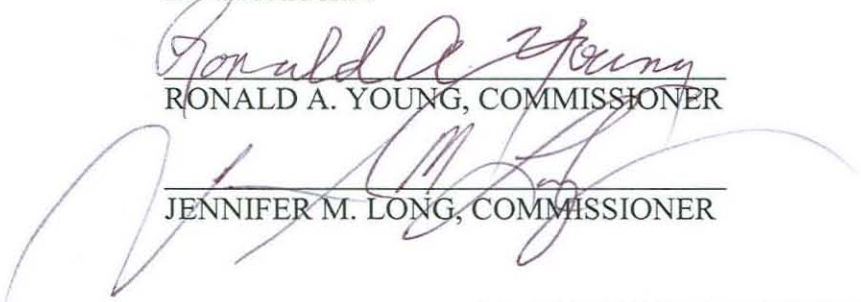
Pursuant to the District of Columbia Administrative Procedure Act, D.C. OFFICIAL CODE § 2-509(c) (2001), the agency must maintain an official record of the proceedings. The official record includes the testimony and exhibits introduced during the hearing. The regulations require the hearing examiner to record the proceedings, maintain a copy of the tape recordings in the official record, and transmit the tape recordings to the Commission. 14 DCMR §§ 3804.3, 4006.1, 4007.1(b) (2004). The Commission reviews the tape recordings and other evidence contained in the official record in order to decide the appeal issues. See D.C. OFFICIAL CODE § 42-3502.16(h) (2001). "Where issues on appeal depend for their resolution on the record of the hearing, as it does here, we cannot proceed to decision. Instead, it is necessary for us to remand to the Rent Administrator for a new hearing." Sibert v. Barros and Co., TP 12,019 (RHC July 24, 1989) at 2-3. See also Graham v. Bernstein, 527 A.2d 736 (D.C. 1987) (citing Bernstein v. District of Columbia Rental Hous. Comm'n, No. 84-1547 (D.C.C.A. Jan. 29, 1986) (remanding the case to the Rent Administrator for a new hearing when the tape recording of the hearing before the Rent Administrator was found to be inaudible)).

The Commission remands this matter to the Rent Administrator for a hearing on the housing provider's claim of exemption, because the record does not contain the tape recording of the hearing held on February 11, 2004. See Tenants of Rittenhouse Apartments v. Rittenhouse, LLC, CI 20,755 (RHC Nov. 14, 2005); Burnett v. Sharma, TP 24,910 (RHC Oct. 3, 2000). The hearing examiner may not receive new evidence on the merits of the tenant's claim, because the testimony was preserved on the tape recording of the hearing held on April 22, 2004. Because this is a "case" remand, the parties are required to file new notices of appeal if they wish to appeal any future decisions and orders issued by the hearing examiner. See Majerle Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 777 A.2d 785 n.2 (D.C. 2001) (quoting Bell v. United States, 676 A.2d 37, 41 (D.C. 1996)). However, if the parties agree in writing to proceed with the instant appeals with less than a full record, and they agree to submit a written stipulation of facts to the Commission concerning the housing provider's claim of exemption, the parties may file a motion with the Rent Administrator to transfer the case back to the Commission. Sibert v. Barros and Co., TP 12,019 (RHC July 24, 1989) at 3. Since the tenant is not represented by counsel and the housing provider has an attorney, the Commission notes that the tenant may contact the Office of the Tenant Advocate at (202) 442-4400 if the parties agree to proceed with less than a full record and submit stipulated facts concerning the housing provider's claim of exemption.

IV. CONCLUSION

For the foregoing reasons, the Commission vacates the decision and order and remands this matter to the Rent Administrator for action consistent with this decision.

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 23rd day of March 2006 to:

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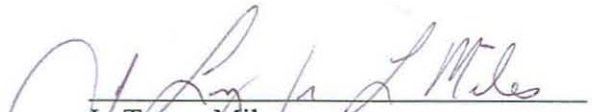

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