GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE TENANT ADVOCATE

VIA ELECTRONIC MAIL

April 20, 2012

Mr. Peter Szegedy-Maszak, Chairman
D.C. Rental Housing Commission
441 4th Street NW, Suite 1140B North
Washington, DC 20020

RE: Case No. 2011-DHCD-VA 10,005, *in re* 1615 Swann Street, N.W.

Dear Chairperson Szegedy-Maszak:

I am writing to request that the Rental Housing Commission exercise its prerogative under 14 D.C.M.R. §3808 to initiate review of the final order in the above-referenced matter. The final order approving the Voluntary Agreement in this matter was issued by the Office of Administrative Hearings on March 14, 2012. Our understanding of the rules is that the Commission may initiate review at least through April 23, 2012. Regardless, given the shortness of time, we note the Commission's prerogative under 14 D.C.M.R. 3816, if applicable, to enlarge the time on its own initiative for good cause.

Our concerns are squarely focused on section IV(B)(2)(c) of the decision at pages 11-13. In this section, the Court concludes that the Voluntary Agreement in question does not result in inequitable treatment of the tenants, or contradict the provisions of section 102 of the Rental Housing Act, and in fact advances those provisions. We believe these assertions are neither well-considered nor well-founded for the following reasons:

1. As the decision notes on page 11, the terms of the Voluntary Agreement in question limit future rent increases for existing tenants to the amount of the standard annual rent increase calculated on the basis of "current rent." However the "new rent amount" listed on page 13 for all units, including those of existing tenants, is at least 20 percent more, and as much as 385 percent more, than the current rent. According to our calculation, the new rent amount for the eight (8) units on average is 95 percent more than the current rent.

   This suggests that under the terms of the Voluntary Agreement, which now enjoys government sanction, the housing provider may impose all or any portion of the difference between the new rent amount and the current rent on any future tenant. This is the very definition of rent ceilings, which section 206 of the Act abolishes (D.C. Official Code § 42-3502.06). In addition to this serious statutory conflict, we also foresee any

number of possible disputes regarding the calculation of rent increases for any unit that is being charged less than the new rent amount, including those of all existing tenants.

2. The housing provider has agreed to so limit the amount of future rent increases for existing tenants in order to secure their agreement to impose the entire burden of much larger rent increases onto any future tenant. This raises serious concerns about inequitable treatment, which is far from a hypothetical concern inasmuch as new tenants surely will move into what is presumed to be, and technically will remain, a "rent controlled" building. Prior decisions of the Rental Accommodations Division have rejected proposed Voluntary Agreements precisely on this basis.

3. Rent increases for any future tenant under the Voluntary Agreement are now subject to the whims of what we consider to be an illicit new rent ceiling regime, one in which the amount of a rent increase more than likely will be random if not arbitrary and capricious. This is precisely why rent ceilings were abolished.

4. Contrary to the OAH order, this cannot but have the effect of eroding the income from increased housing costs of low- and moderate-income tenants, contrary to the very first provision of section 102 of the Act. With the approval of the Rent Adjustment Schedule, the Voluntary Agreement seemingly has already had the effect of eroding moderately priced rental housing, contrary to the fifth provision of section 102 of the Act.

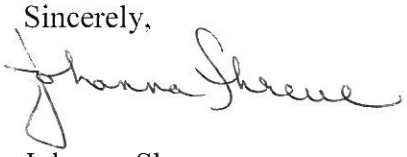
5. Notwithstanding the fact that the Rent Administrator based her decision in part on the lack of supporting documentation regarding the rate of return, the decision concludes on pages 12 – 13 that the rent increases "will enable the housing provider to earn a reasonable rate of return on the entire building." The decision offers no new facts or evidence as to why the rate of return provided by the new rent amounts is reasonable rather than excessive. What we do know based on the Rent Adjustment Schedule on page 13 is that the new rent amount on average is nearly double the current rent.

Finally, if the Rent Administrator erred in dismissing the Voluntary Agreement prior to a hearing, we would suggest that it may have been more appropriate for the OAH Judge either to reverse and remand the case to the Rent Administrator or to include the Rent Administrator as a party for purposes of the OAH hearing. The role of the Rent Administrator is absolutely critical in screening Voluntary Agreements for violations of the purposes of the Act – or inequitableness, misrepresentation, fraud, duress, etc. -- where the interests of the housing provider and 70 percent of existing tenants may be inimical to those factors.

This is underscored by the fact that the Rent Administrator's role in approving or disapproving the Voluntary Agreement is a statutory one under section 215 of the Act, while the right of a party to a hearing regarding the disapproval of a Voluntary Agreement is not a statutory right, inasmuch as section 215 is not included among those matters that are subject to a hearing under section 216 of the Act.

In short, while there are any number of competing policy concerns regarding Voluntary Agreements which we hope to help reconcile, we are deeply concerned that this decision represents a threat to the statutory purposes of the District's rent control law – one which the Commission at minimum should review. Thank you for your consideration of this important matter.

Sincerely,



Johanna Shreve
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JS/jc