

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
941 North Capitol Street, N.E., Suite 9100  
Washington, DC 20002  
TEL: (202) 442-8167  
FAX: (202) 442-9451

2008 DEC 12 A 10:49

MICHAEL JOSEPH LEVY  
Tenant/Petitioner,

v.

CARMEL PARTNERS, INC. d/b/a  
QUARRY II, LLC  
Housing Provider/Respondent.

Case Nos.: RH-TP-28830  
RH-TP-28835  
Consolidated  
*In re:* 2714 Quarry Road, N.W.,  
Unit B-1

---

**FINAL ORDER**

**I. INTRODUCTION**

On November 6, 2006, Tenant/Petitioner Michael Joseph Levy filed tenant petition TP 28,830 with the Rent Administrator alleging violations of the Rental Housing Act of 1985 with respect to his rental unit, No. B-1, at the Housing Accommodation, 2714 Quarry Road, N.W. Tenant asserted in the tenant petition that: (1) Housing Provider imposed a rent increase larger than the amount of the rent increase allowed by the Rental Housing Act; (2) Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division ("RACD");<sup>1</sup> (3) the rent being charged exceeds the legally calculated rent ceiling for the unit; (4) the rent ceiling filed with the RACD is improper; (5) a rent increase was

---

<sup>1</sup> On October 1, 2007, the rental housing functions of the Department of Consumer and Regulatory Affairs were transferred to the Department of Housing and Community Development ("DCHD"). The RACD functions were assumed by the Rental Accommodations Division of DCHD. The transfer does not affect any of the issues in this case.

taken while the unit was not in substantial compliance with the District of Columbia Housing Regulations; and (6) Housing Provider has violated unnamed provisions of the Rental Housing Act. On or about November 13, 2006, Tenant sent a copy of TP 28,830 to the Rent Administrator, who evidently construed Tenant's communication as a wish to file a new tenant petition, and assigned a new number, TP 28,835, to the identical earlier-filed tenant petition. The tenant petitions were consolidated by Order dated April 26, 2007.<sup>2</sup>

An evidentiary hearing was held on June 12, 2007, and July 13, 2007. Tenant represented himself and testified on his own behalf. Housing Provider was represented by Abrielle B. Anderson, Esquire. James Flanagan, Senior Vice President, Bruce Vannall, the Housing Accommodation's Maintenance Director, and Sandy B. Burke, the Housing Accommodation's Community Director testified on behalf of Housing Provider. Tenant's Exhibits ("PX") 101, 103, 104, and 106 and Housing Provider's Exhibits ("RX") 200 through 203 and 205 through 208 were admitted into evidence at the hearing.

Based on the entire record and for reasons set forth below, I find that Tenant has not sustained his burden of proof with respect to any of the claims alleged in the tenant petitions. Housing Provider has sustained its burden of proof as to its claim that Tenant's apartment is exempt from the rent stabilization provisions of the Rental Housing Act. Therefore, the tenant petitions will be dismissed.

---

<sup>2</sup> On May 11, 2007, Tenant filed an Addendum to the Petition seeking to add a claim of breach of contract. At the hearing on June 12, 2007, I explained to Tenant that I had no jurisdiction to hear a breach of contract claim, and that the Addendum to the Petition would be dismissed. The Addendum to the Petition is dismissed in this Final Order.

## II. FINDINGS OF FACT

On May 18, 1979, a Certificate of Occupancy (“C of O”) was issued to a former owner, 2714 Quarry Road Development Corp., for 2714 Quarry Road, N.W. (“the Housing Accommodation”). RX 208. The C of O was for an 18-unit apartment house. *Id.* In March 1981, the former owner obtained a building permit to construct additional units in the unoccupied basement of the existing building. RX 207 and 206. A new C of O, for 22 units, was issued for 2714 Quarry Road, N.W. on October 3, 1985. Exh. 205.

Tenant and the former Housing Provider, H & M Enterprises, entered into a lease agreement for Tenant’s apartment on August 4, 1995, for a term of six months. PX 106. Tenant has resided in his basement apartment, Unit B-1, continuously since that time. Tenant’s apartment is one of the apartments newly constructed after March 1981.

In June of 2004, Housing Provider, Carmel Partners, Inc., d/b/a Quarry II LLC, purchased the property. On March 29, 2005, Housing Provider filed a claim of exemption form with RACD. Housing Provider claimed an exemption from the rent stabilization provisions of the Rental Housing Act for the new units in the existing building for which the C of O was issued after January 1, 1980. RX 202.

On August 16, 2006, Housing Provider sent Tenant a letter advising him that his apartment was exempt “from the District’s Rent Control Regulations.” RX 201. The letter enclosed a copy of the claim of exemption form. *Id.* On August 31, 2006, Housing Provider sent another letter to Tenant informing him that his apartment was “exempt from rent control regulations” and that his rent would be increased effective October 1, 2006. RX 200. The August 31, 2007 letter also enclosed a copy of the claim of exemption form. *Id.*

### **III. Conclusions of Law**

#### **A. Jurisdiction**

This matter is governed by the Rental Housing Act of 1985 (the “Rental Housing Act” or the “Act”), D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings (“OAH”) has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

#### **B. Tenant’s Claim Concerning Rent Increases**

In rental housing cases “the proponent . . . shall have the burden of establishing each fact essential to the order by a preponderance of the evidence.” OAH Rule 2932.1, 1 DCMR 2932.1. *Cf.* D.C. Official Code § 2-509(b) (“In contested cases . . . the proponent . . . shall have the burden of proof.”) Here, it was Tenant’s burden to prove that Housing Provider imposed an illegal rent increase.

The rent control provisions of the Rental Housing Act apply to “each rental unit in the District,” subject to exemptions that are specified in the Act itself. D.C. Official Code § 42-3502.05(a). It is settled law that the burden of proof is on the housing provider to prove eligibility for an exemption from the Act. *Revithes v. D. C. Rental Hous. Comm’n*, 536 A.2d 1007 (D.C. 1987); *Best v. Gayle*, TP 23,043 (RHC Nov. 21, 1996) at 5. In this case, Housing

Provider/Respondent met its burden of proof that it was eligible for the exemption by complying with the provisions of the Act. As the Rental Housing Commission has stated:

[t]he filing of a claim of exemption form does not *ipso facto* meet the burden of proof on exemption, because the facts stated therein must be proven not to be a misrepresentation. . . . We conclude, some evidence of the exemption must be presented at the OAD hearing, not merely an assertion, or oral statement, or the Registration/Claim of Exemption Form for the Commission to review to determine the record contains substantial evidence to support the claim of exemption.

*Butler v. Toye*, TP 27,262 (RHC Dec. 2, 2004) at 5, citing *The Vista Edgewood Terrace v. Rascoe*, TP 24,858 (RHC Oct. 13, 2000) at 12-13. Housing Provider entered into evidence the C of Os before and after the units were constructed in the basement, and the application for the building permit and the permit itself for the construction of the units. These documents corroborate the information contained in the claim of exemption form and the testimony of Housing Providers' witnesses.

The exemption at issue here is D.C. Official Code § 42-3502.05(a)(2), which provides:

Any rental unit in any newly constructed housing accommodation for which the building permit was issued after December 31, 1975, or any newly created rental unit, added to an existing structure or housing accommodation and covered by a certificate of occupancy for housing use issued after January 1, 1980, provided, however, that this exemption shall not apply to any housing accommodation the construction of which required the demolition of an housing accommodation subject to this chapter, unless the number of newly constructed rental units exceeds the number of demolished rental units . . . .

Here, Housing Provider established by presenting evidence on the record that Tenant's apartment in the Housing Accommodation did not exist prior to 1981, when it was created from unoccupied basement space, increasing the total number of units in the Housing Accommodation from 18 to 22. The C of O was issued for Tenant's apartment in October 1985, after the January

1, 1980, date in the statute. It follows that Tenant's apartment is exempt under D.C. Official Code § 42-3502.05(a)(2).

Tenant argues that his unit should not be exempt, since he was not notified until August 2006 that the Housing Provider was claiming an exemption, many years after he entered into his original lease with Housing Provider's predecessor. D.C. Official Code § 42-3502.05(d) provides: "Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program." The District of Columbia Rental Housing Commission has considered the issue raised by Tenant in the case of *Hammer v. Manor Mgmt. Corp.*, TP-28,006 (RHC May 17, 2006). The Housing Provider in *Hammer* failed to file a claim of exemption form after purchasing exempt property. The Rental Housing Commission held that although a Housing Provider is required to file a claim of exemption in order to obtain the exemption, failure to file for the exemption and register the property did not forever forfeit the ability to obtain the exemption. It was error, the Commission held, to impose a rent ceiling after the claim of exemption was filed.

Evidence in the record demonstrates that Tenant's apartment met the requirements for an exemption from the rent stabilization portions of the Rental Housing Act from the very beginning of Tenant's occupation of the premises. However, Tenant did not object to the rent being charged until after the Housing Provider filed the claim of exemption and notified Tenant in August of 2006 that the rent would be prospectively increased. The Rental Housing Commission has held in *Hammer* that a past failure to file for an exemption does not prevent a Housing Provider from claiming an exemption later. It follows that the failure of one Housing

Provider to give Tenant notice of the claim of exemption before he entered into the original lease, and the lapse of time between the time the present Housing Provider filed the claim of exemption with the Rent Administrator and Tenant was notified of the claim of exemption does not prevent Housing Provider from possessing a valid claim of exemption. Because Tenant was notified of the exemption more than 30 days before Tenant's rent was increased, there is no legal reason that the current Housing Provider should be disadvantaged by its predecessor's failure to file for the exemption and notify Tenant of the exemption before Tenant entered into the lease. There is no contention that Tenant was not actually notified of the exemption, and sent a true copy of the claim of exemption form, in August 2006, more than 30 days before the rent increase was to take effect.

Housing Provider's exemption extends to all of the claims contained in Tenant's petition. The statutory exemption only applies to the rent stabilization provisions of the Rental Housing Act, Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17. *See* D.C. Official Code § 42-3502.05(a). Tenant's claims in the Tenant Petition all relate to the rent stabilization provisions of the Rental Housing Act. Accordingly, Tenant I must dismiss all of Tenant's claims.

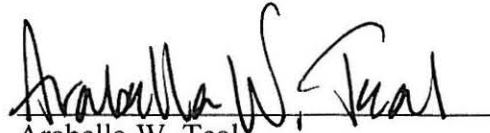
#### **IV. Order**

Therefore, it is this 12th day of December 2008:

**ORDERED**, that TP 28,830 and TP 28,835 are **DISMISSED WITH PREJUDICE**, including the May 11, 2007, Addendum to the tenant petition; and it is further

**ORDERED**, that any party may move for reconsideration of this Final Order within ten days under OAH Rule 2937, 1 DCMR 2937; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Final Order are set forth below.

  
Arabella W. Teal  
Administrative Law Judge



**Certificate of Service:**

**By Priority Mail with Delivery  
Confirmation (Postage Paid):**

Michael Joseph Levy  
2714 Quarry Rd. NW  
Unit # B-1  
Washington, DC 20009

Carmel Partners, Inc.  
d/b/a Quarry II, LLC  
1700 Connecticut Ave. NW  
Suite 300  
Washington, DC 20009

Richard W. Luchs, Esquire  
Abrielle B. Anderson, Esquire  
1620 L Street, N.W., Suite 900  
Washington, DC 20036-5605

**By Inter-Agency Mail:**

District of Columbia Rental Housing  
Commission  
941 North Capitol Street, N.E., Suite 9200  
Washington, DC 20002

Keith Anderson, Acting Rent Administrator  
District of Columbia Department of Housing  
and Community Development  
Housing Regulation Administration  
941 North Capitol Street, N.E., Suite 7100  
Washington, DC 20002

I hereby certify that on Dec. 12,  
2008 this document was caused to be served  
upon the above-named parties at the  
addresses and by the means stated.

Benedicta Rhames  
Clerk / Deputy Clerk