

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CI 20,683

In re: 2800-2801 Quebec Street, N.W.

Ward Three (3)

QUEBEC HOUSE ASSOCIATES  
Housing Provider/Appellant

v.

TENANTS OF QUEBEC HOUSE  
Tenants/Appellees

**DECISION AND ORDER**

**MAY 13, 1999**

**YOUNG, COMMISSIONER:** This case is on appeal from a decision of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985 (Act), D. C. Law 6-10, D. C. Code § 45-2501, et seq., and the District of Columbia Administrative Procedure Act (DCAPA), D.C. Code § 1-1501, et seq. The regulations, 14 DCMR 3800 et seq., also apply.

**I. PROCEDURAL BACKGROUND**

The housing accommodation, located at 2800 and 2801 Quebec Street, N.W., is a two (2) building complex containing a total of 847 rental units. The Quebec House Associates owned the complex, and the Cafritz Company acted as managers of the housing accommodation. On March 18, 1994, the Quebec House Associates, the housing

provider/appellant, filed capital improvement petition (CI) 20,683<sup>1</sup> with the Rental Accommodations and Conversion Division (RACD). The capital improvement petition sought an increase in the rent ceilings to cover the cost of the replacement and upgrading of the housing accommodation's heating, ventilation, and air conditioning (HVAC) system. The housing provider's capital improvement petition proposed the following:

This capital improvement proposes to replace integral parts of the North and South Building heating and air conditioning systems. The work involves engineering and design as well as the selective demolition, inspection and replacement of the hot water and chilled water equipment in the boiler rooms and in the apartment units. Specifically, the work includes: the installation of piping and valves for the separation of the chilled water circulation loops; installation of new pumps for proper control of water flow; replace existing single speed pump motors with variable speed motors; install new flow measuring and control valves in the main distribution loops; install control valves in the heating and cooling water return risers; install electrical disconnects for new pumps; install new control devices; and reconnect the new systems to the existing boilers and chillers.

Finally, forty-eight (48) new fan coil units will be installed to replace existing original non-functioning equipment convectors, in 48 occupied apartments of the South building only.

This work will protect the safety and health of the tenants and protect the habitability of the accommodations by making possible the continuous, uninterrupted heating and air conditioning services by forcing a greater volume of cold and hot water throughout the chilled water, hot water and condenser water piping systems. The replacement of the existing water equipment and original fan coil units is necessary to ensure that sufficient air-cooled water from the chillers is properly and evenly distributed for the comfort of the tenants during the hot and humid summer months.

CI 20,683, Section V, March 18, 1994. (OAD Record (R) at 51.)

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<sup>1</sup> Capital improvement petition CI 20,683 contained nine (9) items for which the housing provider sought approval for capital improvements. The hearing examiner approved the housing provider's request for the remaining eight (8) items in the petition, and they are not issues in this appeal.

The total cost of the HVAC capital improvement in CI 20,683 was \$337,000.00. (R. at 68.)

On June 22 and 23, 1994, OAD conducted a hearing on the capital improvement petition with Gerald J. Roper presiding. The hearing record (tapes) of June 22 and 23, 1994, reflect that the housing provider called as its principal witness, Robert Naismith, a mechanical engineer employed by Potomac Energy Group, Incorporated. Mr. Naismith testified that he was employed by the housing provider to conduct a study to determine the best solution to tenant complaints of inadequate air conditioning during the cooling season. Naismith testified that a "chiller system" installed five or six years earlier was operating properly, producing and delivering chilled water to each building. However, he testified that the chilled water was not being delivered to each rental unit such that it was reducing the temperature in the units. Naismith testified that it was his opinion that the cheapest and most effective solution to the problem was the installation of a new system of pumps and distribution pipes to properly allocate the chilled water to the individual rental units as needed. He stated that the existing distribution system was an integral part of the air conditioning system which had exceeded its useful life.

In response to questions raised by the hearing examiner, Naismith testified, operating under the assumption that 75 degrees would be a comfortable temperature, that he found temperatures in rental units in the housing accommodation which exceeded 80 degrees. He offered as his professional opinion that reducing the temperature in a rental unit by five (5) degrees, as well as producing better humidity control, would mean the difference between a comfortable and uncomfortable environment.

Copies of the contract and permit for the HVAC improvements were submitted for the record. (Petitioner's Exhibit #32, R. at 167.) John Koniszewski, a certified public accountant (CPA) testified that the improvements contemplated were capital improvements, and that the costs were depreciable under the Internal Revenue Code.

On December 18, 1994, the hearing examiner issued his decision and denied this segment of the housing provider's capital improvement petition. This segment of the capital improvement called for the installation of piping and valves for the separation of chilled water circulation loops; installation of new pumps for control of chilled water flow; the installation of variable speed pumping motors; installation of new flow measuring and control valves in the main distribution loops; installation of control valves in the heating and cooling water return risers; installation of electrical disconnects for the new pumps; installation of new control devices; and the reconnection of the new systems to the existing boilers and chillers. The housing provider filed a timely Notice of Appeal in the Commission.

## II. ISSUE ON APPEAL

On appeal to the Commission, the housing provider argues that, testimony was presented at the OAD hearing that showed sufficient cooled water was not being delivered to individual rental units in the housing accommodation, resulting in warmer and more humid conditions in those units during cooling season. The housing provider further argues that the undisputed testimony of record was that replacement of antiquated circulation, distribution, and pumping equipment would enhance the habitability of the housing accommodation by decreasing the humidity and temperature in the units by five (5) degrees. The housing provider argued that the proposed capital improvement met all

other criteria established by the Act, D.C. Code § 45-2520. The housing provider further argued that the hearing examiner made conclusions of law in his decision which mandated the approval of CI 20,683. The housing provider points to that part of the decision which states:

This work will protect the safety and health of the tenants and protect the habitability of the accommodations by making possible the continuous, uninterrupted heating and air conditioning services by forcing a greater volume of cold and hot water throughout the chilled water, hot water and condenser water piping system. The replacement of the existing water equipment and original fan coil units are necessary to ensure that sufficient air-cooled water from the chillers is properly and evenly distributed for the comfort of the tenants during the hot and humid summer months.

Quebec House Associates v. Tenants of Quebec House, CI 20,683 (OAD Dec. 18, 1994) at 10-11.

### III. DISCUSSION OF THE CASE

Whether the hearing examiner abused his discretion when he denied the housing provider's petition for a capital improvement to replace the cooling and heating water circulation system and convectors in the housing accommodation.

The housing provider argues that the decision of the hearing examiner was arbitrary, capricious, an abuse of discretion and not in accordance with the evidence of record. In his decision the hearing examiner's stated, in part:

The Examiner finds the testimony of Petitioner's experts speculative at best. Petitioner's key witness, Mr. Naismith, although very knowledgeable [sic] in his field could not explain exactly how the proposed improvement, \$219,050.00 in the South building, and \$117,950.00 in the North building, was to benefit or enhance the health safety and welfare of the tenants other than to bring the temperature down one or two degrees in the cooling season. In fact Mr. Naismith testified that the chillers were working properly and had been the subject of a capital improvement petition a few years ago. However, after some complaints and a reinspection of the system he found the system to be inadequate and in order to provide an adequate level of services, Mr. Naismith recommended the proposed work be done.

Ordinarily, the work proposed by the Petitioners may constitute [sic] a capital improvement when performed [sic] in connection with the replacement or revocation [sic] of the HVAC system. Here, the uncontricted [sic] evidence is that the air conditioning system was the subject of a capital improvement approved May 7, 1988 by the Rent Administrator in C/I #20,272 where the Petitioners replaced air conditioning chillers in both buildings and installed a new domestic hot water system in the North Building. The total cost was \$826,363.00.

Quebec House Associates v. Tenants of Quebec House, CI 20,683 (OAD Dec. 18, 1994) at 19-20.

The housing provider argues that the uncontradicted evidence of record was that the equipment to be installed pursuant to the capital improvement (piping and distribution systems) was both new and an enhancement to the existing component of the HVAC system, which had not been renovated in the earlier capital improvement. The housing provider argues that new equipment and enhancements to presently existing equipment are both appropriately considered capital improvements following the Commission's holdings in Tenants of 549 Rental Units of Fort Chaplin v. Fort Chaplin Park Associates, CI 20,153 (RHC Aug. 19, 1988) and Tunlaw Park Tenants Association v. Chas. E. Smith Management, Inc., CI 20,091-092 (RHC June 24, 1987). The hearing examiner's decision further stated:

It appears to this Examiner that the nature of the work to be performed is no more than a replacement and maintenance job to correct the capital improvement to the air conditioning system that was previously performed incorrectly.

...

Now it appears from the nature of the proposed capital improvement that the previous capital improvement was not properly designed to provide the tenants with a sufficient amount of air conditioning even with the added 'redundancy' and 'cost'. Thus, to now request another capital improvement on the air conditioning system is not in the best interest of the tenants. The work plan is no more than a repair and maintenance of the existing system to get it to the level of performance that the first capital improvement failed to accomplish. Further, there has been absolutely no showing where the proposed work would protect the health, safety, and welfare of the tenants.

Quebec House Associates v. Tenants of Quebec House, CI 20,683 (OAD

Dec. 18, 1994) at 20-21.

#### IV. THE COMMISSION DECISION

There are four different and independent factors in the Act, D.C. Code § 45-2520(a)(1),<sup>2</sup> which may be used to justify the approval of a capital improvement petition. Those factors are to: (1) protect health, safety, or security; (2) enhance health, safety, or security; (3) protect habitability; and (4) enhance habitability. See 1841 Columbia Road Tenants Association v. 1841 Columbia Road Limited Partnership, CI 20,082 (RHC Dec. 23, 1987), Fort Chaplin Park Associates v. District of Columbia Rental Housing Commission, 649 A.2d 1076 (D.C. 1994).

In this case, the housing provider produced the testimony of Robert Naismith, a mechanical engineer employed by Potomac Energy Group, Incorporated, who provided unrefuted testimony regarding the effect of the capital improvement to the HVAC system, that is, that the capital improvement would enhance the habitability of the housing accommodation. Naismith testified that tenants complained that their units were not receiving enough chilled air to sufficiently cool their units. In response to tenant complaints, he testified, the housing provider sought to replace water circulation

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<sup>2</sup> The applicable section of the Act, D.C. Code § 45-2520 provides:

- (a) On petition of the housing provider, the Rent Administrator may approve a rent adjustment to cover the cost of capital improvements to a housing accommodation if:
  - (1) the improvement would protect or enhance the health, safety, and security of the tenants or the habitability of the housing accommodation; or
  - (2) The improvement will effect a net savings in the use of energy by the housing accommodation, or is intended to comply with applicable environmental protection regulations, if any saving in energy costs are passed on to the tenants.
- (b) The housing provider shall establish to the satisfaction of the Rent Administrator:
  - (1) That the improvement would be considered depreciable under the Internal Revenue Code (26 U.S.C.).
  - (2) The amount and cost of the improvement including interest and service charges; and
  - (3) That required government permits and approvals have been secured.

equipment which had come to the end of its useful life with technologically superior equipment which was capable of delivering sufficient chilled water and thus cooled air to the south "problem" building. Contrary to the hearing examiner's finding, the testimony of record was that the installation of the new equipment would reduce the temperatures in the south building by at least five (5) degree, not two (2) degrees as the decision stated.<sup>3</sup>

Naismith testified that a reduction in a rental unit of five (5) degrees, with reduced humidity, was significant, the difference between uncomfortable conditions and comfortable and habitable conditions.

The Commission's authority to review this capital improvement petition is found in D.C. Code § 45-2526(h), which states, in part, "[t]he Rental Housing Commission may reverse in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, ... or unsupported by substantial evidence on the record of the proceedings before the Rent Administrator." (emphasis added.) The hearing examiner, despite unrefuted evidence in the record, as represented by Naismith's testimony, stated that the capital improvement requested by the housing provider was merely a repair of a previous capital improvement. Moreover, the hearing examiner misstated Naismith's testimony by stating the temperature improvement would be two (2) degrees, rather than five (5) degrees, as Naismith testified. Clearly, the record fails to support the conclusion of the hearing examiner, in that the testimony and evidence of record reflects that CI 20,683 did not involve the repair or replacement of the chiller equipment. The substantial evidence in the record showed an integral, yet

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<sup>3</sup> See, Quebec House Associates v. Tenants of Quebec House, CI 20,683 (OAD Dec. 18, 1994) at 20.



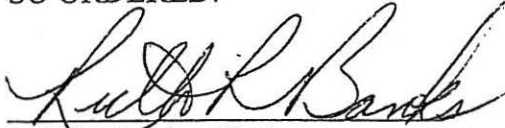
separate component of the HVAC system, the distribution and pumping system, qualified as a capital improvement that would enhance the habitability of the housing accommodation, by circulating cooler water, which in turn would circulate cooler air to the tenants in the summer months.

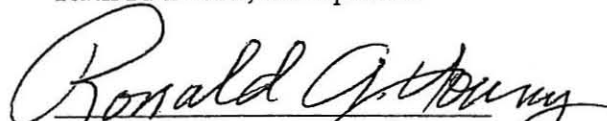
Additionally, the hearing examiner erred in not ruling on that part of CI 20,683, which called for the replacement of 48 convectors. The Commission notes that we have previously held that the Rent Administrator may treat as a capital improvement the installation of a major appliance that has the essential characteristics of capital improvements when installed in less than all units; that is, the capital improvement has an extended life, is depreciable for tax purposes, and serves to restore the housing accommodation by replacing a previous item of the same kind for which depreciation has been taken and which has outlived its usefulness. Burwell v. Dudley, CI 20,034 (RHC May 26, 1989); Plante v. Tenants of 224 36<sup>th</sup> St., N.E., CI 20,288 (RHC Dec. 28, 1988). That part of the capital improvement petition requesting replacement of the forty-eight (48) convector units clearly qualified as a capital improvement and should have been approved by the hearing examiner, as a capital improvement based on the substantial evidence in the record.


V. CONCLUSION

Accordingly, the Commission reverses the decision of the Rent Administrator in Quebec House Associates v. Tenants of Quebec House, CI 20,683 (OAD Dec. 18, 1994), and remands this case to OAD for a hearing for the limited purpose of determining the rent ceiling adjustment per unit to recover the cost of this capital improvement.

SO ORDERED.

  
Ruth R. Banks, Chairperson

  
Ronald A. Young, Commissioner

  
Jennifer M. Long, Commissioner

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in CI 20,683 was mailed postage prepaid on this 13<sup>th</sup> day of May 1999 to:

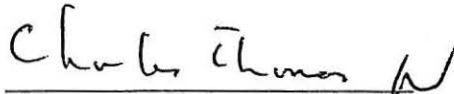
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