DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CI 20,783

In re: 1300 Harvard Street, N.W.

ASHBURN, LLC
Housing Provider

v.

TENANTS OF 1300 HARVARD STREET, N.W.
Tenants

DECISION AND ORDER

December 29, 2005

LONG, COMMISSIONER. This matter is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). In accordance with D.C. OFFICIAL CODE § 42-3502.16(h) (2001), the Commission initiated review of the Rent Administrator's March 17, 2005 decision and order in CI 20,783. The Act, the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (2004) govern the proceedings.

I. PROCEDURAL HISTORY

On August 29, 2003, David Cormier filed Capital Improvement Petition (CI) 20,783 on behalf of Ashburn, LLC. for the fifteen unit housing accommodation located at 1300 Harvard Street, N.W. In the petition, the housing provider, Ashburn, LLC, sought to replace the roof at a cost of $20,000.00, install new water meters, heaters and hot water pipes at a cost of $30,000.00, and remove lead paint for $30,000.00. The total cost of the

proposed capital improvements was $80,000.00, and the interest and services charges were $159,594.00, for a grand total of $239,594.00. The housing provider requested a rent ceiling surcharge of $125.00 per month, per unit, to cover the cost of the capital improvements.

Hearing Examiner Keith Anderson convened the evidentiary hearing on October 20, 2003. Housing Provider David Cormier appeared and presented evidence to support the requested capital improvements. Not one tenant or tenant representative appeared for the hearing. On May 21, 2004, the hearing examiner issued the first of three decisions and orders. In the first decision, the hearing examiner ruled that the housing provider was not entitled to a rent ceiling surcharge because Mr. Cormier provided no evidence that the housing provider requested an inspection thirty days before the petition was filed, and the housing provider failed to properly calculate the loan interest charge. Ashburn, LLC v. Tenants of 1300 Harvard Street, N.W., CI 20,783 (RACD May 16, 2004) at 8, Finding of Fact 9.

On June 9, 2004, the housing provider filed a motion for reconsideration. The housing provider asked the hearing examiner to reconsider the decision because there was newly discovered evidence concerning lead in the drinking water, and there was an omission of the letter evidencing the request for an inspection. The housing provider also identified and corrected numerical errors on pages 14 and 15 of the capital improvement petition. On June 23, 2004, the hearing examiner issued the second decision and order wherein he granted the housing provider's motion for reconsideration. The hearing examiner stated that he erred when he failed to consider the housing provider's testimony that he requested the housing inspection on June 27, 2003, which was more than thirty

days before he filed the petition on August 29, 2003. Additionally, the hearing examiner found that evidence of hazardous levels of lead could not have been introduced during the hearing on October 20, 2003, because the housing provider did not receive the report until March 9, 2004.

On March 16, 2005, the hearing examiner issued the third decision and order, which he described as the de novo decision and order. The hearing examiner granted the capital improvement petition and ruled that the housing provider was entitled to a rent ceiling surcharge in the amount of $181.00,[1] per unit, per month. He also ruled that the tenants in units A, 3, 5, 6, and 8 were entitled to the elderly or disabled tenant exemption from the rent ceiling surcharge. On April 25, 2005, the Commission exercised its power to initiate review of the hearing examiner's March 16, 2005 decision and order.

II. ISSUES

The Commission identified the following three issues in the Notice of Commission Initiated Review:

A. Whether the hearing examiner erred by holding a hearing when he did not have record proof that the capital improvement petition and notice of the hearing were properly addressed and delivered to all of the tenants.

B. Whether the decision and order was properly addressed and delivered to all of the tenants.

C. Whether the Commission is required to remand CI 20,783 for a new hearing because the hearing tape is blank.

Notice of Commission Initiated Review at 2.

III. DISCUSSION

A. Whether the hearing examiner erred by holding a hearing when he did not have record proof that the capital improvement petition and notice of the hearing were properly addressed and delivered to all of the tenants.

[1] See discussion infra Part IV.A (correcting the plain error in the amount of the rent ceiling surcharge).

It is well settled that each individual, who is a party to a contested case, has a right to a hearing, notice of the hearing, and notice of the claims. D.C. OFFICIAL CODE § 2-509(a) (2001). The Rent Administrator's rules further provide that all parties to any petition filed with the agency shall have a right to a hearing and shall receive a copy of the petition.. 14 DCMR §§ 3902 and 3903.1 (2004). In accordance with § 3902, the Rent Administrator is required to mail a copy of the capital improvement petition to each tenant in an envelope provided by the housing provider and addressed to each tenant by name.

On September 12, 2003, the Department of Consumer and Regulatory Affairs, Housing Regulation Administration, issued the official notice of the hearing scheduled for October 20, 2003 and a copy of the capital improvement petition. The agency issued the notices by priority mail with delivery confirmation. The notices contained the last name and the unit number for the tenants residing in the fifteen unit housing accommodation. The record contains a copy of the hearing notices for units 1 through 9 and units A through F. The record also contains the delivery confirmation receipts from the United States Postal Service (USPS). The receipts reflect that the hearing notices were delivered to all but two of the rental units,[2] unit 1 and unit E. The delivery confirmation for unit 1 reflects that the hearing notice and a copy of the capital improvement petition were taken to the USPS on September 12, 2003. However, the USPS was not able to confirm that the notice was delivered to the tenant in unit 1. There is no delivery confirmation receipt or any information concerning unit E.

[2] The USPS Delivery Confirmation Receipt for the tenant in unit 5, Chevez, was inadvertently placed in the official record for CI 20,784.

When the hearing examiner convened the hearing on October 20, 2003, not one tenant appeared for the hearing. When the hearing examiner issued the "de novo" decision and order dated March 16, 2005, he simply wrote, "There was no Tenant's [sic] Opposition Case, as no Tenant/Respondents appeared at the hearing." Ashburn, LLC v. Tenants of 1300 Harvard Street, N.W., CI 20,783 (RACD Mar. 16, 2005) at 4. The hearing examiner did not discuss whether there was record proof that the tenants received notice of the hearing. Moreover, the hearing examiner did not recount any efforts that he undertook to ensure that there was record proof that the tenants received copies of the capital improvement petition or the hearing notice, before he held the adjudicatory hearing. The first decision and order, issued on May 21, 2004, suffered similar flaws, and the hearing examiner made no reference to the tenants in the June 23, 2004 decision and order that he issued in response to the housing provider's motion for reconsideration of the May 21, 2004 decision. The hearing examiner granted the capital improvement petition and permitted the housing provider to impose a rent ceiling surcharge in the amount of $181.00 per month, per rental unit.

"An administrative agency's power to impose sanctions extends only to those parties before the agency who have been afforded the required procedural guarantees with respect to the agency's proceedings. These procedural guarantees have their roots in constitutional due process and those due process requirements are met only if a party 'was given adequate opportunity to prepare and present its position' to the agency involved." Ammerman v. District of Columbia Rental Accommodations Comm'n, 375 A.2d 1060, 1062 (D.C. 1977) (citations omitted). Because there is no record proof that the USPS delivered the capital improvement petition and hearing notice to the tenants in

unit 1 and unit E, the agency cannot impose the rent ceiling surcharge on unit 1 and unit E. Accordingly, the Commission vacates the rent ceiling surcharge that the hearing examiner ordered for units 1 and E.

B. Whether the decision and order was properly addressed and delivered to all of the tenants.

When the Housing Regulation Administration issued the decision and order on March 16, 2005, the agency did not address the mailing labels to the tenants in their individual names. The decision contained the following:

> Copies to:
>
> David Cormier
> 1909 – 19th Street, NW Apt. 709
> Washington, DC 20009
>
> Tenants of
> Apts. A, B, C, D, F; and 1-9
> 1300 Harvard Street, N.W.
> Washington, DC 20009

Ashburn, LLC v. Tenants of 1300 Harvard Street, N.W., CI 20,783 (RACD Mar. 16, 2005) at 11. The record contains the USPS Delivery Confirmation receipts, which reflect that the decision and order was mailed on March 17, 2005. A mailing label was affixed to each delivery receipt, and the labels were addressed to the tenants in the following manner:

> Tenants of:
> 1300 Harvard St, NW #7
> Washington, DC 20009

The record contains delivery confirmation receipts addressed in the same manner for units one (1) through nine (9) and units A, B, C, D, and F. The decision and order did

not indicate that the decision was mailed to unit E, and the record did not contain a delivery confirmation receipt or an address label for unit E. Record (R.) at 116-129.

The Housing Regulation Administration did not meet the demands of due process when it mailed the decision and order dated March 16, 2005 to the "Tenants of" fourteen of the fifteen units in the housing accommodation and omitted unit E from the mailing. The agency made similar errors when it issued the first two decisions and orders on May 21, 2004 and June 23, 2004. The agency addressed these first two decisions and orders to the "Tenants of" the various units. There is no record proof that the agency mailed the May 21, 2004 decision and order to the tenants in unit E, there were no delivery confirmation receipts for units 3, 5, and 7, and there was no mailing label for unit A. See R. at 88-101. In addition, there was no record proof that the agency mailed the decision and order dated June 23, 2004 to the tenants in units B and E, and there was no proof that the USPS delivered the decision to the tenants in units 6 and 8. See R. at 102-115.

The Rent Administrator's rules which govern service of documents provides: "All documents required to be served upon any person ... shall be served upon that person ... or a representative designated by that person." 14 DCMR § 3911.1 (2004). The person who is served must be designated by name, which "consists of one or more Christian or given names and one surname or family name." Gore v. Newsome, 614 A.2d 40, 43 (D.C. 1992) (quoting Black's Law Dictionary 1023 (6th ed. 1990)). "Due process does not require a notice system that is incapable of error. [However,] in order to satisfy the demands of due process, the notice need only be designed to notify the person whom the law requires to be notified." Dozier v. Dep't of Employment Servs., 498 A.2d

577, 580 (D.C. 1985) (citing Carroll v. District of Columbia Dep't of Employment Servs., 487 A.2d 622 (D.C. 1985)) (emphasis added).

Because the Housing Regulation Administration failed to meet the requirements of due process when it issued the final decision and order dated March 16, 2005, the Commission vacates the decision and order and remands this matter to the Rent Administrator. The Commission directs the Rent Administrator to reissue the decision and order in the name of "the person whom the law requires to be notified" in each rental unit. Dozier, 498 A.2d at 580.

C. **Whether the Commission is required to remand CI 20,783 for a new hearing because the hearing tape is blank.**

The Commission reviewed the hearing tape and determined that it captured the entire hearing. Accordingly, the Commission dismisses Issue C.

IV. PLAIN ERROR

A. **Whether the hearing examiner erred when he awarded of a rent ceiling surcharge of $181.00 per month when the petition and the rent ceiling surcharge calculation yielded a rent ceiling surcharge of $125.00 per month.**

B. **Whether the hearing examiner erred when he stated, on page two (2) of the decision, that the total cost of the capital improvements, plus interest and service charges was $319,594.00 as opposed to $239,594.00, which appeared in the petition and in the calculation on page eight (8) of the decision.**

When the Commission reviewed the decision and order dated March 16, 2005, the Commission noted that the hearing examiner concluded, as a matter of law, that the housing provider was entitled to a rent ceiling surcharge of $181.00 per month for each rental unit. Ashburn, LLC v. Tenants of 1300 Harvard Street, N.W., CI 20,783 (RACD Mar. 16, 2005) at 9, Conclusion of Law 1. When the Commission examined the capital

improvement petition and the computation of the rent ceiling surcharge on page eight (8) of the decision and order, the Commission noted that the calculation yielded $125.00 as the rent ceiling surcharge. The Commission also noted plain error on page two (2) of the March 16, 2005 decision and order, where the hearing examiner indicated the total cost of the capital improvements, with interest and service charges, was $319,594.00. The capital improvement petition and the calculation on page eight (8) of the decision reflect that the total amount of the capital improvements, plus interest and service charges was $239,594.00. See R. at 12.

The Commission did not identify these plain errors when it issued the notice of initiated review. However, the Commission exercises its power to correct these plain errors pursuant to 14 DCMR § 3807.4 (2004). Accordingly, the Commission corrects Conclusion of Law 1 by changing the amount of the rent ceiling surcharge from $181.00 per month to $125.00 per month, and the Commission corrects the error that appears on page two (2) of the decision by changing $319,594.00 to $239,594.00, which is the total amount of the capital improvements, including interest and service charges.

V. CONCLUSION

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

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

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 CI 20,783 was mailed by priority mail with delivery confirmation, postage prepaid, this 29th day of December 2005 to:

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Bethesda, MD 20814

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