DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CI 20,686

Ward Three (3)

CARILLON HOUSE TENANTS' ASSOCIATION
Tenant/Appellant

v.

CARILLON HOUSE, L.P.
Housing Provider/Appellee

DECISION AND ORDER

May 6, 1999

Banks, Chairperson. This appeal is from 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, "the 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 HISTORY

A. The Petition

On March 29, 1994, the housing provider filed the capital improvement petition[1] for capital improvements to the Carillon House, which is a 488 unit housing accommodation located at

[1] Capital improvement petitions are filed pursuant to D.C. Code § 45-2520.

2500 Wisconsin Avenue, N.W. The petition listed the following proposed capital improvements: elevator modernization, air conditioning for exercise and party rooms, new trash compactor, upgraded security system, brick and tuck pointing, asbestos removal, new handicap ramp, and new stairwell treads. (Petition at 5(A).) The petition stated that the total cost of the capital improvements was $602,240.00. (Petition at 7.)

The petition also stated that the loan for the capital improvements was based on the time period of 25 years, at 9.675% interest rate, for a total of $999,718.40 interest. (Petition at 9.) Record (R) at 61. Section XI of the petition listed the "Service Charges." It contained a footnote, which stated, "[t]he above service and interest charges are based on the proportion of the cost of improvements to the total cost of the loan." (Petition at 10.) The petition also stated, "96 months after implementation of the increase, we will evaluate the recovery to determine if the total cost of the improvements has been received." (Petition at 15.)

B. The Hearing

On June 15, 1994, OAD convened the hearing on the capital improvement petition. The first witness was Lawrence Diamond,

Vice President of Commercial Management.[2] He testified that the proposed capital improvements were identical to those listed in the petition, and that the rent surcharge was $35.00 per month. His opinion was that the capital improvements would not result in energy savings. He testified that the total cost of the capital improvement was $602,240.00, composed of the following:

elevator modernization	$242,500
air conditioning	$ 12,200
new trash compactor	$ 14,450
security system	$ 36,890
brick and tuck pointing	$ 6,100
asbestos	$ 15,000
handicap ramp	$ 4,000
new stairwell treads	$ 16,350
subtotal[3]	$347,490
plus construction fee	54,750
subtotal	$402,240
plus service charges	$ 15,056
total	$417,296

To repeat, the petition stated and the testimony was that the total cost[4] for all capital improvements was $602,240.00

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[2] During March 1999, the Commission contacted counsel for both parties, and informed them that a portion of Diamond's testimony was missing from the hearing tape, which was detected by the abrupt cessation of the recording of his testimony at the hearing. After review of the tapes, counsel for the housing provider did not object to the issuance of the Commission's decision, notwithstanding the missing portion of Diamond's testimony. Also, no objection was received from the tenants' counsel.

[3] The Commission totaled the costs of all items in the petition, which were identical to the figures in Diamond's testimony at the hearing. The Commission's total of the costs did not agree with the housing provider's statements in the petition or the testimony at the hearing about the total cost of the capital improvements.

[4] The petition and testimony totals for all capital improvements was $602,240.00. The Commission notes the mathematical difference between that figure which was identical to the testimony, and the Commission's

and the interest was $999,718.40. The loan settlement statement reflected that the principal amount of the new loan (refinance) was $10,500,000.00 and that the date of settlement was September 22, 1992. (Line 202 & 220 of settlement statement.) (R. 49.) The settlement statement was admitted into evidence. (Pet. Exh. 5.) Mr. Diamond identified all of the contracts related to the capital improvements, except the asbestos removal, which had no contract. The estimated recovery period was 96 months.

C. The Decision

On August 12, 1994, the OAD issued its decision. Hearing examiner, Carl Bradford, found the following relevant facts:

> 3. The capital improvements will protect or enhance the health and safety of the tenants and the habitability of the housing accommodation for the reasons to which Petitioner's witnesses testified during the hearing, as described at pages 7 to 12 of this Decision.
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> ...
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> 6. The principal cost of the improvements, exclusive of interest and service charges is $602,240.00.
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> 7. All permits necessary to proceed with the capital improvements have been obtained.
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> 8. The cost of the interest and service charges to be included in the surcharge is $1,014,774.40.
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> 9. The total cost of the improvements is $1,617,014.40.

Decision at 16-17.

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calculations under the plain error regulation, which states, "... the Commission may correct plain error." 14 DCMR 3807.4.

Based on the figures in the petition and the hearing testimony, the hearing examiner concluded that the rent ceiling surcharge was $35.00 per month for each rental unit, and granted the capital improvement petition.

II. The Tenants' Issues

On appeal to the Commission, the tenants requested that the decision be reversed on the following issues.

A. Whether the housing provider met its burden of proof that the handicap ramp, asbestos work, trash compactor, and air conditioner installation enhanced the health, safety and security of the tenants or the habitability of the housing accommodation?
B. Whether the housing provider met its burden of proof in regard to the cost of the asbestos work?
C. Whether the housing provider met its burden of proof in demonstrating and calculating its interest costs?
D. Whether the housing provider met its burden of proof with respect to the issue of permits?
E. Whether the housing provider met its burden of proof with respect to the certain mandated capital improvements for which no Certificate of Calculation has been filed?[5]

III. Commission Decision

A. Whether the housing provider carried its burden of proof to show the installation of the handicap ramp,

[5] The tenants raised other issues, which were too vague and general to decide, and they were not elaborated upon in their brief. Those issues are: "1) the decision is arbitrary, capricious, and an abuse of discretion, 2) the examiner's decision is not supported by substantial evidence, 3) the examiner erred as a matter of law, 4) the Examiner erred in ruling that the housing provider met its burden of proof on all disputed issues , 5) the Examiner failed to make findings of fact and conclusions of law on all disputed issues of law and fact." Tenants Notice of Appeal at 1. Accordingly, these issues are dismissed as not in compliance with the Commission's regulation, 14 DCMR 3802.5, which requires the notice of appeal to have a concise statement of the alleged errors in the decision. Hampton House North Tenants Association v. Shapiro, CIs 20,669-20,670, (RHC Feb. 9, 1998).

trash compactor, condensers for air conditioning and the removal of asbestos enhanced the health, safety and security of the tenants or the habitability of the housing accommodation.

The Act authorizes the Commission to reverse any decision of the Rent Administrator that is unsupported by substantial evidence on the record. Conversely, if there is substantial evidence in the record, the Commission may affirm the decision in whole or in part. D.C. Code § 45-2526(h). This issue relates to the determination, whether under D.C. Code § 45-2520(a)(1), "the improvement would protect or enhance the health, safety, and security of the tenants or the habitability of the housing accommodation." Ft. Chaplin Park Associates v. District of Columbia Rental Housing Commission, 649 A.2d 1076 (D.C. 1994).

1. Handicap Ramp

The tenants assert that there was no evidence to support the housing provider's position that the handicap ramp would benefit the health, safety or security of the tenants, or the habitability of the housing accommodation in the building as a whole. The housing provider's witness testified that the handicap ramp was a new access to the building. On cross-examination, the witness stated that there are handicap visitors, and that it was the intent of management to comply with the Americans with Disabilities Act (ADA). However, he

testified that the ADA did not require the handicap ramp in residential housing. After review of the substantial evidence in the record, the Commission concluded the housing provider proved, as new access to the building, the handicap ramp enhanced the habitability of the housing accommodation. Therefore, the housing provider met its burden of proof on this issue. Accordingly, this appeal issue is denied, and the hearing examiner is affirmed.

2. Trash Compactor

The substantial record testimony about the new trash compactor was that it serves as the replacement of a 30 to 40 year old trash compactor, which was inadequate. The new trash compactor was an automatic and sanitary equipment that is used to compact trash in a manner that was different from the older unit. This capital improvement was in response to tenant complaints about odors from the trash room in the halls, laundry and party rooms, especially on hot days.

After review of the substantial evidence in the record, the Commission determined that the housing provider met its burden of proof that the trash compactor enhanced the habitability of the housing accommodation by eliminating obnoxious odors, and providing a more sanitary method of trash disposal. The replacement of old outdated equipment with newer modern equipment was approved for telephones in Tunlaw

Park Tenants Association v. Charles E. Smith Management, Inc., CIs 20,091 & 20,092 (RHC June 24, 1987). Similarly, in this case, old equipment is being replaced with more modern equipment. Therefore, this appeal issue is denied, and the hearing examiner is affirmed.

3. Air Conditioning

The tenants opposed the capital improvements of two new condenser units for the installation of air conditioning in the party room and exercise room. The tenants asserted there was a fee to use the party room, and that it was not a facility, which is included in the rent, thus making it similar to a parking space. The housing provider's witness testified the fee charged for the party room was for trash removal and clean up, but not for use. In addition, these rooms became uncomfortable during use, due to the increase in temperature without a mechanism to cool the rooms. On the other hand, the Commission's review of the record revealed the tenants did not put in the record any proof that the party room was not included in the rent, and therefore failed to meet their burden of proof. Accordingly, the tenants failed to establish that the party room was not included in the rent.[6]

[6] "The proponent of a rule or order shall have the burden of proof." D.C. Code § 1-1509(b); 14 DCMR 4003.1.

After review of the testimony in the record, the Commission concludes that the air conditioning in the party room will enhance the tenants' health and the habitability of the housing accommodation. A single air conditioning unit is a proper item for capital improvement petitions. Plante v. Tenants of 224-36th Street, N.E., CI 20,288 (RHC Dec. 28, 1988) at 5. In this case the air conditioning condensers were capital improvements for two separate areas. Thus, this appeal issue is denied, and the hearing examiner is affirmed.

4. Asbestos

The tenants asserted that the housing provider failed to carry its burden of proof that the removal of asbestos enhanced the health, safety and security of the tenants, or the habitability of the housing accommodation. The record evidence on asbestos was that, as a part of the renovations for the elevator and trash compactor, it was anticipated that asbestos removal would be necessary. There was no testimony that asbestos was actually present in the housing accommodation and needed to be removed. Accordingly, the housing provider did not carry its burden of proof on asbestos removal. See Hamilton House Limited Partnership v. Tenants of 1255 New Hampshire Avenue, N.W., CI 20,384 (RHC May 2, 1990), where the Commission denied a capital improvement petition because the housing provider did not present testimony about

the presence and risks associated with asbestos. This appeal issue is granted, and the hearing examiner is reversed.

B. Whether the housing provider met its burden of proof in regard to the cost of the asbestos work.

The Act requires, "[t]he housing provider shall establish to the satisfaction of the Rent Administrator: … [t]he amount and cost of the improvement including interest and service charges." D.C. Code § 45-2520(b)(2).

The tenants asserted in their brief that the $15,000.00 cost for the asbestos removal was "just a guess." (Brief at 4.) The Commission reviewed the record pursuant to D. C. Code § 45-2526(h). Upon review of the record, there was no contract or other basis to justify $15,000.00 as the cost of the asbestos removal. The witness did not state where asbestos was located in the housing accommodation. In addition, the witness, Mr. Diamond, did not testify what basis he used to conclude that $15,000.00 was the cost of asbestos removal. The witness was not the contractor for asbestos removal and did not present any factual basis for the $15,000.00 cost for asbestos removal.

Therefore, not only was there no substantial evidence in the record to support the asbestos removal, Issue A (4) supra, but also there was no factual basis to support the cost of asbestos removal. Accordingly, this appeal issue is granted,

and the hearing examiner is reversed on the $15,000.00 cost for asbestos removal.

C. Whether the housing provider met its burden of proof with respect to the issue of permits.

The Act, D. C. Code § 45-2520(b)(3), states the "required governmental permits and approvals have been secured." The housing provider had the burden of proof on the required permits. Columbia Realty Venture v. District of Columbia Rental Housing Commission, 590 A.2d 1043 (D.C. 1991).

The witness testified at the hearing that the cost of the drawings to obtain the permits and the actual permits was $16,500.00. The tenants neither on cross-examination, nor in the tenants' case rebutted the statement that the required permits were obtained. Nevertheless, this issue is moot as to the asbestos removal due to the Commission's decision to reverse the hearing examiner, because the housing provider did not prove the existence of asbestos and the cost of the asbestos removal, as required by the Act. See, Issue B, supra. As to the other capital improvement items, the tenants failed on cross-examination or in their case to present evidence that showed the housing provider failed to obtain a necessary permit, or to rebut the housing provider on the permit issue. Accordingly, this appeal issue is denied.

D. Whether the housing provider met its burden of proof with respect to certain mandated capital improvements for which no Certificate of Calculation has been filed.

The Act, D.C. Code § 45-2520(h), for mandated capital improvements[7] states:

> [a] housing provider may adjust the rent ceiling for any rental unit to provide for the cost of any capital improvements which are required by provisions of any federal or local statute or regulation becoming effective after October 30, 1980, amortized over the useful life of the improvements, and the cost of the improvements applied on an equal basis to those rental units within the housing accommodation which benefit from the improvement, by filing with the Division a certificate of calculation for mandated capital improvement increase. The certificate shall establish:
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> (1) That the improvement is required by the provisions of a federal or District statute or regulation becoming effective after October 30, 1980;
> (2) The amount of the cost of the improvements; and
> (3) That required governmental permits and approvals have been secured. (emphasis added.)

The tenants' brief stated that both the elevator[8] and the handicap ramp were capital improvements mandated by the Americans with Disabilities Act (ADA), because they would

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[7] For a discussion of mandated versus regular capital improvements see Tenants of 2424 Pennsylvania Avenue, N.W. v. Lenkin Management Co., CI 20,346 (RHC Dec. 31, 1992).

[8] The tenants did not raise any issue related to the elevator in their notice of appeal. Therefore, the elevator is not an issue before the Commission. DeLevay v. District of Columbia Rental Housing Commission, 411 A.2d 354 (D.C. 1980). Nevertheless, elevators are proper items for capital improvement, see Tenants of Ambassador Apartments, et al v. Columbia Plaza Limited Partnership, CI 20,418-20,426 (RHC Nov. 30, 1992).

conform to the requirements of the ADA. However, the tenants did not cite the specific provisions of either federal or District law that mandated the handicap ramp at the residential housing accommodation. The housing provider's witness testified that the ADA did not require the handicap ramp at the residential housing accommodation. Therefore, the substantial evidence in the record supported the hearing examiner's determination to approve the capital improvement for the handicap ramp, as a new access to the housing accommodation. Accordingly, this appeal issue is denied and the hearing examiner is affirmed.

The Commission notes that the tenants failed or elected not to challenge the capital improvements to the elevator as an appeal issue in their notice of appeal, and therefore cannot raise that issue in their appeal brief. 14 DCMR 3807.4.[9]

The Commission concludes that the housing provider did not file a capital improvement petition for approval of a mandated capital improvement. (Petition at 6.) (R. 64.) Further, the installation of a handicap ramp and voluntary compliance with the ADA does not automatically convert the normal capital improvement petition under D.C. Code § 45-

[9] "Review by the Commission shall be limited to the issues raised in the notice of appeal…." 14 DCMR 3807.4.

2520(a) to a mandated capital improvement petition under D.C. Code § 45-2520(h). The discretion of what type of capital improvement is to be used remains with the housing provider.[10] The capital improvement petition was never amended to plead a mandated capital improvement. See Tavana Corporation v. Tenants of 1850 - 1854 Kendall Street, N.E., CI 20,694 (RHC Mar. 8, 1996). This appeal issue is denied and the hearing examiner is affirmed.

E. Whether the housing provider met its burden of proof in demonstrating and calculating its interest costs.

The Act provides, "the housing provider shall establish to the satisfaction of the Rent Administrator … the amount and cost of the improvement including interest and service charges." D.C. Code § 45-2520(b)(2). Further, the Act states, "[a]ny decision of the Rent Administrator under this section shall determine the adjustment of the rent ceiling: "[i]n the case of building-wide major capital improvement, by dividing the **cost** over a 96-month period of amortization and by dividing the result by the number of rental units in the

[10] See Tenants of 1755 N Street, N.W. v. N Street Follies Limited Partnership, HP 20,746 (RHC Apr. 30, 1998) at 5, where the Commission stated the decision of how to raise rent ceilings under the Act, i.e., petitions for hardship, capital improvement, new services and facilities, etc., belongs to the housing provider under the Act. To expand, the housing provider decides which method to use to raise rents. In this case, the housing provider chose the regular capital improvement rather than the mandated capital improvement. The choice was not the tenants'; it was the housing provider's decision. The housing provider's burden of proof must meet the requirements of the method chosen under the Act.

housing accommodation." D.C. Code § 45-2520(c)(1). (emphasis added.)

The Commission interprets the phrase "the amount and cost" to relate to "actual" cost, not "proportional" cost in a loan package. (Pet. at 10 and section A, supra.) This is an issue of first impression for statutory interpretation of the words, "amount and cost" in the Act versus proportional costs. Accordingly, we use the rule of statutory construction that requires us to give the "plain meaning" to all unambiguous words. Parreco & Son v. District of Columbia Rental Housing Commission, 567 A.2d 43, 47-48 (D.C. 1989).

The Act does not state, "[t]he … service and interest charges are based on the proportion of the cost of improvements to the total cost of the loan." (Petition at 10.) (emphasis added.) In fact, the loan time period is not relevant since the Act mandates a 96 month recovery period for costs. D.C. Code § 45-2520(c)(1). Accordingly, the Commission holds that "cost" means actual cost, which must be proved by substantial evidence in the record. D.C. Code § 1-1509(c).

Since the Act provides for the recovery of interest, D.C. Code § 45-2520(b)(2), it is important to calculate interest in accordance with the mathematical formula for interest, which is interest equals principal multiplied by rate, multiplied by

time (I=PRT), as approved by the court in Jerome Management, Inc v. District of Columbia Rental Housing Commission, 682 A.2d 178 (D.C. 1996).[11] The time period in the Act of "96 months" is 8 years, which is used in the formula for "time" to calculate interest.

The Commission's regulation, 14 DCMR 4210.19(a), implements the 96 month recovery period in the Act. In addition, the regulation, 14 DCMR 4210.40(a), in pertinent part states, "'[i]nterest' shall mean all compensation paid by the housing provider to a lender for the use, forbearance or detention of money used to perform a capital improvement." This regulation, like the Act, does not refer to proportional costs, rather it refers to "all compensation" which the Commission interprets to include the amount of the actual costs, service charges, and the actual interest for the 96 month period.

Similarly, 14 DCMR 4210.41(a), states,

> The amount of interest which shall be includable by a housing provider in a capital improvement petition for purposes of the calculation under § 4210.19(a) or § 4210.21(a) as applicable, shall be … the following:
>
> (a) The amount of interest payable by the housing provider at a fixed rate of interest on a loan of money used to perform the capital improvement or that portion of a multi-purpose loan of money used to

[11] See Jerome Management, Inc. v. Lydia Walker, TP 12,089 & HP 10,327 (RHC Oct. 15, 1993), aff'd, Jerome Management, Inc. v. District of Columbia Rental Housing Commission, 682 A.2d 178 (D.C. 1996).

> perform the capital improvement as documented by the housing provider by means of the relevant portion of a *bona fide* loan commitment or agreement with a lender, or by such other evidence of interest as shall be satisfactory to the Rent Administrator. (emphasis added.)

This regulation refers to "that portion of a multi-purpose loan," and the Commission interprets "portion" to mean the total of the "actual cost" of the capital improvements, plus allowable interest and service charges. The word "portion" in the regulation is not synonymous with the word "proportional." In the instant case, because the loan greatly exceeds the actual cost of the capital improvements, the tenants repay only that "portion" of the principal, service charges, and interest on the loan used to perform the capital improvements. In addition, 14 DCMR 4210.42, states,

> If the term of the loan obtained by the housing provider to pay for the capital improvement exceeds the calculation period for the rent ceiling surcharge in accordance with §4210.19 or §4210.21, the rent ceiling surcharge shall continue until the loan is fully discharged; Provided, that the provisions of § 4210.43 shall apply when the housing provider has recovered an amount equal to the sum of the following:
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> (a) The total costs of the capital improvements;
> (b) The allowable service charges; and
> (c) The interest payments up to that time.
>
> (emphasis added.)

This regulation appears to authorize the extension of the surcharge beyond the 96 month (8 years) recovery period. However, the limiting text in 14 DCMR 4210.42 is "[i]f the

term of the loan obtained by the housing provider to pay for the capital improvement," along with the words "total costs" and "the interest payments up to that time." The amount of the loan in this case exceeded the cost of the capital improvements, and the loan "time" length was 25 years, which exceeded the 96 month recovery period. Clearly, this loan which greatly exceeded the amount of the actual costs of the capital improvements and the time for repayment of the loan including interest, was more than triple the eight years (8) allowed by the Act, cannot be the basis for continuation of interest payments after the costs are recovered by the housing provider. Here, the loan obtained by the housing provider was not solely to pay for the capital improvements, as evidenced by the amount of the loan, $10,500,000.00, in contrast with the cost of the capital improvements, $402,296.00.

The regulation, 14 DCMR 4210.42, provides for those cases where the housing provider was limited by the maximum 20% rent ceiling increase and therefore could not recover the costs and service charges in the 96 months. D.C. Code § 45-2520(c)(1), provides, "[n]o increase under this paragraph may exceed 20% above the current rent ceiling."[12] The regulation, 14 DCMR 4210.42, is consistent with the Commission's interpretation

[12] 1841 Columbia Road Tenants Association v. District of Columbia Rental Housing Commission, 575 A.2d 306, 308 (D.C. 1990). See also 14 DCMR 4210(c).

that costs means actual costs, and interest and service charges, must be recovered during the 96 month recovery period, as stated in 14 DCMR 4210.19. See also 14 DCMR 4210.20, which states:

> The ninety-six (96) month period referred to in § 4210.19(a) and the percentage referred to in § 4210.19(b) shall be solely applicable to the calculation of the monthly amount of the rent ceiling surcharge and are not to be factors in determining the permitted duration of a capital improvement rent ceiling surcharge or rent increase, which shall be determined on the basis of the actual recovery by the housing provider of all costs, including interest and service charges, of the capital improvements, in accordance with §§ 4210.23 through 4210.38.

To hold otherwise would render the regulations to be inconsistent with the Act. Where agency regulations conflict with its organic act, the agency must resolve the conflict by deferring to the agency's organic act. Seman v. District of Columbia Rental Housing Commission, 552 A.2d 683 (D.C. 1989).

Accordingly, the housing provider is limited to the recovery of the actual costs plus the interest and service charges on the actual costs, during the 96 month recovery period mandated by the Act and its regulations cited herein, unless it was limited by the 20% maximum rent ceiling increase. There was no testimony in this case that the housing provider was limited by the 20% maximum rent ceiling adjustment. The recovery of all costs, including interest and service charges, does not include the costs, interest and

service charges, associated with the portion of a loan that exceeds the value (cost) of the capital improvements, as the loan does in this case.

The rate of the loan was not a contested issue. This appeal issue is granted, and the hearing examiner is reversed.

IV. Conclusion

The Commission determined that the total number for all actual costs in the petition and testimony at the hearing was mathematically incorrect, because the total cost of the capital improvements in the petition was $347,490.00 without the construction fee and service charges. However, with those items, the construction fee and service charges, the total cost of the capital improvements was $417,296.00, which is less than $602,240, which the housing provider placed in the record. (See actual costs, supra p. 3.) In addition, the Commission held that the housing provider did not carry its burden of proof on the cost for the asbestos removal at the housing accommodation. (Issue A 4, supra.) Therefore, the Commission disallowed $15,000 of the cost for asbestos removal. This reduced to $402,296.00, the total cost of the capital improvements, as calculated by the Commission.

For the interest figure to be accurate, the number for the principal, and the numbers for the rate and time, must be mathematically correct in the formula for interest

calculations. In this case, the number for the principal (total cost of all capital improvements) used by the housing provider and the hearing examiner was not mathematically correct.

In addition, as stated in the Act, the costs (principal) must be recovered over a 96 month period, which is eight (8) years. D.C. Code § 45-2520(c)(1). Where the amount of the benefit (principal) and interest were not accurate, the court ordered a remand. Hill v. District of Columbia Department of Employment Services, 717 A.2d 909 (D.C. 1998). There, the amount of benefit (principal) and the amount of interest were in dispute, as in this case. Moreover, the court in Hill determined that new issues arose on appeal, as in this case. Here, the new issue on appeal is the correct total of all the costs, i.e., the Commission totaled the costs of the capital improvements to be $402,296.00, which is less than the $602,240.00, that the housing provider placed in the record. Under these circumstances, a remand to OAD for the hearing examiner to determine the actual total cost of all capital improvements is necessary to determine the correct principal amount for use in the formula, I=PRT, to calculate the interest and ultimately the rent ceiling increase payable by the tenants. Accordingly, the hearing examiner is reversed on the total cost of the capital improvements, the amount of the

interest, and the rent ceiling increase. These issues are remanded for findings of fact and conclusions of law by the hearing examiner. All of the other issues related to the interest calculation are moot, based on the inaccurate numbers used for the principal (costs) and service charges.

The hearing examiner was affirmed on all issues except the reversals on the cost of asbestos removal ($15,000.00) and the calculation of the interest charges and resulting rent ceiling increase. On remand, an evidentiary hearing is necessary for the recalculation of the interest on the actual costs in accordance with the formula approved in Jerome, as explained in Issue E, above. On remand, the housing provider is precluded from inserting evidence in the record about asbestos removal. Wire Properties v. District of Columbia Rental Housing Commission, 476 A.2d 679 (D. C. 1984).

However, the hearing examiner must determine the amount of costs already recovered by the housing provider based on its theory of using proportional costs rather than actual costs. The housing provider must affirmatively prove the

computations related to costs, interest, and service charges paid to the lender and paid by the tenants. Tenants of 500 23rd Street, N.W., v. District of Columbia Rental Housing Commission, 585 A.2d 1330, 1334-1335 (D.C. 1991).

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the forgoing Decision and Order in CI 20,686 was mailed postage prepaid this 6th day of **May, 1999** to:

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