

COLUMBIA REALTY VENTURE v. D.C. RENTAL HOUSING COMMISSION, 590 A.2nd 1043 (1991)

Court: D.C. Court of Appeals, opinion by Terry, A.J.

Judicial History: Landlord filed capital improvement petition seeking increase in rent ceilings for individual units in building in order to pay for capital improvements being made throughout the building. Petition was opposed by a group of tenants who appealed after hearing examiner approved proposed increase.

Facts: In this case, both landlord and tenant seek reversal of portions of an order of the Rental Housing Commission (RHC) granting landlord's capital improvement petition. The tenants claim two RHC errors. First, they assert that the RHC erred in failing to require landlord to present proof that all necessary permits had been obtained before beginning work on the capital improvements. Second, the tenants maintain that the RHC erred by including the cost of hot water risers as a capital expense without a finding that the interests of the affected tenants were protected. Landlord contends that the RHC improperly reversed the hearing examiner's decision to include a contractor's fee in the total cost of the capital improvements.

Holding: The Court of Appeals held that:

- 1.) RHC erred in failing to require landlord to present proof that all necessary permits had been obtained for the capital improvements;
- 2.) substantial evidence supported decision of the RHC to include cost of replacement of hot and cold water risers in capital improvement allowance; and
- 3.) RHC erred in shifting burden of proof to landlord on issue whether 10% contractor's fee should be allowed in total cost of capital improvements, and in requiring contractor to justify the fee.

Reasoning:

- 1.) Under D.C. law, a landlord is required to present evidence that the required permits have been obtained or to demonstrate that no permits are required as part of the *prima facie* showing for an increased rent ceiling based on capital improvements.
- 2.) There was uncontradicted testimony that old hot and cold water risers were rotten and that they were replaced in a particular manner in order to minimize cost and inconvenience to tenants.
- 3.) Under the District of Columbia Administrative Procedure Act, party asserting a particular fact has burden of affirmatively proving that fact.

Decision: Affirmed in part; reversed in part and remanded.