DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

HP 20,023

SAMUEL J. AUXIER, Housing Provider/ Appellant

v.

Tenants of 2523 13th St., N.W., Tenants/Appellees

On Appeal from the
Rent Administrator
(Decided May 23, 1986)

DECISION AND ORDER

Jordan, Commissioner: The housing provider appeals from a Decision and Order of the Rent Administrator's designee, Hearing Examiner Harold J. Cook, dated October 7, 1985. The Hearing Examiner granted the housing provider's Hardship Petition, in part, by permitting him to raise the rent ceiling for each rental unit in the subject housing accommodation by 16.23 percent. The appeal raises two points: first, that the value assigned to the housing provider's equity upon which the permissible return was calculated was too low; and second, that certain reductions in the expenses allowed were unjustified. We find no merit in either argument and affirm.

Section 206(c) of the Rental Housing Act of 1985, D.C. Law 6-10, D.C. Code §45-2516(c) (1986 supp.), permits a housing provider to elect to seek a rent ceiling adjustment through a hardship petition under §212 of the Act, D.C. Code §45-2522 (1986 supp.), rather than by taking an annual adjustment of general applicability under §206(b), D.C. Code § 45-2516(b) (1986 supp.). Section 212(a) authorizes the Rent Administrator to review hardship petitions filed by housing providers requesting hardship adjustments and to allow rent ceiling adjustments which will generate no more than a 12% rate of return computed in the manner set forth in subsection 212(b). Section 212(a) and (b) taken together make it clear that the 12% rate of return is to be calculated on the housing provider's equity in the property.

Section 103(13) of the Act, D.C. Code §45-2503(13) (1986 supp.) defines "equity" as follows:

"(13) 'Equity' means the portion of the

> assessed value of a housing accommodation that exceeds the total value of all encumbrances on the housing accommodation."

The rate of return is calculated by dividing the net income by the housing provider's equity. §212(b)(2), D.C. Code §45-2522(b)(2) (1986 supp.).

The form for filing a Hardship Petition issued by the Rental Accommodations and Conversions Division contains appropriate spaces for a housing provider to supply the basic information pertaining to a petition for a hardship adjustment. When supplemented with supporting documentation it comprises the housing provider's presentation. Section V - Rate of Return Schedule contains a sub-caption entitled "Equity" which tracks the statutory definition of that term as quoted, supra. It contains blank spaces for the assessed value, the total encumbrances and the equity, which is obtained by subtracting the latter from the former. Here the petitioner listed the assessed value as $190,000.00, the encumbrances as $172,248.03 and the equity as $17,751.97. Twelve percent of that amount is $2,130.24

At the hearing Mr. Auxier, the managing agent, who appeared on behalf of the owner, alluded to the fact that the cost of the property had been $235,000 and that the present owner had put up cash in the sum of $60,000 as the down payment. He did not suggest that equity should be based on the $60,000 figure or that the equity calculation made in his own petition was erroneous. In his appeal Mr. Auxier urged for the first time that the equity figure should be based upon the $60,000 actually invested in the property and not upon the $17,751.97 listed in the petition. A twelve percent return on that amount would be $7200, which would require a greater rent adjustment than if the equity were the $17,751.97.

We reject the housing provider's argument. He did not question the measure of equity at the hearing; indeed, it was he who prepared the petition with the lower figure which he now attempts to impeach. More importantly, the law is perfectly clear as to the definition of the word equity. It is the assessed value minus the encumbrances. We have no power to alter that definition. If the District of Columbia Council had wished to consider market value and actual investment as the measuring rods for

equity it could have done so. It chose not to and we are not at liberty to alter that determination.

In his second point the housing provider objects to the hearing examiner's reduction of the amount of certain expenses claimed in the petition. He makes specific reference to items contained in Section IV - Operating Expense Schedule of the petition. As to each he argues that it was error to amortize them over a longer period than is normally allowed in common business practice. Specifically he objects to the change in item 3, Operating Cost, sub-item f., Equipment over $100, which was reduced from $379.48 to 76.00. This represented two used refrigerators which the hearing examiner amortized over 5 years rather than allowing the full amount. The record is clear that Mr. Auxier stipulated to this reduction at the hearing.

The next was item 5, Maintenance and Repair Cost, sub-item a, Painting, which was scheduled at $4,712.00 but which the hearing examiner amortized over five years, allowing $942.40 for the year included in the petition. Although the record is not

entirely clear as to whether the housing provider actually stipulated to this reduction, the tenants' counsel asserted without contradction that the work included a complete repainting of a large number of apartments. The amortization of such an item over five years is in accordance with the guidelines used by RACD for that type of expenditure and is fully supported by the evidence in the record.

Two other items objected to were the reduction made in item 5, Maintenance and Repair, sub-item b., Decorating, from $2,726.00 to $1,090.00 and the reduction of the entry under 5, Maintenance and Repair, sub-item c., Repairs, from $8,979.63 to $3,590.00. The record leaves no doubt that these two reductions were stipulated to by counsel for tenants and Mr. Auxier compromising midway between the three years suggested for both items by the former and the two years urged by the latter. We decline to alter that agreement.

For the forgoing reasons the Decision and Order of the Rent Administrator is AFFIRMED.

Daniel B. Jordan

Daniel B. Jordan, Commissioner

Belva Newsome

Belva D. Newsome, Chairperson

I. T. Creswell, Jr.

Isaiah T. Creswell, Jr., Commissioner

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Certificate of Service

I hereby certify that on this 23rd day of May, 1986, a copy of the foregoing decision and order was placed in the District government mailing system. The time for appeal begins to run three (3) business days following the postmark date on the envelope transmitting this Decision and Order.

N. Steinman