

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 11,906

TALLEY HOLMES, JR., Landlord/ Appellant

v.

ROBERT BUTLER, Tenant/ Appellee

(On Appeal from the Rent Administrator)

Issued June 20, 1986

DECISION AND ORDER

Jordan, Commissioner: On July 25, 1985 Hearing Examiner Carl Bradford issued a Decision and Order in which he found that the landlord, Talley Holmes, Jr., had failed to register the rental unit occupied by Robert Butler and that he had raised the rent on two occasions while the unit was unregistered. The hearing examiner ordered that the property be registered, that the rent be rolled back to its level previous to the two increases and that the landlord refund the rent overcharges, trebled, with interest. In addition, the hearing examiner imposed a \$1,000 fine upon the landlord for failure to properly register the housing accommodation in accordance with law.

The hearing examiner relied on the evidence that the housing accommodation consisted of a single rental unit which was not exempt because Mr. Holmes, an attorney active in the rental housing market in the District of Columbia, owned more than four rental units. D.C Code §45 - 1516(a)(3). The landlord registration file disclosed that the property was

registered in 1978, but no other registration was filed thereafter. Prior to October 1, 1980 the rent for the unit in question was \$81.25 per month. Effective October 1, 1980 it was raised to \$100.00 per month. On June 1, 1984 it was increased to \$105.00 per month.

On this record the hearing examiner found that in the three years preceding the date of hearing the landlord had overcharged by \$18.75 for 26 months and \$23.75 for 10 months. The total overcharge, therefore, was \$725.

The hearing examiner found that the violations were "knowing" within the meaning of the Rental Housing Act of 1980, D.C. Law 3-131, §901(a), D.C. Code §45-1591(a) (1981 ed.) and in accordance with that section and cases thereunder he trebled the damages and added interest. The total damages were \$2,370.20.

The hearing examiner also imposed a fine of \$1,000.00 against the landlord as provided for in §901(b) of the Act, D.C. Code §45-1591(b).

In reviewing this case we note that the Decision and Order notified the parties that any Notice of Appeal had to be filed with the Commission on or before August 13, 1985. Mr. Holmes never filed a formal Notice of Appeal so denominated. He did, however, file a document entitled Motion for Reconsideration of Decision and Order of Hearing Examiner. It was file stamped by the Commission August 15, 1985. The regulations of the Commission in effect at the time that motion was filed 14 DCMR 4011, 32 DCR 4774 (effective July 29, 1985)


required that motions for reconsideration of final orders of the Rent Administrator be filed with the hearing examiner and that was not done. In fact the motion was both addressed to the Commission and filed with it. Accordingly, it was not addressed by the Rent Administrator. However, since the motion contained sufficient detail to fulfill the requirements of a Notice of Appeal, 14 DCMR 4100, 32 DCR 4776, the Commission will treat it as a notice of appeal in order to do substantial justice to the appellant.

Unfortunately, even this action leaves appellant in a position where we are forced to dismiss the appeal for lack of jurisdiction, even though a full hearing has been held, because of the belated discovery that the motion for reconsideration which we now treat as a notice of appeal was untimely filed.

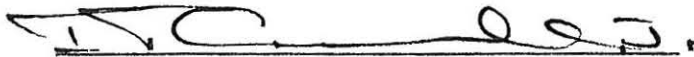
The District of Columbia Court of Appeals has ruled that the statutory ten day time period for filing an appeal is jurisdictional, which means that after that period expires the Commission no longer has jurisdiction to accept an appeal, and the time cannot be extended. Smith v. District of Columbia Rental Accommodations Commission, 411 A.2d 612 (D.C., 1980). The Smith case was decided under the ten day rule in the Rental Accommodations Act of 1975, D.C. Law 1-33, D.C. Code 1978 Supp. §45-1652(g), but the corresponding section of the Rental Housing Act of 1985, D.C. Law 6-10, §216 (h), D.C. Code §45-2526(h), which applies to the present case, is the same. Thus, when Mr. Holmes filed his appeal on

August 15, 1985, rather than on or before August 13, 1985, he was too late to invoke the jurisdiction of the Rental Housing Commission.

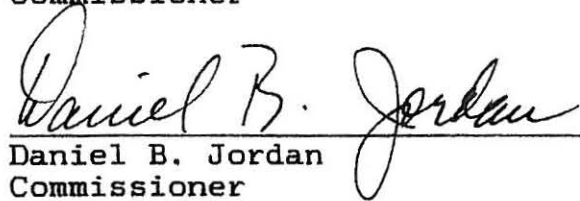
Accordingly, we hold that appellant's appeal was untimely filed and the appeal is DISMISSED.



Belva D. Newsome
Chairperson



Isaiah T. Creswell, Jr.
Commissioner



Daniel B. Jordan
Commissioner


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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 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.



181