

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 23,146

In re: 4301 Halley Terrace, S.E., Unit 4

Ward Eight (8)

BERTHA REDMOND
Tenant/Appellant

v.

MAJERLE MANAGEMENT, INC.
Housing Provider/Appellee

DECISION AND ORDER

March 26, 2002

LONG, COMMISSIONER. This case is before the District of Columbia Rental Housing Commission (Commission) following a remand from the District of Columbia Court of Appeals (Court). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001),¹ the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

I. PROCEDURAL HISTORY

Bertha Redmond filed Tenant Petition (TP) 23,146 with the Rental Accommodations and Conversion Division (RACD) on September 22, 1992. In the

¹ The government of the District of Columbia authorized the compilation of the laws of the District of Columbia in the 2001 Edition of the District of Columbia Official Code. The 2001 Edition represents a recodification of the 1981 Edition of the District of Columbia Code. Many of the numbers, which represented the titles, chapters, subchapters, and sections in the 1981 Edition, were changed in the 2001 Edition. Consequently, the titles, chapters, subchapters, and sections numbers in the Rental Housing Act of 1985 and the District of Columbia Administrative Procedure Act bear new numbers. See Preface to the 2001 Edition, D.C. OFFICIAL CODE.

petition, the tenant alleged that the housing provider: 1) imposed a rent increase that was higher than the amount of increase allowed by any provision of the Act; 2) failed to file the proper rent increase forms with the RACD; 3) charged rent that exceeded the legally calculated rent ceiling; 4) filed an improper rent ceiling with the RACD; 5) increased the rent while the unit was not in substantial compliance with the housing regulations; 6) failed to properly register the housing accommodation with the RACD; 7) reduced services and facilities provided in connection with the rental unit; 8) directed retaliatory action against the tenant in violation of § 502 of the Act; and 9) served a notice to vacate that violated the requirements of § 501 of the Act.

On December 17, 1992, Hearing Examiner Matthew Green held the first adjudicatory hearing in these proceedings. On January 27, 1993, the hearing examiner issued a decision and order, dismissing the petition with prejudice. The hearing examiner concluded, as a matter of law, that the Act's three-year statute of limitations and the statute of limitations in the Probate Act, D.C. OFFICIAL CODE § 20-903(a), barred the tenant's claims. The tenant appealed the decision issued by Hearing Examiner Green. The Commission reversed the hearing examiner's dismissal of the tenant's claims between September 22, 1989 and September 22, 1992, and remanded the case for a hearing de novo.²

Hearing Examiner Carl Bradford held the hearing de novo on February 22, 1996 and March 27, 1996. At the conclusion of the hearing, the hearing examiner invited the parties to submit proposed decisions and orders in lieu of closing arguments. The hearing examiner indicated that the proposed decisions and orders should advise the hearing

² See Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC Oct. 24, 1995).

examiner why he should make a finding in that party's favor. The housing provider, through counsel, submitted a proposed decision and order. The hearing examiner adopted, verbatim, the complete text of the housing provider's proposed decision and order, which contained the following conclusions of law:

1. The Petitioner's motion to disqualify counsel for Respondents [sic] is denied.
2. That Respondents [sic] took no rental increase, nor did Petitioner pay a rent increase for the period September 22, 1989 to September 22, 1992.
3. That the base rent and rent ceiling for Petitioner's unit is \$250.00 per month.
4. That Respondents [sic] are properly registered under the Act.
5. That Petitioner's claims for reduction in services is denied.
6. Petitioner's claim alleging that Respondent retaliated against her is denied.
7. That Petitioner's claim that she received a notice to vacate in violation of the Act is denied.
8. That Petitioner has neither shown, nor proven, any violation of the Rental Housing Act by Respondents [sic] as alleged in TP 23,146.

The hearing examiner issued the decision and order on May 31, 1996 and dismissed the petition with prejudice.

On June 17, 1996, the tenant filed a notice of appeal, which raised twenty-seven issues. The Commission held the hearing on appeal on January 16, 1997. The Commission reviewed the record and discovered glaring variations between the record evidence and the findings of fact and conclusions of law. The substantial record evidence revealed that the housing provider failed to properly register the housing accommodation; substantially reduced services and facilities; increased the tenant's rent when the housing accommodation was not in substantial compliance with the housing code; demanded rent in excess of the legal rent ceiling; and engaged in retaliatory conduct. The Commission reversed the hearing examiner's decision and order, because the substantial evidence on

the record of the proceedings did not support it. See Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC June 4, 1999).

The Commission ordered the housing provider to refund \$12,019.71 to the tenant. The refund included \$7125.31 for the reduction in services; \$4894.40, which represented the trebled refund for the rent overcharges; and interest through the date of the Commission's decision. The Commission imposed a \$500.00 fine, because the housing provider violated the registration requirements of the Act. In addition, the Commission imposed a fine of \$1000.00, because the housing provider violated D.C. OFFICIAL CODE § 42-3505.02, when it directed retaliatory action against the tenant. The Commission rolled the tenant's rent back from \$240.00 to \$228.00, until the housing provider properly registered the property and remedied the housing code violations.

The housing provider appealed the Commission's decision by filing a petition for review in the District of Columbia Court of Appeals. The housing provider asked the Court to decide whether the Commission had the authority to: Determine that there was a rent overcharge; award treble damages for the rent overcharge; impose fines for violations of the Act; roll the tenant's rent back to \$228.00 until the housing provider registered the property and corrected housing code violations; ignore the three year statute of limitations when the rent was allegedly increased in 1987; award a refund for the period September 22, 1989 to March 27, 1996 for reduction in services; and award interest for the period that the tenant paid rent into the court registry.

The Court affirmed the Commission's decision, in part, and remanded the case to the Commission for an explanation of the award period for the reduction in services. The Court affirmed the Commission's imposition of fines, and its ruling that the housing

provider was liable for the rent charged in excess of the rent ceiling. In addition, the Court affirmed the award for the reduction in services, except to the extent that the award included damages for the period after the tenant filed the petition. The Court remanded the case to the Commission for a “statement of reasons and legal principles underlying its decision ... [to impose] damages incurred after the tenant filed her complaint” Majerle Mgmt., Inc. v. District of Columbia Rental Hous. Comm’n, 768 A.2d 1003, 1010 (D.C. 2001).

In response to the Court’s opinion, the housing provider filed a Petition for Rehearing or Rehearing En Banc (Petition). The Apartment and Office Building Association of Metropolitan Washington (AOBA) filed a consent motion for leave to appear as amicus curiae in support of the housing provider’s petition. The housing provider sought “further review of the holding rejecting Petitioner’s claim that the rent control law’s three year statute of limitations barred the tenant’s challenge to the \$250 per month rent first charged on September 1, 1989, three years and 21 days” before the tenant filed the petition. Petition at 1.

In response to the Petition, the Court vacated Part III of its opinion to the extent that it affirmed the Commission’s ruling that the tenant was entitled to a refund for rent overcharges. The Court remanded the case for “further proceedings on the diminution of services issue, and for further consideration of its determination of a refund for asserted rent overcharges.”³ The Court directed the Commission to “provide a clear explanation of its reasons for concluding that the lawful rent ceiling for the tenant was \$228 per month, including statements regarding the applicability, or not, of the Rental Housing

³ Majerle Mgmt., Inc. v. District of Columbia Rental Hous. Comm’n, 777 A.2d 785 (D.C. 2001).

Commission decisions cited in the petition for rehearing.”⁴ The Court denied the petition for rehearing en banc. After the Court remanded the case to the Commission, AOBA filed a motion for leave to appear as amicus curiae with respect to the rent overcharge and rent refund issues. The Commission granted AOBA’s motion. See Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC Aug. 30, 2001).

II. ISSUES

The Commission considered the following issues on remand from the District of Columbia Court of Appeals.

A. Whether the Commission properly determined that the correct rent ceiling was \$228.00 per month and properly ordered a refund for rent overcharges.

B. Whether the Commission had the authority to order a refund for the reduction of services through the date of the OAD hearing.

III. DISCUSSION

In its order, which remanded this case to the Commission, the Court requested a clear explanation of the Commission’s reasons for concluding that the tenant’s lawful rent ceiling was \$228.00 per month. The Court also asked the Commission to include statements regarding the applicability, or not, of the Commission decisions that the housing provider cited in the petition for rehearing.

The housing provider cited a long line of cases in which the Commission interpreted the Act’s statute of limitations.⁵ When the Commission issued its decision in

⁴ Id.

⁵ The housing provider cited the following cases in the petition for hearing or rehearing en banc: Washington v. H.G. Smithy Co., TP 23,370 (RHC May 14, 1998); Emes v. Campbell, TP 23,258 (RHC Oct. 23, 1996); Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995); Kim v. Woodley, TP 23,260 (RHC Sept. 13, 1994); Peerless Properties v. Hashim, TP 21,159 (RHC Oct. 26, 1992); Williams v. Aubinoe, TPs 22,821 & 22,814 (RHC Aug. 12, 1992); Washington Realty Co. v. 3030 30th St. Tenant Ass’n, TP 20,749 (RHC Jan. 30, 1991); Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990); Sendar v. Burke, HP 20,213 & TP 20,772 (RHC Apr. 6, 1988); Borger Mgmt., Inc. v. Godfrey, TP 20,116 (RHC Sept. 4, 1987).

Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC June 4, 1999), the Commission conducted a statute of limitations analysis and disallowed the tenant's challenge to the adjustments that the housing provider implemented more than three years before the tenant filed the petition. However, the Commission held that the statute of limitations did not bar the tenant's challenge to the adjustment, which the housing provider implemented on July 1, 1991. The tenant's challenge to the July 1, 1991 adjustment survived, because the tenant filed the petition and challenged the adjustment on September 22, 1992, which was less than three years after the housing provider implemented the adjustment. Once the Commission determined that the statute of limitations did not bar the tenant's challenge to the July 1, 1991 adjustment, the Commission reviewed the propriety of the adjustment. In conducting its review of the adjustment that the housing provider implemented on July 1, 1991, the Commission determined that the substantial record evidence showed that the tenant's legal rent ceiling was \$228.00.

The Commission did not depart from its prior decisions, when it held that the tenant's legal rent ceiling was \$228.00. In fact, the Commission followed its prior decisions when it disallowed the tenant's challenge to adjustments that the housing provider implemented more than three years before the tenant filed her claim. However, when the Commission reviewed the July 1, 1991 adjustment, the Commission encountered a unique set of facts that were not found in its prior decisions.

In Redmond, the housing provider executed a notice of adjustment of general applicability on May 31, 1991. In that notice, the housing provider indicated that the tenant's legal rent ceiling was \$228.00, and stated on the face of the notice, that its records revealed the tenant might have been overcharged. On July 1, 1991, the housing

provider filed a Certificate of Election of Implementation of Adjustment of General Applicability with the RACD; implemented the adjustment of general applicability, which was noticed on May 31, 1991; and reduced the rent charged, which exceeded the legal rent ceiling. During the OAD hearing, the tenant introduced the Tenant Notice for 1991 Section 206(b) Increase of General Applicability. On cross-examination, the housing provider testified that the rent ceiling was \$228.00, when the housing provider implemented the notice of adjustment of general applicability in 1991. Moreover, the RACD registration file revealed that the rent ceiling was \$228.00.

The Commission conducted its review based upon the factual context of the record in the case before it. To those facts, the Commission applied the Act, the regulations, and its prior decisions, where applicable. In Cafritz v. District of Columbia Rental Hous. Comm'n, 615 A.2d 222, 228 (D.C. 1992), the Court stated, "its opinions must be read in the context of the facts ... of the order under discussion. To keep opinions within reasonable bounds precludes writing into them every limitation or variation which might be suggested by the circumstances of cases not before the Court. General expressions transposed to other facts are often misleading." The Commission found the Court's statement in Cafritz to be particularly apropos to the Redmond decision. The housing provider urged the Court and the Commission to decide Redmond based on the circumstances of the cited cases, which are not currently before the Commission. When one reviews Redmond in the context of the facts in Redmond, the Commission's rationale for concluding the rent ceiling was \$228.00 becomes apparent. In order to keep the Redmond decision within the reasonable bounds of the law, the Commission did not write into it every limitation or variation, which might be suggested

by the circumstances of other cases that are not currently before the Commission. On the facts under consideration in Redmond, the statute of limitations did not preclude the Commission's review.

The Court's decision in Kennedy v. District of Columbia Rental Hous. Comm'n, 709 A.2d 94 (D.C. 1998), serves as a vivid illustration of the Court's practice of deciding cases based on the issue presented and the "context of the facts ... of the order under discussion."⁶ Kennedy also illustrates why the Act's statute of limitations does not bar Ms. Redmond's claim. In Kennedy, the Court observed the precise issue that the petitioner placed before it. The Court stated, "the question presented was whether tenants may challenge rent charges, where they are asserted to exceed the lawful rent ceiling based solely on a single improper ceiling adjustment made some eight years previously and, therefore, not subject to direct attack because of the three year statute of limitations contained in the Rental Housing Act of 1985." Id. at 95 (emphasis added). The Court also noted that the "petition [filed on April 11, 1994] attributed the improper rent ceilings exclusively to an erroneously computed June 30, 1986 rent ceiling adjustment..." Id. (emphasis added). The Court held that the Act's three-year limitation on actions barred the tenants' claim, because they "did not file a timely challenge to the June 1986 rent ceiling adjustment." Id. at 100.

The Court's holding in Kennedy did not bar Ms. Redmond's claim, because Ms. Redmond filed her petition on September 22, 1992, which was less than three years after the housing provider implemented the adjustment on July 1, 1991. Unlike Kennedy, Redmond was not "based solely on a single improper adjustment made some eight years

⁶ Caftiz, 615 A.2d at 228.

previously.” Id. at 95. Ms. Redmond based her claim on several rent ceiling adjustments; and she lodged a timely challenge to the July 1, 1991 adjustment, which the housing provider implemented less than three years before she filed the petition. In Kennedy, the Court held that “[t]enants must file any challenge to any type of rent adjustment within three years after the adjustment takes effect.” Since Ms. Redmond filed her petition on September 22, 1992, within three years of the July 1, 1991 adjustment, the statute of limitations did not bar the challenge.

After reviewing the record, the Commission determined that the substantial record evidence illustrated that the tenant’s rent ceiling was \$228.00. A detailed explanation of the Commission’s reasons for determining that the legal rent ceiling was \$228.00 follows. The Commission began its discussion with an overview of the record evidence. Next, the Commission discussed the legal standard governing its review and recounted the substantial record evidence, which demonstrated that the legal rent ceiling was \$228.00. Thereafter, the Commission discussed the housing provider’s position and the proper interplay between the rent ceiling and rent. The Commission cited the cases from the petition for rehearing throughout the decision. However, the Commission discussed each case, seriatim, in Part A, Section 4 of its decision. In Part A, Section 5, the Commission calculated the refund for the rent overcharges. Finally, in Part B, the Commission provided its reasons and the legal principles underlying its decision to impose a refund for the reduction in services through the date of the OAD hearing.

A. Whether the Commission properly determined that the correct rent ceiling was \$228.00 per month and properly ordered a refund for rent overcharges.

1. Overview

The housing provider filed an Amended Registration Form with the RACD on December 22, 1987. The registration form documented a September 1, 1987 increase in the tenant's rent ceiling from \$218.00 to \$228.00. Consequently, the tenant's rent ceiling, which was the maximum amount the housing provider could legally demand for monthly rent, was \$228.00. On September 1, 1989, the housing provider increased the tenant's rent to \$250.00, without an increase in the rent ceiling. As a result, the rent exceeded the rent ceiling.

On May 31, 1991, the housing provider noticed its intent to implement an adjustment of general applicability.⁷ On the face of the notice, the housing provider informed the tenant that her legal rent ceiling was \$228.00; and the housing provider advised the tenant that her rent account might have been overcharged. The adjustment of general applicability, implemented on July 1, 1991, led to an increase in the rent ceiling from \$228.00 to \$240.00. The housing provider reduced the rent charged from \$250.00 to \$240.00, which was the new rent ceiling that the housing provider implemented on July 1, 1991. The housing

⁷ D.C. OFFICIAL CODE § 42-3502.06(b) provides:

On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent ceiling established by subsection (a) of this section. This adjustment of general applicability shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the previous calendar year. No adjustment of general applicability shall exceed 10%. A housing provider may not implement an adjustment of general applicability, or an adjustment permitted by subsection (c) [hardship petition] of this section for a rental unit within 12 months of the effective date of the previous adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent ceiling for that unit.

provider's action to reduce the rent to the amount of the rent ceiling was in accordance with 14 DCMR § 4205.1, which provides:

If the rent for a rental unit on or after the effective date of the Act exceeds the authorized rent ceiling for the rental unit, the housing provider shall promptly implement a rent reduction to an amount equal to or less than the authorized rent ceiling.

On September 22, 1992, the tenant filed a petition and challenged, among other things, the adjustment that the housing provider implemented on July 1, 1991. The statute of limitations, which is embodied in the Act, provides that "[n]o petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment." D.C. OFFICIAL CODE § 42-3502.06(e). Since the tenant filed the petition on September 22, 1992, the Act permitted a challenge to rent adjustments that the housing provider implemented between September 22, 1989 and September 22, 1992. Accordingly, D.C. OFFICIAL CODE § 42-3502.06(e), did not bar the tenant's challenge to the adjustment that the housing provider implemented on July 1, 1991. See Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995); Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990) (holding that tenants may challenge adjustments that the housing provider implemented within three years before the tenants filed the petition).

2. The Commission's Review

When the tenant filed the notice of appeal, the Commission considered the following pertinent issue:

Whether the hearing examiner erred when he disregarded the statement on the May 31, 1991 notice of rent increase in which the housing provider

indicated the correct rent ceiling was \$228.00 per month, and admitted to overcharges in the rent.

Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC June 4, 1999) at 29.

D.C. OFFICIAL CODE § 42-3502.16(h) governs the Commission's review of the notice of appeal. This provision of the Act empowers the Commission to reverse in whole or in part, any decision of the Rent Administrator that the Commission finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of the Act, or unsupported by the substantial evidence on the record of the proceedings before the Rent Administrator.

The Commission conducts its review by examining the entire record on appeal. The record on appeal consists of the hearing examiner's findings of fact and conclusions of law, the tape recordings or transcripts of the hearing, all documents and evidence admitted during the hearing, registration files and other documents officially noticed, and all pleadings filed with the Rent Administrator. See 14 DCMR § 3804. The Commission determined that the lawful rent ceiling was \$228.00 after reviewing the substantial record evidence.

The record shows that the housing provider filed an Amended Registration Form⁸ on December 22, 1987. This form indicated that the housing provider increased the tenant's rent ceiling from \$218.00 to \$228.00 on September 1, 1987. Since the tenant filed TP 23,146 on September 22, 1992, the three-year limitations period began on

⁸ The regulation, 14 DCMR § 4204.9, provides:

Except as provided in §4204.10, any rent ceiling adjustment authorized by the Act and this chapter shall be taken and perfected within the time provided in this chapter, and shall be considered taken and perfected only if the housing provider has filed with the Rent Administrator a properly executed amended Registration/Claim of Exemption Form as required by §4103.1, and met the notice requirements of §4101.6.

September 22, 1989 and ended on September 22, 1992. The tenant could not challenge the September 1, 1987 rent ceiling adjustment, because the housing provider implemented the adjustment more than three years before the tenant filed the petition. Consequently, the tenant's legal rent ceiling, as established by the December 22, 1987 filing, was \$228.00. The Amended Registration Form that the housing provider filed on December 22, 1987 was the only filing that reflected rent levels, until the housing provider filed the Certificate of Election of Adjustment of General Applicability⁹ on July 1, 1991.

During the OAD hearing, the tenant offered testimony and documentary evidence concerning the 1991 adjustment, and she cross-examined the housing provider's witness on the adjustment that it implemented on July 1, 1991. The tenant attached the Tenant Notice for 1991 Section 206(b) Increase of General Applicability to the tenant petition and submitted it as an exhibit during the OAD hearing. The hearing examiner marked the exhibit as Petitioner's Exhibit 2, and admitted it as record evidence. The Tenant Notice for 1991 Section 206(b) Increase of General Applicability contained the following relevant information:

⁹ The regulation, 14 DCMR § 4204.10, provides:

Notwithstanding §4204.9, a housing provider shall take and perfect a rent ceiling increase authorized by §206(b) of the Act (an adjustment of general applicability) by filing with the Rent Administrator and serving on the affected tenant or tenants in the manner prescribed in §4101.6 a Certificate of Election of General Applicability, which shall do the following:

- (a) Identify each rental unit to which the election applies;
- (b) Set forth the amount of the adjustment elected to be taken, and the prior and new rent ceiling for each unit; and
- (c) Be filed and served within thirty (30) days following the date when the housing provider is first eligible to take the adjustment.

In accordance with Section 206(b) of the Rental Housing Act of 1985, D.C. Law 6-10, please be advised that the rent ceiling for your apartment will be increased to \$240.00, effective July 1, 1991.

Your Legal Rent Ceiling Is	<u>\$228.00</u>
Your Current Rent Charged Is	<u>\$250.00</u>
Your New Rent Ceiling Is	<u>\$240.00</u>
Your New Rent Charged Is	<u>\$240.00</u>

Notice: Records available from the owner, now deceased, show that you may have been overcharged on your rent account. If you believe this is the case, please notify this office, in writing, within thirty (30) days or we will consider your account to have been correctly charged.

Majerle Management, Inc.

In this notice, the housing provider informed the tenant that the legal rent ceiling was \$228.00 and noticed a rent ceiling increase from \$228.00 to \$240.00 on July 1, 1991.

The housing provider also indicated that the current rent charged was \$250.00, and the new rent charged would be \$240.00.

On July 1, 1991, the housing provider filed the Certificate of Election of Adjustment of General Applicability with the RACD.¹⁰ With this filing, the housing provider perfected the rent ceiling adjustment of general applicability, effective July 1, 1991, and certified that the rent ceiling was \$228.00.

During the OAD hearing, the housing provider testified that the legal rent ceiling was \$228.00, when it executed the notice of adjustment of general applicability in 1991.

¹⁰ The Commission takes official notice of the Certificate of Election of General Applicability, which the housing provider filed with the RACD on July 1, 1991. The Commission takes this action pursuant to the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE § 2-509(b), which provides that where the decision of an agency in a contested case rests upon official notice of a material fact not appearing in the evidence in the record, any party to such a case, upon timely request, shall be afforded an opportunity to show the contrary. In accordance with D.C. OFFICIAL CODE § 2-509(b), the parties have fifteen (15) days from the date of this decision to show facts contrary to those found in the Certificate of Election of General Applicability. See Carey v. District Unemployment Compensation Bd., 304 A.2d 18, 20 (D.C. 1973).

The transcript of the OAD hearing contained the following testimony:

MS. REDMOND: Going back to the tenant notice of 1991, Section 206(b), Increase of General Applicability, how did you arrive at that \$240 you're listing as the new rent ceiling?

MR. MAJERLE: I have to look at it again. Can I look at a copy?

EXAMINER
BRAFOR: Let him see a copy.

MR. MAJERLE: That would have been a 5.4% increase over [\$]228, the legal rent ceiling as I saw it.

MS. REDMOND: And how did you determine that the legal rent ceiling was \$228.00?

MR. MAJERLE: Based on the registration file.

OAD Hearing Transcript (Mar. 27, 1996) (TR.) at 122.

The registration file for the housing accommodation contains an amended registration form that the housing provider filed on December 22, 1987.¹¹ Under the section of the amended registration form entitled Rent Ceilings, the housing provider indicated that it adjusted the tenant's rent ceiling from \$218.00 to \$228.00 on September 1, 1987. The record does not contain an amended registration form, certificate of election, or any other document that reflects an increase in the rent ceiling from \$228.00 to \$250.00. In Charles E. Smith Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 492 A.2d 875, 878 (D.C. 1985), the Court held that "[s]ome form of reporting requirements or 'paper trail' is essential for effective rent control." See also 14 DCMR §

¹¹ Pursuant to Carey v. District Unemployment Compensation Bd., 304 A.2d 18, 20 (D.C. 1973), the hearing examiner took official notice of the RACD registration file for the housing accommodation. See Redmond v. Majerle Mgmt., Inc., TP 23,146 (OAD May 31, 1996) at 7.

4204.10. There were no documents in the registration file that reflected an increase in the tenant's rent ceiling above \$228.00, until the housing provider filed the Certificate of Election of Adjustment of General Applicability on July 1, 1991.

The Commission determined that the correct rent ceiling was \$228.00 after reviewing the substantial record evidence of the hearing examiner's proceedings. In the Tenant Notice for 1991 Section 206(b) Increase of General Applicability, which the tenant attached to the petition and submitted as an exhibit during the hearing, the housing provider indicated that the proper rent ceiling was \$228.00. In addition, the housing provider testified during the OAD hearing that the legal rent ceiling was \$228.00. Moreover, the housing provider's registration file reflected that the rent ceiling was \$228.00. When the housing provider increased the rent ceiling from \$228.00 to \$240.00, the housing accommodation was not properly registered.¹² The Act prohibits a housing provider from implementing a rent adjustment, if the housing accommodation is not registered in accordance with § 42-3502.05. See D.C. OFFICIAL CODE § 42-3502.08(a)(1)(B). Consequently, the Commission rolled the rent back to \$228.00. See Redmond at 9-15; Majerle Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 768 A.2d 1003, 1005 (D.C. 2001). See also Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995) (holding that the rent increases were illegal because the housing accommodation was not properly registered when the housing provider implemented the increases).

¹² The Commission reversed the hearing examiner's finding that the housing accommodation was properly registered, because the substantial record evidence revealed that the housing provider failed to register the property in accordance with D.C. OFFICIAL CODE § 42-3502.05. The owner of the property did not obtain a certificate of occupancy or housing business license in her name. In addition, the certificate of occupancy, which the housing provider attached to the amended registration form on July 1, 1991, reflected four rental units, and the housing business license reflected five rental units.

When the Commission issued Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC June 4, 1999), it reviewed the tenant's challenge to the housing provider's July 1, 1991 adjustment of general applicability. Since the tenant filed the petition on September 22, 1992, the July 1, 1991 adjustment was within the three-year statute of limitations.

3. The Housing Provider's Position and the Interplay of Rent and Rent Ceiling

In the face of the record evidence, the housing provider's attorney maintains that the tenant's rent ceiling was \$250.00. In the brief submitted to the Court, the housing provider's attorney asserted the following:

On September 22, 1989, Redmond's rent ceiling was \$250.00 per month. This ceiling is not subject to attack because it was implemented more than three years prior to the tenant petition.¹³ In July 1991, Redmond's rent ceiling was reduced to \$240.¹⁴ No other testimony was presented as to a higher or lower monthly rent charged on September 22, 1989, three years prior to the tenant petition. Redmond may only challenge rent increases not rent reductions.¹⁵

The testimony at RACD was clear. The rent paid on September 22, 1989 was \$250.00. The rent was reduced to \$240.00 thereafter. The three year statute of limitations basically says whatever rent was charged three years prior to the filing is the rent ceiling.

¹³ The record does not support counsel's assertion that Ms. Redmond's rent ceiling was \$250.00 per month on September 22, 1989. The rent ceiling, as illustrated by the December 22, 1987 filing, was \$228.00. There is no record evidence that the housing provider implemented an increase in the rent ceiling from \$228.00 to \$250.00. The Amended Registration Form filed on December 22, 1987 was the only filing that reflected rent levels, until the housing provider filed the Certificate of Election of Adjustment of General Applicability on July 1, 1991. On July 1, 1991, the housing provider implemented a rent ceiling adjustment that increased the rent ceiling from \$228.00 to \$240.00.

¹⁴ Petitioner's Exhibit 2 revealed that the housing provider increased the rent ceiling from \$228.00 to \$240.00 on July 1, 1991. Counsel's assertion that the housing provider reduced the rent ceiling to \$240.00 is at odds with the record evidence.

¹⁵ The Act does not provide that a tenant "may only challenge rent increases not rent reductions." The Act employs the term "adjustment" to describe changes, increases and decreases, in the rent and rent ceiling. D.C. OFFICIAL CODE § 42-3502.06(e) provides that a "tenant may challenge a rent adjustment implemented ... by filing a petition with the Rent Administrator." Moreover, 14 DCMR §§ 4200.5 & 4200.7 provide that a "rent ceiling adjustment is any increase or decrease in a rent ceiling which is authorized by the Act, ... and [a] rent adjustment is any increase or decrease in rent required or permitted by the Act and this chapter." (emphasis added). See also 14 DCMR § 4204.12, which provides: "Where a housing provider is required to take and perfect a downward rent ceiling adjustment, the housing provider shall simultaneously implement a rent reduction to an amount equal to or less than the new rent ceiling." (emphasis added).

Brief at 10. The quoted text contains both factual and legal conclusions that are not supported by the record, the Act, or the regulations promulgated to implement the Act. See supra notes 13-15. The housing provider's assertion that the tenant's rent ceiling was \$250.00 per month reveals a misinterpretation of the term rent ceiling.

The rent ceiling, which is the chief mechanism for stabilizing rent in the District of Columbia, is the officially recognized maximum allowable rent. See Borger Mgmt., Inc. v. Godfrey, TP 20,116 (RHC Sept 4, 1987) at 14. The "rent" is the amount of money that the housing provider charges the tenant. The rent charged may be lower than or equal to the rent ceiling, but it cannot be higher than the rent ceiling. The housing provider may increase the rent charged "to an amount no higher than the rent ceiling in accordance with § 208(g)." Id. at 3.

The Commission's regulations provide a comprehensive explanation of the term rent ceiling, and they illustrate the proper interplay between the rent ceiling and rent. The regulation, 14 DCMR § 4200, provides:

- 4200.1 The rent ceiling establishes the maximum amount of rent that a housing provider may legally demand or receive for a rental unit which is covered by the Rent Stabilization Program of the Act.
- 4200.2 Each rental unit covered by the Rent Stabilization Program shall have an initial rent ceiling established pursuant to §206(a) of the Act and §4201; Provided, that no rent ceiling shall be established for any rental unit exempt from the program pursuant to §205(a) of the Act.
- 4200.3 If a rental unit has a rent ceiling, the rent for that unit may legally be equal to or less than the rent ceiling, but the rent shall not be more than the rent ceiling.
- 4200.4 The Act regulates rent ceilings by determining which rental units shall have a rent ceiling, and by setting the terms and conditions for every increase or decrease in the rent ceiling of a rental unit.

- 4200.5 A rent ceiling adjustment is any increase or decrease in a rent ceiling which is authorized by the Act, and taken and perfected by the housing provider in accordance with §4204.
- 4200.6 The Act regulates the rent for each rental unit under the Rent Stabilization Program by requiring that the rent shall always be less than or equal to the rent ceiling, and by setting terms and conditions for every increase or decrease in the rent for a rental unit covered by the Act.
- 4200.7 A rent adjustment is any increase or decrease in rent required or permitted by the Act and this chapter.¹⁶
- 4200.8 An increase in the rent for a rental unit shall be authorized only by an increase in the rent ceiling taken and perfected pursuant to §4204 and under the following conditions:
- (a) At the election of the housing provider pursuant to §§4206 and 4207;
 - (b) Under an order of the Rent Administrator issued pursuant to §§4209, 4210, 4211, or 4212;
 - (c) Under a voluntary agreement approved by the Rent Administrator pursuant to §4213; or
 - (d) Under any prior rent control law and the regulations, if any, promulgated under that prior law.

(emphasis added).

The housing provider maintains that the rent charged established the rent ceiling. In essence, the housing provider argues that when it set the rent at \$250.00, the rent ceiling, which was \$228.00 at the time, was somehow increased to \$250.00 based upon the passage of time. The housing provider's position is diametrically opposed to the Act and 14 DCMR § 4200.3, which provides that "the rent for [a rental] unit may legally be equal to or less than the rent ceiling, but the rent shall not be more than the rent ceiling." (emphasis added). The fact that the housing provider improperly increased the rent to

¹⁶ There was no record evidence that the rent increase to \$250.00 was required or permitted by the Act or the regulations.

\$250.00 does not result in a conversion of the rent to the rent ceiling.

The housing provider urged the Court to reverse the Commission's refund for rent overcharges by focusing its challenge on the rent that the housing provider charged more than three years before the tenant filed the petition. While the focus on the \$250.00 rent charged provides for what appears to be a compelling statute of limitations argument, the tenuity of the housing provider's position is revealed when one considers the substantial evidence concerning the adjustment implemented on July 1, 1991; the rent stabilization provisions of the Act; 14 DCMR §§ 4200.1-4200.8; and the decisions interpreting the Act.

In Guerra v. Shannon & Luchs, TP 10,939 (RHC Apr. 2, 1986) at 2 n.2, the Commission held that "[a]n increase in actual rent charged is never directly authorized by the Act, but rather is authorized only by a prior or concurrent rent ceiling increase properly taken under the Act. This may appear to be splitting hairs, but the record-keeping necessary for proper administration of the rent stabilization program requires that this distinction be recognized and observed." (emphasis added). The Commission quoted Guerra with approval in Borger Mgmt., Inc. v. Godfrey, TP 20,116 RHC (Sept. 4, 1987) at 9. Rent ceiling adjustments, properly taken under the Act, "shall be considered taken and perfected only if the housing provider has filed with the Rent Administrator a properly executed amended Registration/Claim of Exemption form...." 14 DCMR § 4204.9.

In Redmond, there was no record evidence of a rent ceiling increase from \$228.00 to \$250.00, properly taken under the Act. The Amended Registration Form, filed on December 22, 1987, reflected that the tenant's rent ceiling was \$228.00. This Amended

Registration Form was the only filing that reflected rent levels, until the housing provider filed the Certificate of Election of Adjustment of General Applicability on July 1, 1991. This Certificate of Election of Adjustment of General Applicability evinced a rent ceiling adjustment from \$228.00 to \$240.00.¹⁷ Consequently, the Act provided no basis for increasing the rent charged to \$250.00. The housing provider argues that the rent charged, which the housing provider improperly increased to \$250.00, established a rent ceiling in the amount of \$250.00. This position does not enjoy support in the law.

When the Commission confined the inquiry to the three-year period immediately preceding the date that the tenant filed the petition, the Commission determined that the July 1, 1991 adjustment fell within the statutory period, which was September 22, 1989 to September 22, 1992. The housing provider suggests that we ignore record evidence, within the three-year period, which confirms that the rent ceiling was \$228.00 and not \$250.00.

AOBA's counsel, in its brief to the Commission, stated, "the Commission undermines the central purpose of the statute of limitations of avoiding this 'administrative quagmire' by its startling holding that merely stating the wrong rent

¹⁷ The rent ceiling increase from \$228.00 to \$240.00 was improper, because the housing provider violated the provisions of 14 DCMR § 4205.5, which provides:

Notwithstanding §4205.4, a housing provider shall not implement a rent adjustment for a rental unit unless all of the following conditions are met:

- (a) The rental unit and the common elements of the housing accommodation are in substantial compliance with the DCMR 14, Housing Regulations, or any substantial noncompliance is the result of tenant neglect or misconduct;
- (b) The housing provider has met the registration requirements of §4102 with respect to the rental unit; and
- (c) At least one hundred eighty (180) days shall have elapsed since the date of implementation of any prior rent increase.

ceiling or rent within three years can reopen challenges that would otherwise clearly be barred.” AOBA Brief at 8.

The record does not support AOBA’s post hearing assertion that the housing provider stated “the wrong rent ceiling or rent” within the three year period. To the contrary, the record contains several instances where the housing provider asserted that the legal rent ceiling was \$228.00. On May 31, 1991, the housing provider executed a Tenant Notice for 1991 Section 206(b) Increase of General Applicability in which it indicated that \$228.00 was the legal rent ceiling. On July 1, 1991, the housing provider filed a Certificate of Election of Adjustment of General Applicability with the RACD and certified that the prior rent ceiling was \$228.00, and the new rent ceiling was \$240.00. In each of these documents, the housing provider indicated that the prior rent charged was \$250.00, and the new rent charged, on the effective date of the adjustment, was \$240.00. During the OAD hearing, the housing provider testified that the legal rent ceiling was \$228.00. The housing provider stated that he “determine[d] that the rent ceiling was \$228.00 [b]ased on the registration file.” Tr. at 122. Accordingly, the record does not support AOBA’s assertion that the housing provider stated the wrong rent ceiling within the three-year limitation period.¹⁸

The position advanced by AOBA and the housing provider would undermine one of the central purposes of the Act, which is to protect low- and moderate-income tenants from the erosion of their income from increased housing costs. See D.C. OFFICIAL CODE § 42-3501.02. The housing providers’ position would thwart the Rent Stabilization

¹⁸ Post hearing assertions by counsel do not constitute evidence. Moreover, “an administrative decision should rest upon evidence appearing in the public record of the agency proceeding.” Harris v. District of Columbia Rental Hous. Comm’n, 505 A.2d 66, 69 (D.C. 1986). The record did not contain evidence that the housing provider “merely stated the wrong rent ceiling or rent within” the statutory period.

Program of the Act by enabling housing providers to implement unauthorized rent increases that exceed the rent ceiling. The conversion of an illegal rent to the rent ceiling would be tantamount to a nullification of the Act's chief mechanism for stabilizing rents.

The Commission cannot turn a deaf ear or a blind eye to the substantial record evidence. The illegal rent, which the housing provider implemented more than three years before the tenant challenged the adjustment, did not become the rent ceiling on the facts of Redmond. The tenant's timely challenge to the adjustment that the housing provider implemented within the statutory period provided the Commission with jurisdiction to review the adjustment. The testimonial and documentary evidence that the rent ceiling was \$228.00 was overwhelming.

When the Council of the District of Columbia promulgated the Act's statute of limitations, it did so in order to rectify the administrative difficulties associated with conducting "a rent ceiling analysis of all prior years to arrive at the present rent ceiling." Kim v. Woodley, TP 23,260 (RHC Sept. 13, 1994) at 10. When the legislature enacted the statute of limitations, "it required the tenant petition to be filed within three years from the date the challenged adjustment became effective." Id. The legislature did not intend to repeal or amend the statutory definition of a rent ceiling or the relationship between the rent ceiling and rent charged.

The record evidence in Redmond revealed that the housing provider implemented a rent ceiling adjustment on July 1, 1991. The tenant filed the petition, on September 22, 1992, which was less than three after the effective date of the July 1, 1991 adjustment. In the notice and certificate executed to implement the adjustment, the housing provider listed the legal rent ceiling, which was \$228.00. Moreover, the agency's registration files

established that the legal rent ceiling was \$228.00. The Commission has consistently held that the last legally established rent ceiling remains the rent ceiling unless it is properly adjusted. See Washington v. H.G. Smithy Co., TP 23,370 (RHC May 14, 1998); Kim v. Woodley, TP 23,260 (RHC Sept. 13, 1994); Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990). The housing provider implemented a rent ceiling adjustment from \$228.00 to \$240.00 on July 1, 1991. The Commission reversed the adjustment, because the housing accommodation was not properly registered on the effective date of the adjustment. Consequently, the housing provider did not properly adjust the rent ceiling since it implemented the last legally established rent ceiling of \$228.00. Accordingly, the tenant's authorized rent ceiling is \$228.00.

4. Cases Cited in Petition for Rehearing or Rehearing En Banc

The Court directed the Commission to consider the applicability of the Commission decisions cited in the petition for rehearing or rehearing en banc. Before the Commission fashioned its response, the Commission considered each case, and incorporated salient points from the cases in its decision.

The Commission is mindful of the doctrine of stare decisis, which provides that "when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where [the] facts are substantially the same ..."¹⁹ (emphasis added). However, "the rule of stare decisis is never properly invoked unless in the decision put forward as precedent the judicial mind has been applied to and passed upon the precise question." Murphy v. McCloud, 650 A.2d 202, 205 (D.C. 1984) quoted in Mushroom Transp. v. District of Columbia Dep't of

¹⁹ BLACK'S LAW DICTIONARY 1261 (5th ed. 1979).

Employment Servs., 698 A.2d 430, 433 (D.C. 1997).

In the prior decisions that the housing provider cited, the “judicial mind” of the Commission did not pass upon the peculiar facts and the precise question presented in the Redmond appeal. In the cases that the housing provider cited, the Commission consistently held that the statute of limitations barred a challenge to an adjustment that the housing provider implemented more than three years before the tenant filed the petition. In Redmond, the Commission did not depart from its prior decisions when it determined that the legal rent ceiling was \$228.00. Redmond, however, contained a unique set of facts, which distinguished it from the decisions that the housing provider cited.

Below, the Commission discusses the following cases seriatim: Washington v. H.G. Smithy Co., TP 23,370 (RHC May 14, 1998); Emes v. Campbell, TP 23,258 (RHC Oct. 23, 1996); Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995); Kim v. Woodley, TP 23,260 (RHC Sept. 13, 1994); Peerless Properties v. Hashim, TP 21,159 (RHC Oct. 26, 1992); Williams v. Aubinoe, TPs 22,821 & 22,814 (RHC Aug. 12, 1992); Washington Realty Co. v. 3030 30th St. Tenant Ass’n, TP 20,749 (RHC Jan. 30, 1991); Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990); Sendar v. Burke, HP 20,213 & TP 20,772 (RHC Apr. 6, 1988); Borger Mgmt., Inc. v. Godfrey, TP 20,116 (RHC Sept. 4, 1987);

a. Borger Mgmt., Inc. v. Godfrey, TP 20,116 (RHC Sept. 4, 1987)

The principles articulated in Borger Mgmt., Inc. v. Godfrey, TP 20,116 (RHC Sept. 4, 1987) support the Commission’s decision in Redmond and illustrate the fallacy in the housing provider’s argument that the rent charged established the rent ceiling.

In Borger, the Commission stressed the importance of distinguishing between the rent and the rent ceiling. The Commission held that the rent ceiling, which is the chief mechanism for stabilizing rent in the District of Columbia, is the officially recognized maximum allowable rent. The “rent” is the amount actually charged for the unit. The Commission held that the rent charged may be lower than the rent ceiling; however, the rent charged cannot be higher than the rent ceiling. Id. at 7. “An increase in actual rent charged is never directly authorized by the Act, but rather is authorized only by a prior or concurrent rent ceiling increase properly taken under the Act.” Guerra v. Shannon & Luchs, TP 10,939 (RHC Apr. 2, 1986) at n.2 quoted in Borger at 9.

In Redmond, the housing provider filed an amended registration form on December 22, 1987. The amended registration form, which was the last rent ceiling increase that the housing provider implemented, documented an increase in the rent ceiling from \$218.00 to \$228.00. Since the rent ceiling is the maximum allowable rent, the Act prohibited the housing provider from charging a rent higher than the rent ceiling, which was \$228.00.

In violation of the Act and the principles enunciated in Borger, the housing provider increased the rent charged to \$250.00, when the rent ceiling was only \$228.00. The housing provider acknowledged its error, when it implemented an adjustment of general applicability on July 1, 1991 and in testimony during the OAD hearing. The housing provider violated the Act and the principles enunciated in Borger, because the rent charged exceeded the rent ceiling, which is the maximum amount that the housing provider may charge or demand for rent.

b. Washington v. H.G. Smithy Co., TP 23,370 (RHC May 14, 1998)

In Washington v. H.G. Smithy Co., TP 23,370 (RHC May 14, 1998), the tenant filed a petition on May 28, 1993 and challenged a rent ceiling adjustment that the housing provider implemented in 1989. "The hearing examiner held that the tenant did not present evidence of any invalid rent ceiling adjustment during the relevant three year period, May 28, 1990 through May 28, 1993." Id. at 3. Since the tenant filed the petition on May 28, 1993 and challenged a rent ceiling adjustment that the housing provider implemented in 1989, the hearing examiner held that the Act's three-year limitation on actions barred the tenant's challenge. The tenant appealed the hearing examiner's decision.

While the matter was pending in the Commission, the Court issued Kennedy v. District of Columbia Rental Hous. Comm'n, 709 A.2d 94 (D.C. 1998). The "question presented [in Kennedy was] whether tenants may challenge rent charges, where they are asserted to exceed the lawful rent ceiling based solely on a single improper ceiling adjustment made some eight years previously and, therefore, not subject to direct attack because of the three year statute of limitations contained in the Rental Housing Act of 1985." Id. at 95 (emphasis added). The Court noted that the "petition attributed the improper rent ceilings exclusively to an erroneously computed June 30, 1986 rent ceiling adjustment...." Id. The Court held that the three (3) year statute of limitations barred the tenants' recovery of rent refunds for rent overcharges based solely on a single rent adjustment that the housing provider implemented more than three years before the tenant filed the petition.

The housing provider in Washington moved for summary affirmance of the hearing examiner's decision based on the Court's holding in Kennedy. The Commission

noted that Washington, like Kennedy, “involved similar tenants’ claims of a single invalid implemented rent ceiling adjustment ... made approximately eight (8) years prior to the filing of the tenants’ petition under the 1985 Act.” Washington at 5. The Commission held that the three-year statute of limitations barred the tenant’s challenge to the rent ceiling adjustment that the housing provider implemented more than three years before the tenant initiated her claim. The Commission noted that Ms. Washington “did not present evidence of any invalid rent ceiling adjustment during the relevant three year period.” Id. at 3. This fact distinguishes Washington from Redmond.

Unlike Ms. Washington, Ms. Redmond presented evidence of an invalid rent ceiling adjustment during the relevant three-year period. The Commission denied the tenant’s claim in Washington, because the case involved a single rent ceiling adjustment that the housing provider implemented more than three years before the tenant challenged the adjustment. Ms. Redmond, on the other hand, filed a tenant petition and challenged an adjustment, which the housing provider implemented less than three years before Ms. Redmond challenged the adjustment. Consequently, the statute of limitations did not bar Ms. Redmond’s claim.

Accordingly, the Commission’s decision in Washington does not preclude the Commission’s review of the rent adjustment that the housing provider implemented less than three years before the tenant filed the petition in Redmond.

c. Emes v. Campbell, TP 23,258 (RHC Oct. 23, 1996)

In Emes v. Campbell, TP 23,258 (RHC Oct. 23, 1996), the tenant filed a petition on February 12, 1993. The tenant claimed that the rent charged exceeded the legal rent ceiling, and she alleged that the rent ceilings filed with RACD were improper. The

Commission held that D.C. OFFICIAL CODE § 42-3502.06(e) limited the tenant's challenge to February 12, 1990 through February 12, 1993, which was the three-year period immediately preceding the date, that she filed the petition.

The housing provider filed several registration forms with RACD between 1985 and 1990. The Commission reviewed the record and determined that there was only one "rent ceiling filing in the record for the relevant time period." Id. at 10. That filing reflected that the rent ceiling for the tenant's unit was \$4342.00 in April 1990, and the rent charged was \$1445.00. The Commission held that the tenant could not "show with the agency's records for this case that her rents exceeded the allowed rent ceilings, because the record showed that the rent ceilings for the tenant's unit were always higher than the rent charged." Id. at 10.

In Redmond, the Act limited the tenant's challenge to adjustments that the housing provider implemented between September 22, 1989 and September 22, 1992. The tenant introduced testimony and documentary evidence, which showed that her rent exceeded the legal rent ceiling. During the OAD hearing, the tenant introduced the housing provider's rent ceiling filings. Ms. Redmond entered the housing provider's Tenant Notice for 1991 Section 206(b) Increase of General Applicability into evidence during the OAD hearing. The notice reflected that the tenant's legal rent ceiling was \$228.00, and the rent charged was \$250.00.²⁰ In Emes, the Commission held that the "tenant did not show, through the introduction of the housing provider's rent ceiling filings, that her rent exceeded her unit's rent ceilings during the relevant period." Id. at

²⁰ The housing provider's registration file in RACD contains a Certificate of Election of Adjustment of General Applicability that the housing provider filed with the agency on July 1, 1991. This document reflects that the rent charged, which was \$250.00, exceeded the rent ceiling, which was \$228.00.

9-10. In Redmond, the tenant illustrated, through the housing provider's filings and testimony, that her rent exceeded the rent ceiling during the statutory period.

Accordingly, Ms. Redmond, unlike the tenant in Emes, showed, through the introduction of the housing provider's rent ceiling filings, that her rent exceeded the unit's rent ceiling.

d. Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995)

In Jenkins, the tenant filed the petition on July 9, 1993 and challenged several rent adjustments that the housing provider implemented between November 6, 1985 and June 8, 1993. The Commission, which held that the tenant did not timely challenge the rent adjustments that occurred between November 6, 1985 and July 8, 1990, stated the following:

[A]ccording to the statute of limitations found in D.C. Code § 45-2516(e),²¹ the tenant could only challenge the rent increases that were taken three years prior to the filing of the tenant petition. In other words, the tenant could challenge any rent adjustments that occurred between July 9, 1990 and July 9, 1993. The tenant can, however, go forward from the date the tenant petition was filed to challenge any rent adjustment that occurred after the petition was filed and before the record closed. D.C. Code § 45-2516(e) only determines how far back a tenant can challenge a rent adjustment.²²

Id. at 9.

In Jenkins, the housing provider implemented three rent increases during the three-year statutory period, July 9, 1990 to July 9, 1993. The Commission found that the three increases were illegal, because the housing accommodation was not properly registered when the housing provider implemented the rent increases. See D.C. OFFICIAL

²¹ D.C. CODE § 45-2516(e) was recodified at D.C. OFFICIAL CODE § 42-3502.06(e).

²² "When violations are continuing in nature, the Commission also "looks forward" from the date the petition was filed, to the termination date of the violation. If the violation did not terminate prior to the timely filing of the petition, and if the record contained evidence of the continuing violation, the remedy of refund for [the] improper rent adjustment may go up to the date the record closed, which is usually the hearing date." Jenkins at 6.

CODE § 42-3502.08. The Commission held that the refund period was July 9, 1990 through October 26, 1993, which was the date the record closed. The Commission reversed the hearing examiner's refund calculations and remanded the case to the hearing examiner for a proper calculation of the tenant's refund.

The facts in Jenkins are strikingly similar to the facts in Redmond. In Redmond, the Commission denied a challenge to the rent adjustments that the housing provider implemented more than three years before the tenant filed the petition. However, the Commission permitted a review of the 1991 adjustment, which the housing provider implemented within the statutory period. In line with Jenkins, the Commission denied the adjustment implemented on July 1, 1991, because the housing provider failed to register the housing accommodation in accordance with D.C. OFFICIAL CODE § 42-3502.08. Accordingly, the Commission's holding in Jenkins supports the Commission's decision in Redmond.

e. Kim v. Woodley, TP 23,260 (RHC Sept. 13, 1994)

In Kim v. Woodley, TP 23,260 (RHC Sept. 13, 1994), the housing provider increased the tenant's rent ceiling on February 3, 1987. The tenant filed a petition and challenged the February 3, 1987 adjustment six years after the housing provider implemented the adjustment. The Commission held that the tenant could not collect a refund for the rent overcharges, because the challenge to the rent increases had to be made no later than three years after their effective dates."

The tenant in Kim failed to challenge the rent adjustment within three years of the effective date of the adjustment. By contrast, the tenant in Redmond challenged the adjustment within three years of its effective date, and she offered substantial evidence to

prove her assertion that the rent charged exceeded the authorized rent ceiling. The record in Kim is devoid of these facts, which justified the Commission's holding in Redmond.

Accordingly, the Commission's holding in Kim, did not preclude the Commission's review of the adjustment that the tenant challenged in Redmond, because the tenant filed her challenge less than three years after the housing provider implemented the adjustment.

f. Williams v. Aubinoe, TPs 22,821 & 22,814 (RHC Aug. 12, 1992)

The housing provider also cited Williams v. Aubinoe, TPs 22,821 & 22,814 (RHC Aug. 12, 1992). Williams involved consolidated petitions that two tenants filed with the agency. On September 24, 1991, one tenant filed a petition and challenged an adjustment that became effective on June 1, 1986. The second tenant filed a petition on September 26, 1991, which challenged an adjustment that became effective on September 1, 1987. In each petition, the housing provider implemented one rent ceiling adjustment that became effective more than three years before the tenant filed the petition. In Williams, the housing provider did not implement a rent ceiling adjustment within the three-year period before the tenant filed the petition. The Commission affirmed the hearing examiner's finding that the statute of limitations barred the tenants' claims, because the tenants did not challenge the adjustments within three years.

Ms. Redmond successfully challenged a rent ceiling adjustment by filing her petition less than three years after the housing provider implemented the adjustment. The facts in Williams are distinguishable from the facts in Redmond, because the Act's statute of limitations did not bar Ms. Redmond's claim.

g. Sendar v. Burke, HP 20,213 & TP 20,772 (RHC Apr. 6, 1988)

In Sendar v. Burke, HP 20,213 & TP 20,772 (RHC Apr. 6, 1988), the housing provider increased the tenant's rent on July 1, 1983. On December 12, 1986, the tenant filed a petition and challenged the legality of the July 1, 1983 rent increase. The tenant filed the petition three years, five months, and twelve days after the effective date of the rent increase. The Commission held that the Act's three-year limitation on actions barred the tenant's claim of an illegal rent increase, which was first implemented more than three years before the tenant filed the petition.

When the Commission applied the holding in Sendar to the facts in Redmond, the Commission determined that the Act did not bar Ms. Redmond's claim, because she filed her petition within three years of the effective date of the challenged adjustment.

h. Washington Realty Co. v. 3030 30th St. Tenant Ass'n, TP 20,749 (RHC Jan. 30, 1991)

Washington Realty Co. v. 3030 30th St. Tenant Ass'n, TP 20,749 (RHC Jan. 30, 1991) concerned an alleged reduction of a service more than three years before the tenants filed their claim. The housing provider argued that the tenants could not challenge its discontinuation of a service, because the housing provider discontinued the service more than three years before the tenants filed the petition. The Commission, which noted that its duties did not include fact finding, remanded the issue for the hearing examiner to issue findings of fact concerning the date that the housing provider discontinued the service. The Commission held that "if it was more than three years prior to the filing of the petition, it is clear from sec. [sic] 206(e) taken together with 14 DCMR [§] 4214.8 that no finding of reduction of services can properly be made." Id. at 38 (citation omitted).

The facts in Washington Realty Co. are not analogous to the facts in Redmond. On September 22, 1992, Ms. Redmond filed a timely challenge to an adjustment that the housing provider implemented on July 1, 1991.

i. Peerless Properties v. Hashim, TP 21,159 (RHC Oct. 26, 1992)

Peerless Properties v. Hashim, TP 21,159 (RHC Oct. 26, 1992), like Washington Realty Co., stands for the proposition that § 206(e) bars the filing of a claim for the reduction of services and facilities, which began more than three years before the tenant filed the petition. The recitation of the Act's three-year limitations period and its applicability to reduction in services and facilities claims, while noteworthy, does not impact the heart of the issue in Redmond.

The statute of limitations does not bar Ms. Redmond's challenge to the July 1, 1991 adjustment, because she filed her petition less than three years after the effective date of the adjustment.

j. Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990)

In Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990), the Commission determined that the housing provider established the \$309.00 rent ceiling on November 29, 1982, when it filed an amended registration form adjusting the rent ceiling downward from \$619.00. On April 27, 1988, the tenant challenged the rent adjustments that the housing provider implemented on October 1, 1986, July 1, 1987, and April 1, 1988. Since the date of each of these rent adjustments fell within the three-year limitation period, the Commission held that the statute of limitations did not bar the tenant's challenge.

The Commission analyzed the rent ceiling adjustments of general applicability that the housing provider implemented on July 1, 1987 and July 1, 1988; and the

Commission disallowed the increases. In addition, the Commission noted that it agreed with the examiner's disallowance of "other rent ceiling adjustments ... based on Section 206(b) of the Act ... [because] they contained incorrect rent ceiling information, and because" the housing provider violated 14 DCMR §§ 4205.4 and 4206.5, when he failed to file notice forms. Ayers at 20. Consequently, the Commission determined that "\$309.00 is and will remain the rent ceiling for the Tenant's unit until a further adjustment is properly taken and perfected." Id. at 20-21.

In Redmond, the tenant filed the petition on September 22, 1992. Consequently, the Act permitted the tenant to challenge adjustments that the housing provider implemented between September 22, 1989 and September 22, 1992. The housing provider increased the tenant's rent ceiling from \$218.00 to \$228.00, when it filed an amended registration form on December 22, 1987. Since the housing provider implemented the rent ceiling adjustment more than three years before the tenant filed the petition, the Act barred the tenant's challenge to the December 22, 1987 adjustment. In accordance with Ayers, \$228.00 was and "will remain the rent ceiling for the [Ms. Redmond's] unit until a further adjustment is properly taken and perfected."²³ There is no record evidence that the housing provider properly took or perfected a rent ceiling adjustment after it implemented the adjustment on December 22, 1987.²⁴

On July 1, 1991, the housing provider increased Ms. Redmond's rent ceiling from \$228.00 to \$240.00. On September 22, 1992, the tenant challenged the adjustment

²³ Ayers at 20-21.

²⁴ The housing provider maintains that the tenant's rent ceiling is \$250.00. However, the record does not contain an amended registration form, certificate of election, or any other document that reflects an increase in the rent ceiling from \$228.00 to \$250.00.

that the housing provider implemented on July 1, 1991. Since the tenant filed the petition on September 22, 1992, the Act's three-year limitation on actions did not bar the tenant's challenge to the July 1, 1991 adjustment. The Commission reviewed the adjustment and determined that the housing provider could not implement the 1991 adjustment of general applicability and increase the rent ceiling from \$228.00 to \$240.00, because the housing accommodation was not properly registered.

In accordance with Ayers, Ms. Redmond's rent ceiling remained \$228.00, because the housing provider did not implement an authorized rent ceiling adjustment.

5. Refund for Rent Overcharges

The testimony and exhibits admitted during the OAD hearing revealed that the housing provider knowingly demanded and received rent in excess of the rent ceiling. The RACD records, the housing provider's documents, and the housing provider's testimony illustrated that the tenant's rent ceiling was \$228.00. Nevertheless, the housing provider demanded and received rent in the amount of \$250.00 from September 22, 1989 until June 30, 1991. Thereafter, the housing provider demanded rent in the amount of \$240.00 from July 1, 1991 until March 27, 1996, when the authorized rent ceiling was \$228.00.

When the housing provider charged rent, which exceeded the rent ceiling, the housing provider violated the rent stabilization provisions of the Act. In accordance with the penalty provisions of the Act, the housing provider shall refund the tenant \$5101.16 for the rent overcharges. This figure includes a trebled rent refund of \$3451.98 for the

period September 22, 1989 through March 27, 1996,²⁵ and interest from September 22, 1989 through March 26, 2002 in the amount of \$1649.18.²⁶ In addition, the Commission rolls the tenant's rent back to \$228.00 until the housing provider satisfies the registration requirements of the Act.

The Commission imposes the refund and rolls the tenant's rent back to \$228.00 in accordance with D.C. OFFICIAL CODE § 42-3509.01(a), which provides:

Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provision of subchapter II of this chapter, ... shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

In accordance with D.C. OFFICIAL CODE § 42-3509.01(a), the Commission imposes a rent refund in the amount of \$467.86 for the period September 22, 1989 through June 30, 1991. This figure represents a refund for the difference between the rent charged (\$250.00) and the rent ceiling (\$228.00) from September 22, 1989 through June 30, 1991, which was 21 months and 8 days. The Commission calculated the refund by multiplying the amount of the rent overcharge, which was \$22.00, by the period the housing provider demanded the overcharge, which was 21 months and 8 days. The Commission used the following equations:

$$\$250.00 - \$228.00 = \$22.00 \text{ (overcharge)}$$

²⁵ See *Jenkins v. Johnson*, TP 23,410 (RHC Jan. 4, 1995) (holding that the refund period begins three years before the date that the tenant filed the petition through the date of the OAD hearing, which is when the record closed).

²⁶ "Interest is calculated from the date of the violation (or when service was interrupted) to the date of the issuance of the decision." 14 DCMR § 3826.2.

$$\$22.00 \times (21 \text{ months and eight days}) = \$467.86.^{27}$$

The Commission imposes a refund of \$682.80, which is the difference between the rent charged (\$240.00) and the legal rent ceiling (\$228.00) from July 1, 1991 through March 27, 1996, the date of the OAD hearing. This period was 56 months and 27 days. The Commission calculated the balance of the refund in the following manner:

$$\$240.00 - \$228.00 = \$12.00 \text{ (overcharge)}$$

$$\$12.00 \times (56 \text{ months and 27 days}) = \$682.80.^{28}$$

The total of the combined figures, (\$467.86 + \$682.80), equals a refund for rent overcharges in the amount of \$1150.66.

In addition to imposing a refund for rent overcharges, the Commission imposes treble damages. The trebled refund (\$1150.66 x 3) is \$3451.98. The Commission determined that the housing provider acted in bad faith, and is consequently liable for treble damages, by conducting a two-pronged analysis.

The first determination was whether there was a knowing violation of the Act. The tenant has the burden of proving there was a knowing violation of the Act. Knowing only requires knowledge of the essential facts that brings the conduct within reach of the Act, and from such knowledge, the law presumes knowledge of the legal consequences that result from the performance of the conduct prohibited by the Act. Quality Mgmt. v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986) cited in Third

²⁷ The Commission computed the figure for 21 months and 8 days in the following manner. The Commission divided the monthly overcharge by the average number of days in a month and determined the daily overcharge, using the following equation: $\$22.00 / 30 \text{ days} = .073$. The Commission multiplied the daily figure by 8 days, using the following formula: $.073 \times 8 = \$5.86$. The Commission computer the total overcharge in the following manner: $\$22 \times 21 \text{ months} = \462.00 ; $\$462.00 + \$5.86 = \$467.86$.

²⁸ The Commission calculated the refund in the manner described in n.27, using the following equations: $\$12.00 / 30 = .4$; $.4 \times 27 \text{ days} = \10.80 ; $\$12.00 \times 56 \text{ months} = \672.00 ; $\$672.00 + \$10.80 = \$682.80$.

Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990). The second prong of the analysis was whether the housing provider's conduct was sufficiently egregious to warrant the additional finding of bad faith. Fazekas v. Dreyfuss Brothers, Inc., TP 20,394 (RHC Apr. 14, 1989).

In the instant case, the record revealed that the housing provider demanded and received rent in excess of the legal rent ceiling. The housing provider demanded and collected rent in excess of the rent ceiling, after it acknowledged the correct rent ceiling was \$228.00. In November 1990, the tenant informed the housing provider that she went to the RACD and discovered that her rent was in excess of the legal rent ceiling. The housing provider continued to charge the tenant \$250.00. On March 28, 1991, the housing provider filed a Complaint for Possession in the Superior Court of the District of Columbia, Landlord and Tenant Branch. In the Complaint for Possession, the housing provider indicated that the rent due from March 1, 1991 through March 31, 1991 was \$240.00. Nevertheless, the housing provider continued to demand \$250.00 from the tenant. When the housing provider executed the tenant notice of increase on May 31, 1991, the housing provider indicated that the tenant's rent ceiling was \$228.00. However, the housing provider did not implement a downward rent adjustment until July 1, 1991.

In addition to charging rent in excess of the rent ceiling, the housing provider imposed late fees in contravention of the terms of the lease found in the record. The record contained several letters²⁹ that the tenant sent to the housing provider advising him that the rent charged was higher than the legal rent ceiling; and the tenant informed the housing provider that the \$20.00 late fee was not in accordance with the terms of her

²⁹ See Petitioner's Exhibits 6, 7, 13, and 14.

lease. The record revealed that the tenant attached a copy of the lease to the letters. During the OAD hearing and in documentary record evidence, the housing provider acknowledged receipt of the tenant's letters.³⁰

The facts in this case warrant the imposition of treble damages. The housing provider's knowing demand for rent that exceeded the rent ceiling, and the imposition of late fees in contravention of the terms of the lease, show a higher level of culpability. See Velrey v. Wallace, TP 20,431 (RHC Sept. 11, 1989). Accordingly, the Commission trebles the refund for the rent overcharge. The refund, \$1150.66, trebled, equals \$3451.98. To this trebled figure, the Commission imposes interest through the date of the Commission's final decision and order.

In accordance with 14 DCMR § 3826, the Commission imposes simple interest on the rent refund.³¹ The Commission calculated the interest from September 22, 1989 through March 26, 2002, which is the date the Commission issued the decision and order. See 14 DCMR § 3826.2; see also Johnson v. Gray, TP 21,400 (RHC Aug. 1, 1994) (holding that interest shall be awarded for the entire period of the litigation, which covers the period from the date of the violation to the date of the Commission's decision). The Commission performed two separate interest calculations to arrive at the total amount of interest on the refund for the rent overcharges. The Commission calculated the interest from September 22, 1989, which was three years before the tenant filed the petition, through May 31, 1996, which was the date the hearing examiner issued the decision and

³⁰ See Petitioner's Exhibit 8 and 14.

³¹ "The Rent Administrator or the Rental Housing Commission may impose simple interest on rent refunds, or treble that amount under § 901(a) or § 901(f) of the Act." 14 DCMR § 3826.1.

order. Next, the Commission calculated the interest from June 1, 1996 through March 26, 2002, which was the date the Commission issued the final decision and order.

Interest is calculated by multiplying the number of years the housing provider held the trebled rent overcharge by the judgment interest rate used by the Superior Court of the District of Columbia on the date the Commission issued the decision and order.

See 14 DCMR § 3826.3. The judgment interest rate used by the Superior Court on March 26, 2002 was 5%.

The Commission imposes \$684.14 interest on the rent overcharges from September 22, 1989 through May 31, 1996. The interest calculation for this period appears in the following chart.

Interest Chart
September 22, 1989 through May 31, 1996

A	B	C	D	E	F
Dates of Overcharges	Amount of Overcharge Trebled	Years Held by Housing Provider	Annual and Monthly Interest Rate	Interest Factor (CxD)	Interest Due (BxE)
1989 ³²	\$215.58	7	5%	.350	\$ 75.45
1990	\$792.00	6	5%	.300	\$237.60
1991 ³³	\$612.00	5	5%	.250	\$153.00
1992	\$432.00	4	5%	.200	\$ 86.40
1993	\$432.00	3	5%	.150	\$ 64.80
1994	\$432.00	2	5%	.100	\$ 43.20
1995	\$432.00	1	5%	.050	\$ 21.60
1996 ³⁴	\$104.40	5 months	5% = .004	.020	\$ 2.09

³² The overcharge for 1989 represents the overcharge of \$22.00 per month for 3 months and 8 days in 1989 trebled. The Commission calculated this figure using the following equation: $\$22.00 \times (3 \text{ months and } 8 \text{ days}) = \71.86 ; $\$71.86 \times 3 = \215.58 .

³³ The overcharge for 1991 represents the overcharge of \$22.00 per month from January through June 1991, and the overcharge of \$12.00 per month from July through December 1991 trebled. The following equation reflects the calculations used to arrive at the total amount of the overcharge in 1991: $(6 \times \$22.00) + (6 \times \$12.00) = (\$132.00 + \$72.00) = \$204.00$; $\$204.00 \times 3 = \612.00

³⁴ The overcharge for 1996 represents the overcharge of \$12.00 per month from January through March 27, 1996. The following equation reflects the calculations used to arrive at the total amount of the refund in 1996: $\$12.00 \times (2 \text{ months and } 27 \text{ days}) = \34.80 ; $\$34.80 \times 3 = \104.40 .

					Total Interest Due: \$684.14

In order to award interest on the rent overcharges for the entire period of the litigation, the Commission calculated interest from the date of the OAD decision to the date of issuance of the Commission decision and order. The interest from June 1, 1996 through March 26, 2002 is \$965.04. The Commission calculated simple interest on the refund using the formula $I (\text{interest}) = P (\text{principal}) \times R (\text{rate}) \times T (\text{time})$. The Commission arrived at this figure using the following figures and formula: $\$3451.98 (\text{principal}) \times .05 (\text{rate}) \times 5 \text{ years } 9 \text{ months } 26 \text{ days } (\text{time}) = \965.04 .³⁵

The total interest from September 22, 1989 through March 26, 2002 is \$1649.18. The Commission added the interest from the September 22, 1989 through May 31, 1996 to the interest from June 1, 1996 through March 26, 2002, using the following equation: $\$684.14 + \$965.04 = \$1649.18$.

Accordingly, the housing provider shall refund to the tenant \$5101.16 for the rent overcharge. This figure represents a trebled refund of \$3451.98, plus \$684.14 in interest from September 22, 1989 through May 31, 1996, and interest in the amount of \$965.04 from the June 1, 1996 through March 26, 2002.

B. Whether the Commission had the authority to order a refund for the reduction in services through the date of the OAD hearing.

In Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC June 4, 1999) at 17-26, the Commission held that the housing provider substantially decreased the tenant's services.

³⁵ In order to calculate the interest from June 1, 1986 to March 22, 2002, which is 69 months and 26 days, the Commission used the following equations: $.05 / 12 = .004$; $(\$3451.98 \times .004 \times 69 \text{ months}) = \952.75 ; $.05 / 365 = .0001$; $(\$3451.98 \times .0001 \times 26 \text{ days}) = \12.29 ; $\$952.75 + \$12.29 = \$965.04$.

The Commission ordered a refund from September 22, 1989 until March 27, 1996, which was the final date of the OAD hearing. The Court affirmed the Commission's refund for the reduction in services, except to the extent that the Commission ordered a refund for the period after the tenant filed the petition. The Court remanded the case to the Commission for a statement of reasons and legal principles underlying its decision, including the rationale in favor of, or opposed to, the rule it set forth in Menor." Majerle Mgmt. Inc. v. District of Columbia Rental Hous. Comm'n, 768 A.2d 1003, 1009 (D.C. 2001).

In Menor v. Weinbaum, TP 22,769 (RHC Aug. 4, 1993), the tenant enumerated the services and facilities that the housing provider allegedly reduced. The Commission held that the petition was limited to the housing provider's failure to provide the enumerated services and facilities, which were gas, hot water, air conditioning, a washer, and a dryer. During the hearing, the tenant introduced photographs that depicted general housing code violations, as they existed two years after the tenant filed the petition. The Commission held that the hearing examiner erred when he permitted the tenant to introduce the photographs, because the tenant did not testify that the conditions, which were photographed two years after the filing date, existed when the tenant filed the petition. "More importantly, [the Commission noted,] the conditions depicted in the photographs did not relate to the specific reductions in services and facilities listed in the petition." Id. at 6.

In order to assist litigants, the Commission held the following:

We would like to clarify that conditions that occur prior to the filing of a tenant petition are the relevant matters that the parties are adjudicating. The fact that the condition may have continued past the filing of the petition or re-occurred after a condition had been repaired is at most

corroborative evidence of the original condition. The occurrence of the reduction of services prior to the filing of the petition is significant, because the housing provider must be put on notice of a reduction in services and facilities, and failed to repair or adjust the rent, before the reduction can be considered a violation of the law. Additionally, if the filing of the petition were not the cut off point for the issues to be adjudicated, the landlord would never know what was to be defended.

Id. at 5 n.6 (emphasis added). Menor stands for the proposition that the issues to be adjudicated must appear in the petition, and the tenant must prove that the conditions existed before the tenant filed the petition.

Relying upon Menor, “Majerle contends that the tenant cannot recover for the diminution in services and facilities through the date of the OAD rehearing because Majerle could not have been expected to defend against such an inquiry.” Majerle, 768 A.2d at 1009. Redmond must be distinguished from Menor, because the facts and principles underlying the two cases are incongruent.

In Majerle, the housing provider argues that the Commission erred in awarding damages through the date of the OAD hearing because, “it could not be expected to defend against such an inquiry.” Menor at 5 n.6 quoted in Majerle, 768 A.2d at 1009. The housing provider did not contend that the tenant adjudicated issues, which were not raised in the petition. Moreover, the housing provider did not allege that the tenant failed to prove that the conditions existed before the tenant filed the petition. In essence, the housing provider’s reliance on Menor is misplaced, because the housing provider did not allege that the Commission erred because it failed to use “the filing of the petition [as] the cut off point for the issues to be adjudicated.” Menor at 5.

In Menor, the Commission held that issues, which were not raised in the petition, could not be adjudicated by the agency. Menor does not stand for the proposition that the Commission cannot order a refund for reductions in services that continue through the date of the OAD hearing. On this issue, the Commission held that “[w]hen violations are continuing in nature, the Commission also ‘looks forward’ from the date the petition was filed, to the termination date of the violation. If the violation did not terminate prior to the timely filing of the petition, and if the record contained evidence of the continuing violation, the remedy of refund for [the] improper rent adjustment may go up to the date the record closed, which is usually the hearing date.” Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995) at 6.

In Redmond, the Commission determined that the evidence revealed continuing reductions in services and facilities through the date that the record closed, which was March 27, 1996, the final hearing date. See Majerle Mgmt., Inc. v. District of Columbia Rental Hous. Comm’n, 768 A.2d 1003, 1009 (D.C. 2001); Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC June 4, 1999) at 17-26. In accordance with Jenkins, the Commission awarded a refund for the improper reduction in services and facilities through March 27, 1996.

In Majerle, 768 A.2d at 1010, the Court held that the “award for the diminution in services and facilities is affirmed except to the extent that it included damages incurred after the tenant filed her complaint.” In accordance with Jenkins, the Commission re-imposes its refund for the reduction in services and facilities through the date of the OAD

hearing. In accordance with 14 DCMR § 3826.2, the Commission imposed interest through March 26, 2002.³⁶

Accordingly, the housing provider shall refund the tenant \$7627.43 for the reduction in services and facilities. This figure represents the refund of \$5092.60 for the reduction of services and facilities; \$1116.04 in interest from the date of the violation through the date of the OAD decision; and \$1418.79 in interest from June 1, 1996 through March 26, 2002, which is the period from the issuance of the OAD decision until the date that the Commission issued this decision and order.

III. CONCLUSION

For the foregoing reasons, the Commission affirms Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC June 4, 1999), subject to the detailed explanations contained herein, and the computation of interest through March 26, 2002.

Accordingly, the housing provider shall refund \$12,728.59 to the tenant on or before May 1, 2002. This figure includes \$5101.16 for the rent overcharges and \$7627.43 for the reduction in services.

The housing provider shall remit \$1500.00 to the D.C. Treasurer on or before May 1, 2002.³⁷ This figure represents the \$500.00 fine for the registration violations and

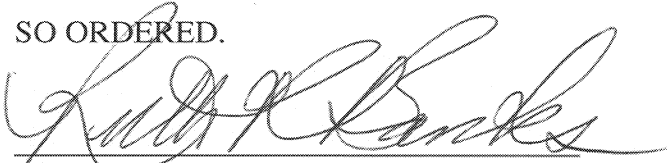
³⁶ When the Commission imposed a refund in Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC June 4, 1999) at 17-26, the Commission ordered the housing provider to refund the tenant \$7125.31 for the reduction in services. The Court affirmed the award for the reduction in services. Accordingly, the Commission re-imposed the previous refund. However, the Commission's regulation, 14 DCMR § 3826.2, provides that interest is calculated from the date of the violation through the date that the Commission issued the decision and order. Accordingly, the Commission calculated interest on the refund through March 26, 2002.

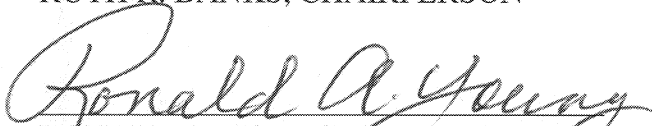
³⁷ In Majerle v. District of Columbia Rental Hous. Comm'n, 768 A.2d 1003, 1009 n.14 (D.C. 2001), the Court affirmed the fines imposed by the Commission. The Court held that the Commission did not abuse its discretion by imposing a \$500 fine for failing to properly register the property. The Court also affirmed the \$1000.00 fine for retaliation. The Court held that the tenant presented evidence of acts that were "presumptively retaliatory ... [and] Majerle has produced no evidence to rebut this presumption and,

a fine in the amount of \$1000.00 for directing retaliatory action against the tenant in violation of D.C. OFFICIAL CODE § 42-3505.02. The housing provider shall forward the fine to the Office of the Chief Financial Officer, Accounting Division, 941 North Capitol Street, N.E., Suite 9607, Washington, D.C. 20002 and present proof of payment to the Commission.

The tenant's rent is rolled back to \$228.00 until the housing provider registers the property in accordance with the Act, and the rental unit and the common elements of the housing accommodation are in substantial compliance with the housing regulations.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER


JENNIFER M. LONG, COMMISSIONER

therefore, we affirm that portion of the order imposing a fine for retaliation.” The Court did not disturb this ruling when it issued Majerle v. District of Columbia Rental Hous. Comm’n, 777 A.2d 785 (D.C. 2001).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 23,146 was mailed by priority mail with delivery confirmation this 26th day of March 2002 to:

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