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

ORDER ON HOUSING PROVIDER/APPELLEE'S OBJECTION TO OFFICIAL NOTICE

April 23, 2002

LONG, COMMISSIONER: On March 26, 2002, the Commission issued a decision and order in TP 23,146. In its decision, the Commission took official notice of a Certificate of Election of Adjustment of General Applicability (Certificate of Election), which was a part of the Rental Accommodations and Conversion Division (RACD) registration file for the housing accommodation. In accordance with the District of Columbia Administrative Procedure Act, D.C. OFFICIAL CODE § 2-509(b) (2001), the Commission gave the parties fifteen days to show facts contrary to those contained in the Certificate of Election.

On April 11, 2002, the housing provider, through counsel, filed a motion and "object[ed] to the taking of official notice by the Rental Housing Commission." The housing provider did not rebut the facts contained in the Certificate of Election. In its motion, the housing provider argued that the "official notice purportedly taken ... and the fact finding in which it engaged are contrary to the District of Columbia Court of Appeals

decision in Johnson v. District of Columbia Rental Hous. Comm'n, 642 A.2d 135, 138 (D.C. 1994)."

In Johnson, the housing provider's attorney submitted tenant petitions from another proceeding, during oral argument before the Commission. The Commission accepted and took official notice of the tenant petitions, which were from another case and not part of the record in Johnson. In addition, the Commission took official notice of the entire agency file in the case that was not before the Commission. The file included tenant petitions, a memorandum, hearing notices, and an appearance sheet. The Commission took official notice of these documents over the objection of the tenant. The Commission reviewed the information in the file and found that the tenant was a party to the proceeding.

The Court expressed "substantial doubt whether the [Commission's] appellate role properly included the elaborate taking of official notice it conducted here." Id. at 139 (emphasis added). The Court noted that, "[w]hile her party status may indeed have been 'perfectly clear' from these documents, petitioner was given no opportunity to show the contrary." The Court held that the Commission's failure to give the tenant an opportunity to rebut the officially noticed facts was contrary to § 2-509(b) and Carey v. District Unemployment Compensation Bd., 304 A.2d 18, 20 (D.C. 1973). In Johnson, the Court noted that the Board in Carey erred when it took official notice of an agency record without "notifying petitioner that the Board was invoking its prerogative to take official notice of a nonrecord fact." Id. (emphasis added). The Court stated that the Commission "acted very much like a finder of fact, contrary to the principle that 'the Commission's function does not extend to making findings.'" Id. (citation omitted).

The DCAPA empowers agencies to take official notice of facts, which did not appear in evidence. D.C. OFFICIAL CODE § 2-509(b) (2001) provides: "Where any decision of ... any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such a case shall on timely request be afforded an opportunity to show the contrary. Even before the enactment of this statutory provision, 'it was well settled that an agency has the 'inherent right to take judicial notice of certain facts not presented in evidence.' [However], [f]acts officially noticed must be of the type which are susceptible to such notice. ... The contents of a court's records are readily ascertainable facts, particularly appropriate for judicial notice. Thus, generally a court may take judicial notice of its own records. ... This principle is likewise applicable to an administrative agency." Renard v. District of Columbia Dep't of Employment Servs., 673 A.2d 1274, 1276 (D.C. 1996) (citations omitted).

In the decision and order that led to the appeal in the instant case, the hearing examiner took official notice of the housing provider's RACD registration file. See Redmond v. Majerle Mgmt., Inc., TP 23,146 (OAD May 31, 1996) at 7. The record on appeal consists of, among other things, the "landlord registration file and any other documents found in the public record of which the Rent Administrator took official notice." 14 DCMR § 3804.3. Consequently, the registration file and the Certificate of Election, which was contained in the registration file, were part of the official record on appeal. When the Commission issued the decision that precipitated the housing provider's opposition, the Commission noted that the hearing examiner took official notice of the housing provider's RACD registration file. See Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC Mar. 26, 2002) at 16 n.11.

Contrary to the housing provider's assertion, the Commission did not engage in fact finding, because the registration file and the certificate contained therein, were part of the record on appeal. Since the hearing examiner's decision did not make a specific reference to the Certificate of Election, the Commission, pro forma, took official notice of the Certificate of Election. Moreover, when the Commission took official notice of the agency's record and gave the parties an opportunity to rebut the facts contained in the Certificate of Election, the Commission acted in accordance with § 2-509(b) and afforded the parties "adequate protection." Renard, 673 A.2d at 1277 (holding that "adequate protection is afforded the opposing party by the statutory provision which allows an opportunity for challenge of a fact which is the subject of a request for official notice.").

In Johnson, the Commission took official notice of documents from another case, which a party submitted during oral argument before the Commission. In addition, the Commission took official notice of the agency record for a case, which was not before the Commission. The Commission reviewed the facts officially noticed and made a finding on the ultimate issue in the case; and the Commission failed to give the opposing party an opportunity to show the contrary.

In Redmond, the Commission did not engage in the elaborate taking of official notice that the Court deemed objectionable in Johnson. In contrast, the Commission took official notice of the Certificate of Election, which was part of the certified record that the hearing examiner officially noticed in Redmond; and the Commission gave the parties an opportunity to show the contrary. Moreover, in the instant appeal, the Commission took official notice of a document contained in the agency's registration file for the case that was before the Commission. The Court has held that the "contents of the [agency's]

records are readily ascertainable facts, particularly appropriate for [official] notice." Renard, 673 A.2d at 1276.

Accordingly, the Objection of Housing Provider/Appellee to Official Notice is denied.

SO ORDERED.

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order on Objection of Housing Provider/Appellee to Official Notice in TP 23,146 was mailed by priority mail with delivery confirmation this 23rd day of April 2002 to:

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