DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,470
and
TP 24,471

In re: 1211 Holbrook Terrace, N.E., Units 1, 2, 3

Ward Five (5)

WILLIAM S. KAMEROW
Housing Provider/Appellant

v.

FLORA M. BACCOUS
and
DONZELLO CRANK
Tenants/Appellees

DECISION AND ORDER

September 26, 2002

LONG, COMMISSIONER. This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). The District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001) and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991), also govern the proceedings.

I. PROCEDURAL HISTORY

These proceedings concern the four unit housing accommodation located at 1211 Holbrook Terrace, N.E. Attorney Rochanda Hiligh filed Tenant Petition (TP) 24,470 with the Rental Accommodations and Conversion Division (RACD) on January 29, 1998 on behalf of Flora Baccous. Flora Baccous occupied unit three from March 1, 1997 until

June 30, 1997, when she relocated to unit one. Ms. Baccous alleged that the rent exceeded the legally calculated rent ceiling for her unit, the housing accommodation was not properly registered, and the services and facilities provided in connection with her rental unit were permanently eliminated and substantially reduced. On the same day, January 29, 1998, Kit J. Strauss, Esquire, filed TP 24,471 for Donzello Crank. Ms. Crank, who leased unit two, alleged that the rent exceeded the unit's legally calculated rent ceiling, the housing accommodation was not properly registered, and the services and facilities provided in connection with her rental unit were permanently eliminated and substantially reduced. Each tenant named Mary Matthews as the property manager in the petitions.

The Office of Adjudication (OAD) consolidated the petitions and convened the initial hearing on April 1, 1998. The tenants appeared for the hearing; however, the housing provider, Mary Matthews, did not appear. The tenants requested leave to amend the petitions to include the owner, William Kamerow. Hearing Examiner Gerald Roper granted the tenants' request and continued the hearing.

The tenants, through counsel, filed their respective amended petitions on April 21, 1998.[1] Attorneys Hiligh and Strauss named William Kamerow as the owner of the housing accommodation and Mary Matthews as the property manager in the amended petitions. In amended TP 24,470, Ms. Hiligh raised the claims that Ms. Baccous alleged in the original petition. Subsequently, Ms. Baccous withdrew the services and facilities claims. Ms. Crank did not allege a services or facilities claim in the amended petition;

[1] The amended TP 24,470 bears two OAD date stamps, April 21, 1998 and September 22, 1998.

however, she alleged that the housing providers charged a rent that exceeded the unit's rent ceiling and failed to properly register the property with the RACD.

Hearing Examiner Roper convened the hearing on August 26, 1998. Each tenant and their attorneys appeared for the hearing; however, the housing providers did not appear. In the housing providers' absence, the hearing examiner received evidence on the tenants' claims.

On May 14, 1999, Hearing Examiner Gerald Roper issued the decision and order in TP 24,470 and TP 24,471. The hearing examiner concluded, as a matter of law, that the housing providers failed to register the housing accommodation and charged a rent that exceeded the units' rent ceilings. The hearing examiner ordered the housing providers to refund $17,591.80 to Ms. Baccous, and he rolled her rent back to $134.50. In addition, the hearing examiner ordered the housing providers to refund $17,849.00 to Ms. Crank, and he rolled her back to $143.00 per month.

On June 3, 1999, William Kamerow, through Patrick Merkle, Esquire, filed a motion for reconsideration. On the same day, the tenants' attorneys requested reconsideration of the hearing examiner's decision. The hearing examiner did not rule upon the motions for reconsideration. In accordance with 14 DCMR § 4013.5 (1991), the motions for reconsideration were denied by operation of law.

Thereafter, the parties appealed the hearing examiner's decision to the Commission. William Kamerow filed a notice of appeal with the Commission on June 17, 1999, and argued that he did not receive notice of the OAD hearing. The tenants filed a notice of appeal and an answer to the housing provider's appeal on July 1, 1999. The Commission held its hearing on October 28, 1999 and issued its decision and order in TP

24,470 and TP 24,471 on January 28, 2000. The Commission reversed and vacated the hearing examiner's decision, because the OAD did not send the hearing notices by certified mail or another form of service that assured delivery.

The tenants filed a motion for reconsideration on February 11, 2002. The tenants requested the Commission to affirm the hearing examiner's decision as it related to Mary Matthews, because she did not appeal the Rent Administrator's decision. In an order dated March 2, 2000, the Commission granted the tenants' motion, affirmed the judgment against Mary Matthews, and instructed the hearing examiner to correct the interest calculation.[2]

Hearing Examiner Roper held the hearing de novo for the housing provider, William Kamerow, on August 29, 2000. On October 12, 2001, the hearing examiner issued the decision and order. The hearing examiner recalculated the judgment against Mary Matthews and imposed a judgment against William Kamerow. William Kamerow appealed the hearing examiner's decision on October 29, 2001, and the Commission held the appellate hearing on March 18, 2002.

II. ISSUES ON APPEAL

In the notice of appeal, William Kamerow, through counsel, raised the following:

> 1. During the hearing, Mary Matthews alleged that she was told that the rent charged by a former owner, Mr. Graham, was $450.00. [Mr. Graham was exempt from rent control and had obtained a certificate of exemption and had not listed any rent levels therein.] This assertion, which is hearsay, is irrelevant because [R]espondent . Kamerow, as well as Mary Matthews, failed to register the property.

[2] During the OAD hearing on August 29, 2000, Mary Matthews testified that she received notice of the tenant petitions in this case.

Your appellant believes that this conclusion is erroneous at law, and the apparent exclusion of the evidence as hearsay violates the rules of procedure of the Office of Adjudication.

2. The record reveals that only Mary Matthews received or demanded rent from these tenants, and that any attempt to collect or receive rent ended when she abandoned the property. The record affirmatively provides that no rent was actually paid to or demanded by William Kamerow. The tenants never knew of William Kamerow; rather their dealings were exclusively with Mary Matthews. The record also reflects that no rent was actually paid. This has resulted in two obvious errors:

A. Continuing to hold the housing provider liable for "collecting" rent beyond the date of foreclosure sale and abandonment of the property, up until the date of recordation of the trustee's deed is error, because the Rent Administrator must accept abandonment as the effective date of termination of liability of the record owner.

B. There was insufficient evidence to hold Mr. Kamerow liable for treble damages in this cases, particularly post-abandonment.

3. Your respondent [sic] respectfully requests that the Commission waive the requirements of 14 DCMR 3802.10 and 3802.11 pending resolution of this appeal.

Notice of Appeal at 1-2.

III. DISCUSSION

A. Whether the hearing examiner erred when he concluded that Mary Matthews' assertion that the former owner charged $450.00 for rent was irrelevant because neither William Kamerow nor Mary Matthews registered the property.

On appeal, the housing provider, William Kamerow, argues that the hearing examiner made an erroneous conclusion when he found that Mary Matthews' assertion that the former owner charged a monthly rent of $450.00 was irrelevant because neither Mary Matthews nor William Kamerow registered the property. Mr. Kamerow's attorney did not provide a clear or concise statement of the reason why the hearing examiner's conclusion was erroneous, and he did not file a brief in support of the notice of appeal.

Instead, the housing provider's attorney quoted, without citation, the following modified portion of footnote four from the hearing examiner's decision.

> During the hearing, Mary Matthews alleged that she was told that the rent charged by a former owner, Mr. Graham, was $450.00. [Mr. Graham was exempt from rent control and had obtained a certificate of exemption and had not listed any rent levels therein.] This assertion, which is hearsay, is irrelevant because [R]espondent Kamerow, as well as Mary Matthews, failed to register the property.

OAD Decision at 14 n.4. The hearing examiner's statement that the rent charged by the former owner is irrelevant because neither Kamerow nor Matthews registered the property is supported by substantial record evidence. For the following reasons, the Commission denies this issue.

Shortly after the hearing examiner convened the hearing, the parties entered two stipulations. The parties stipulated that the housing accommodation was not properly registered, and they stipulated that the rent charged was $450.00. During the hearing, Patrick Merkle, Mr. Kamerow's attorney, stated the following:

> Mr. Merkle: I don't see any reason we couldn't stipulate to number two, no proper registration. That does not mean that Mr. Kamerow was liable for making that registration, but there is no proper registration for the property at the time that it was leased to these tenants.
>
> Hearing Examiner Roper: What was that last statement?
>
> Mr. Merkle: At the time these leases were executed, it is conceded that the property was not registered as exempt or as registered rent control property according to the rules of the Department of Consumer and Regulatory Affairs. However, even though that lease may have been executed at a time when the property was not properly registered, we are not conceding that Mr. Kamerow [inaudible] taking title subsequent to that and then divesting himself or attempting to divest himself of title two weeks thereafter fell under the requirement that he register the property.

OAD Hearing Tape (Aug. 29, 2000). In addition to the stipulation concerning registration, the parties stipulated that the rent charged the tenants was $450.00 pursuant to the leases that were executed in February 1997.

The registration and coverage provision of the Act provides the following:

> Within 120 days of July 17, 1985, each housing provider of any rental unit not exempted by this chapter and not registered under the Rental Housing Act of 1980, shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District for which the housing provider is receiving or entitled to receive rent. Any person who becomes a housing provider of such a rental unit after July 17, 1985 shall have 30 days within which to file a registration statement with the Rent Administrator.

D.C. OFFICIAL CODE § 42-3502.05(f) (2001).

When the hearing examiner issued the decision and order, he incorporated the testimony and stipulations concerning registration and rent, in the following findings of fact:

1. Mary Matthews leased apartment 3 in the subject housing accommodation to Flora Baccous on February 22, 1997 for $450.00 per month rent. On July 1, 1997, Flora Baccous was relocated to apartment 1 at the same monthly rent.

2. Mary Matthews leased apartment 2 in the subject housing accommodation to Donzello Crank on March 1, 1997, for $450.00 per month rent. Petitioner Crank moved into the apartment on March 2, 1997.

3. William Kamerow became the owner of the subject housing accommodation on March 14, 1997, when Mary Matthews transferred the subject housing accommodation to him by a deed that was subsequently recorded with the Recorder of Deeds.

4. William Kamerow never registered the subject housing accommodation.

6. William Kamerow remained the owner of 1211 Holbrook Terrace, N.E. from March 14, 1997 until August 1998 when the subject property was foreclosed on.

8. During the time William Kamerow was the owner of the property, Mary Matthews managed the property as William Kamerow's agent.

Baccous v. Matthews, TPs 24,470 & 24,471 (OAD Oct. 12, 2001) at 9. The substantial record evidence demonstrates that William Kamerow and Mary Matthews failed to register the property.

When the housing provider's attorney filed the appeal he stated, "Mary Matthews alleged that she was told that the rent charged by a former owner, Mr. Graham, was $450.00." However, counsel did not explain how Mr. Graham's alleged rent level impacted the rent that Mr. Kamerow charged and his failure to register the housing accommodation. During the Commission's hearing, the housing provider's attorney argued that Mr. Graham's rent level was relevant under D.C. OFFICIAL CODE § 42-3502.09 (2001), because the former owner's rent level established the rent ceiling for the tenants' units.

The provision of the Act, which governs rent ceilings upon the termination of an exemption, provides the following: "Except as provided in subsection (c) of this section, the rent ceiling for any rental unit in a housing accommodation exempted by § 42-3502.05, except subsection (a)(2) or (a)(7) of that section, upon the expiration or termination of the exemption, shall be the average rent charged during the last 6 consecutive months of the exemption ...." D.C. OFFICIAL CODE § 42-3502.09(a) (2001).

The housing provider's reliance on § 42-3502.09 is misplaced, because there is no record evidence of the former owner's exemption. In the notice of appeal, the housing provider's attorney stated, "Mr. Graham was exempt from rent control and had obtained a

certificate of exemption and had not listed any rent levels therein." However, there is no record evidence that Mr. Graham filed a claim of exemption.[3] Since "'[a]ppellate review is limited to matters appearing in the record before us, ... we cannot base our review of errors upon statements of counsel which are unsupported by that record.'" Hutchinson v. District of Columbia Office of Employee Appeals, 710 A.2d 227, 232 (D.C. 1998) (quoting Cobb v. Standard Drug Co., 453 A.2d 110, 112 (D.C. 1982); D.C. Transit Sys., Inc. v. Milton, 250 A.2d 549, 550 (D.C. 1969)). Section 42-3502.09, which governs rent ceilings upon the termination of an exemption, is not applicable because there is no record evidence of an exemption. Since the housing provider did not introduce competent evidence of Mr. Graham's ownership and exemption, the mere allegation that the former owner charged $450.00 is irrelevant.

The hearing examiner found the housing provider failed to register the housing accommodation. Since there was substantial record evidence to support the finding, the Commission affirms the hearing examiner's finding that the housing provider failed to meet the registration requirements of the Act. However, the Commission reverses the hearing examiner's failure to impose a fine for the housing provider's registration violation.

The Act, D.C. OFFICIAL CODE § 42-3509.01(b) (2001), provides: "Any person who wilfully ... commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (fails to meet obligations

[3] During the Commission's hearing, Mr. Merkle argued that Petitioner's Exhibit (P. Exh.) 11 proved that the housing accommodation was exempt from rent control in 1987. Mr. Merkle improperly relies upon P. Exh. 11, because it is a claim of exemption for Lucilla Kirks. There is no record evidence that the housing accommodation was exempt from the rent stabilization provisions of the Act when Mr. Graham allegedly owned the property.

required under this chapter shall be subject to a civil fine of not more than $5000.00 for each violation. "It has long been established that an administrative agency may be authorized to impose penalties in the form of fines to enforce public rights created by statutes. ... [P]ursuant to an amendment to the 1985 Act, the RHC [Commission] is indisputably authorized to impose fines pursuant to subsection (b) or any other provision of the penalty section." Revithes v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1007, 1021-1022 (D.C. 1987).

> The statutory mandates imposed upon landlords requiring the registration of buildings are used to insure that the buildings are in compliance with provisions of local zoning and/or building ordinances. The registration requirement is also used to impose either restrictions or limitations on the maximum rent a landlord may charge to a tenant on rental property and also to limit rent increases to a certain percentage annually.[4]

When a housing provider fails to register he circumvents the safeguards designed to insure the safe operation of the housing accommodation, and he thwarts the government's interest in stabilizing rent levels. "Since 1975, the Council of the District of Columbia has enacted four consecutive acts designed to stabilize rents. ... At the heart of the Rent Stabilization Program of all four Acts is the registration requirement. In order to monitor rent increases according to the statutory scheme, landlords are required to register their rental units." Revithes, 536 A.2d at 1009.

The housing provider owned the housing accommodation from March 1997 until August 1998. The housing provider's failure to register the housing accommodation in accordance with the Act warrants the imposition of a fine. Accordingly, the Commission imposes a fine of $500.00.

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[4] Linda F. Stewart, A Survey of Recent Case Law: Part Three: Landlord and Tenant: A Landlord's Failure to Timely Register His Building May Preclude Rent Increases, 32 How. L.J. 327 (1989).

B. Whether the apparent exclusion of the evidence [Mary Matthews' statement concerning the rent charged by the former owner] as hearsay violates the rules of procedure of the Office of Adjudication.

There is no record evidence that the hearing examiner excluded Mary Matthews' statement because it was hearsay.[5] The hearing examiner merely characterized the statement as hearsay in a footnote. The hearing examiner indicated that the statement was "irrelevant because [R]espondent Kamerow, as well as Mary Matthews, failed to register the property." OAD Decision at 14 n.4 (emphasis added).

The DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001), provides: "Any oral and documentary evidence may be received, but ... every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence." Similarly, 14 DCMR § 4009.2 (1991) provides: "Testimony or other evidence may be excluded from consideration by the hearing examiner if it is irrelevant, immaterial or unduly repetitious." In accordance with the DCAPA and the regulations, the hearing examiner stated that the rent charged by a former owner was irrelevant. He did not find, as a matter of fact, that the statement was hearsay; and he did not exclude the evidence because it was hearsay.

Accordingly, the Commission denies this issue on appeal.

C. Whether the hearing examiner erred when he held William Kamerow liable when the tenants only interacted with Mary Matthews and there was no record evidence that William Kamerow demanded or received rent from the tenants.

William Kamerow, the owner of the housing accommodation, argues that he should avoid liability because he did not demand or collect rent from the tenants; the

[5] "It is settled that hearsay evidence may be admitted in administrative hearings." Hutchinson v. District of Columbia Office of Employee Appeals, 710 A.2d 227, 232 (D.C. 1998) (quoting Gropp v. District of Columbia Bd. of Dentistry, 606 A.2d 1010, 1014 (D.C. 1992)).

tenants did not know him;[6] the tenants interacted exclusively with Mary Matthews, and the tenants never paid rent. At the heart of Mr. Kamerow's argument is a lack of appreciation for the Act's definitions of the terms housing provider and rent, and the concomitant responsibilities and obligations that the Act places on an owner.

The Act, which contains an all encompassing definition of the term housing provider, provides the following: "'Housing provider' means a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District." D.C. OFFICIAL CODE § 42-3501.03(15) (2001).

The hearing examiner found that William Kamerow was the owner of the housing accommodation from March 14, 1997 until August 1998, and Mr. Kamerow's wife, Mary Matthews, managed the property as Mr. Kamerow's agent during the period that he owned the housing accommodation. Additionally, the hearing examiner found that Mary Matthews managed and served as the agent for two additional rental properties that Mr. Kamerow owned in the District of Columbia. OAD Decision at 9-10, Findings of Fact 3, 5, 8, 9 and 14. Finally, the hearing examiner wrote:

> By allowing Mary Matthews to continue to demand, charge and collect rent while he was the owner of the subject property he bestowed upon Mary Matthews, his wife,[7] apparent authority to act for him. William Kamerow bore the burden of terminating this authority if he did not wish to be responsible for the actions of Mary Matthews, but never took any affirmative step to accomplish this. Consequently, William Kamerow remains liable for his failure to repudiate this agency relationship and is responsible for Ms. Matthews' action of charging and collecting rent in

[6] During the hearing, William Kamerow testified that he visited the housing accommodation shortly after Mary Matthews transferred title to him. He testified that he met Ms. Crank during that visit. OAD Hearing Tape (Aug. 29, 2000).

[7] During the OAD hearing, Mary Matthews and William Kamerow testified that they are married.

excess of the legally calculated rent ceiling. See Lewis v. Washington Metro. Area Transit Auth., 463 A.2d 666, 670 (D.C. 1959).

OAD Decision at 15-16. The Commission agrees.

Mr. Kamerow, the owner, cannot escape liability because his agent managed the housing accommodation. Under the express terms of § 42-3501.03(15) of the Act, the owner is the housing provider. An owner does not obviate his status as a housing provider and escape the responsibilities and obligations that the Act places on an owner when his agent manages the daily operations of the housing accommodation.

"Under principles of agency law, a principal is charged with knowledge of facts known to his agent which the agent had a responsibility to bring to the attention of the principal." Nat'l R.R. Passenger Corp. v. Notter, 677 F. Supp. 1, 15 (D.D.C. 1987) (citations omitted). "The trail reason for the rule which charges a principal with his agent's knowledge is simply the injustice of allowing the principal to avoid, by acting vicariously, burdens to which he would become subject if he were acting for himself." Bowen v. Mount Vernon Savings Bank, 70 App. D.C. 273, 105 F.2d 796, 799 (D.C. Cir. 1939).

Mr. Kamerow's argument that the tenants never paid rent reveals an absence of appreciation for "rent," which is a "term of art." Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286, 287 (D.C. 1997). The Act defines rent as "the entire amount of money ... demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities." D.C. OFFICIAL CODE § 42-3501.03(28) (2001) (emphasis added). The owner, who was the tenants' housing provider, is liable for the entire amount of money his agent, demanded, charged, or received, in excess of the rent ceiling. D.C. OFFICIAL CODE § 42-

3509.01(a) (2001). The fact that the tenants did not actually tender the rent that the housing provider charged or demanded does not reduce or limit the housing provider's liability. Kapusta, 704 A.2d at 287 (affirming the award of a rent refund for the entire nine months that the housing provider demanded rent in excess of the rent ceiling even though the tenant only paid rent for one month).

For the foregoing reasons, the Commission rejects the housing provider's argument that he should avoid liability because he did not personally collect the rent and the tenants did not actually pay the rent that Mr. Kamerow's agent charged.

D. Whether the hearing examiner erred by continuing to hold the housing provider liable for "collecting" rent beyond the date of foreclosure sale and abandonment of the property, up until the date of recordation of the trustee's deed is error.

The housing provider's assertion that the hearing examiner held the housing provider liable for collecting rent beyond the date of the foreclosure sale is not supported by the record evidence.

During the hearing, the housing provider submitted the notice of foreclosure for the subject housing accommodation. The hearing examiner accepted the notice as record evidence and marked it Respondent's Exhibit (R. Exh.) 4. According to the notice, the housing accommodation was scheduled for a foreclosure sale on August 12, 1998. The housing provider's witness, Mary Kamerow, testified that the property was lost at the foreclosure sale. The hearing examiner, found, as a matter of fact, that the foreclosure occurred in August 1998 and ordered a refund through August 12, 1998.

Accordingly, this issue is denied, because there is no record evidence that the hearing examiner held the housing provider liable after the foreclosure sale.

E. Whether the Rent Administrator must accept abandonment as the effective date of termination of liability of the record owner.

The housing provider asserts that the hearing examiner had an obligation to accept abandonment as the effective date of termination of the record owner's liability. However, the housing provider, who filed the notice of appeal through counsel, did not identify any record evidence to support his position that he or his agent abandoned the property. More importantly, the housing provider did not provide any legal authority for the notion that a housing provider's obligations under the Act terminate when the housing provider abandons the property. Without the benefit of a brief, citation to legal authority, or a clearer statement of the issue, the Commission cannot accept the housing provider's argument that abandonment vitiates the housing provider's liability.

Accordingly, the Commission denies this issue.

F. Whether there was sufficient evidence to hold Mr. Kamerow liable for treble damages in this case, particularly post-abandonment.

The record is replete with evidence to support the hearing examiner's decision to hold Mr. Kamerow liable for treble damages.[8] The evidence concerning Mr. Kamerow's "attempt[] to divest himself of title"[9] to the housing accommodation is a textbook example of bad faith. The hearing examiner's decision, however, did not contain findings of fact on the issue of treble damages.

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[8] D.C. OFFICIAL CODE § 42-3509.01(a) (2001) 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 provisions 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.

[9] OAD Hearing Tape (Aug. 29, 2000).

According to the record evidence, Mary Matthews transferred the subject housing accommodation to her husband William Kamerow on March 14, 1997. Mary Matthews, who is also known as Mara Kamerow, testified that she transferred the property to William Kamerow, who is also known as Alan Kamerow, in order to avoid an impending judgment in an unrelated civil action. She testified that Mr. Kamerow transferred the property back to her on March 21, 1997, because he could not assume the mortgage.

On cross-examination, the tenant's counsel, Rochanda Hiligh, effectively impeached Mary Matthews and William Kamerow. In the face of Mary Matthews' testimony that her husband transferred the subject housing accommodation back to her on March 21, 1997, counsel illustrated that Mary Matthews executed a complaint for possession on January 30, 1998 and swore that she was the landlord's agent and not the landlord of the subject housing accommodation. P. Exh. 9.

In addition, counsel revealed several irregularities in the quitclaim deed, which purportedly transferred the property from William Kamerow to Mary Matthews on March 21, 1997. First, counsel secured an admission from William Kamerow that he used the name Alan Kamerow to notarize the quitclaim deed that ostensibly transferred the property from William Kamerow to Mary Matthews on March 21, 1997. When he notarized the quitclaim deed, William Kamerow, using the name Alan Kamerow, indicated that his commission expired on June 1, 2001.

Counsel then introduced two additional deeds that Mary Matthews used to transfer two additional properties to William Kamerow in March 1997. P. Exhs. 14 & 15. Mr. Kamerow notarized those deeds in March 1997 and indicated that his commission expired on July 1, 1997. In the quitclaim deed that William Kamerow

purportedly executed and notarized as Alan Kamerow on March 21, 1997, he stated that his commission expired on June 1, 2001. Ms. Hiligh argued that the quitclaim deed bore a June 1, 2001 expiration, because Mr. Kamerow did not execute and notarize the quitclaim deed in March 1997. To prove this point, she introduced P. Exh. 23. The exhibit, which bore the signature and seal of the Secretary of the State of Maryland, reflected that the state issued the commission, which expired on June 1, 2001, on June 1, 1997. Through cross-examination of Mr. Kamerow, Ms. Hiligh showed that the June 1, 2001 expiration on the quitclaim proved that Mr. Kamerow did not execute the quitclaim deed in March 1997, because he did not receive the commission until June 1997. Ms. Hiligh asked, "The truth of the matter is Mr. Kamerow is that is you didn't complete this form [quitclaim deed] on March 21, 1997." Mr. Kamerow replied, "I don't know." The tenant's attorney argued that Mr. Kamerow executed the quitclaim deed to avoid the judgment in the instant petitions.

After considering the record evidence, the hearing examiner found that Mary Matthews' and William Kamerow's testimony concerning the transfer of ownership back to Mary Matthews to be incredible. Findings of Fact 20 and 21. However, the hearing examiner did not find that the scheme to transfer title to the housing accommodation constituted bad faith.

"In Citizens Association of Georgetown, Inc. v. District of Columbia Zoning Commission, 402 A.2d 36 (D.C. 1979), the Court ruled that there must be findings of fact on each contested issue; the decision must rationally flow from the facts adduced; and, there must be sufficient evidence in the record to support each finding of fact." Velrey v. Wallace, TP 20,431 (RHC Sept. 11, 1989) at 1-2; see also DCAPA, D.C. OFFICIAL CODE

§ 2-509(e) (2001).[10] In the instant case, there was record evidence concerning the housing provider's conduct, and the hearing examiner recounted the evidence in the body of the decision and order. OAD Decision at 17-18. However, the hearing examiner erred when he failed to issue findings of fact on what evidence constituted bad faith. See Hedgman v. District of Columbia Hackers' License Appeal Bd., 549 A.2d 720, 723 (D.C. 1988); Wheeler v. District of Columbia Bd. of Zoning Adjustment, 395 A.2d 85, 88 (D.C. 1978) (holding that a summary of the evidence, without specific findings of fact did not meet the requirements of the DCAPA).

In order to award treble damages there must be a knowing violation of the Act. See Quality Mgmt. v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986) cited in Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990). After the tenant proves a knowing violation of the Act, there must be evidence that the housing provider's conduct was sufficiently egregious to warrant the additional finding of bad faith. Fazekas v. Dreyfuss Bros., Inc., TP 20,394 (RHC Apr. 14, 1989). "We hold as a matter of law that in order to maintain treble damages the finding of bad faith[11] must be based upon specific findings of fact that will show this higher level of culpability." Velrey v. Wallace, TP 20,431 (RHC Sept. 11, 1989) at 2. Accordingly, the Commission

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[10] The District of Columbia Administrative Procedure Act, D.C. OFFICIAL CODE § 2-509(e) (2001), provides:

> Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence.

[11] In Velrey, the Commission noted that Black's Law Dictionary defined bad faith as "not simply bad judgement [sic] or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity." Id. at 2.

affirms the rent refund, vacates the award of treble damages, and remands the petitions for findings of fact that support the hearing examiner's decision to award treble damages.[12]

G. Housing Provider's Request to Waive Requirements of 14 DCMR §§ 3802.10 and 3802.11.

The housing provider's notice of appeal contains a request to waive the requirements of 14 DCMR §§ 3802.10 and 3802.11 (1991). The housing provider made a similar request when he appealed the initial decision that the hearing examiner issued on May 14, 1999. In an order dated August 2, 1999, the Commission granted the housing provider's request. Citing Hanson v. District of Columbia Rental Hous. Comm'n, 584 A.2d 592 (D.C. 1991) and Dias v. Perry, TP 24,379 (RHC June 17, 1999), the Commission ruled that the housing provider was not required to follow §§ 3802.10 and 3802.11, because the hearing examiner's decision was not final and could not be enforced until the parties exhausted all avenues of appellate review. Consequently, a stay was not required.

In accordance with its order in Kamerow v. Baccous, TPs 24,470 & 24,471 (RHC Aug. 2, 1999), the Commission grants the housing provider's request to waive 14 DCMR §§ 3802.10 and 3802.11 (1991).

IV. CONCLUSION

For the foregoing reasons, the Commission denies the issues that the housing provider raised on appeal. The Commission vacates the award of treble damages and

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[12] In Velrey, the Commission reversed the award of treble damages, because the record did not contain substantial evidence to support the award. In the instant case, the record contains evidence that may support the award. Missing from the hearing examiner's decision are findings of fact to support the award of treble damages.

remands the decision for findings of fact that support the hearing examiner's decision to award treble damages.

Further, the Commission imposes a fine of $500.00, because the housing provider failed to register the housing accommodation. The housing provider shall remit $500.00 to the District of Columbia Treasurer on or before November 30, 2002. 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.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

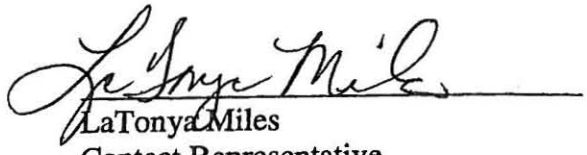
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TPs 24,470 and 24,471 was mailed by priority mail with delivery confirmation, postage prepaid, this 25th day of September 2002 to:

Patrick G. Merkle, Esquire
Law Offices of Patrick G. Merkle, PLLC
1750 K Street, N.W.
Suite 325
Washington, D.C. 20006

Rochanda F. Hiligh, Esquire
Neighborhood Legal Services Program
701 4th Street, N.W.
Third Floor
Washington, D.C. 20001

Deborah Matties, Esquire
Neighborhood Legal Services Program
701 4th Street, N.W.
Third Floor
Washington, D.C. 20001



LaTonya Miles
Contact Representative