DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,597

In re: 424 Q Street, N.W., Unit 1

Ward Two (2)

424 Q STREET LIMITED PARTNERSHIP/
T.K. CHAMBERLAIN
Housing Provider/Appellant

v.

JOHN EVANS
Tenant/Appellee

DECISION AND ORDER

July 31, 2000

LONG, COMMISSIONER. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), through the Office of Adjudication (OAD), to the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. Code § 45-2501 et seq., and the District of Columbia Administrative Procedure Act (DCAPA), D.C. Code § 1-1501, et seq. The regulations, 14 DCMR 3800 et seq., also apply.

I. PROCEDURAL HISTORY

John Evans, tenant/appellee, began his tenancy at 424 Q Street, N.W., unit 1 on October 1, 1996. The housing provider, 424 Q Street Limited Partnership, acquired the property in 1978 and operates it as a seven unit housing accommodation. Mr. Evans, through counsel, filed Tenant Petition (TP) 24,597 with RACD on October 16, 1998. In the petition, the tenant alleged: 1) the rent charged exceeded the legally calculated rent

ceiling; 2) the building was not properly registered with RACD; and 3) services and facilities provided in connection with the rental unit were substantially reduced.

Hearing Examiner Gerald Roper presided at the adjudicatory hearing on January 25, 1999. The tenant appeared with counsel. Theodore Chamberlain, one of the general partners, appeared on behalf of the housing provider, 424 Q Street Limited Partnership. On November 26, 1999, the hearing examiner issued the decision and order in which he made the following relevant findings of fact:

4. The subject housing accommodation is not properly registered with the RACD.
5. Petitioner took possession of the subject rental unit, Apartment 1, on September 25, 1996 at $395 per month. Since August 1998, Petitioner has paid $345 per month into the Court Registry.
6. The base rent for the subject rental unit is $240 per month based upon the rent charged for Apartment 5 in September 1983.
7. No rent increases were perfected by Respondent after September 1, 1983.
8. The rent ceiling for the subject rental unit is $240.
9. The rent charged to Petitioner when he took possession of the subject rental unit ($395) and the rent Petitioner is paying into the Court Registry ($345) exceeds the legal rent ceiling of $240.
10. Substantial housing code violations exist on the subject rental unit.
11. Respondent has been aware of the existence of the Housing Code violations since September 25, 1997 but has not corrected or repaired them.
12. Respondent substantially reduced the services and facilities of Petitioner's rental unit by failing to repair or correct the Housing Code violations Respondent knew existed in Petitioner's unit.
13. The value of the reduction in services and facilities of Petitioner's unit is $100 per month for the period October 1, 1997 to January 31, 1999, for 16 months.
14. Petitioner is entitled to a roll back of the legal rent of $240 by $100 per month until Respondent corrects or repairs the Housing Code violations and properly registers the subject housing accommodation.
15. Respondent knowingly acted in bad faith by failing to register the property, obtain a housing business license, obtain a certificate of occupancy, and not correct defects in the subject premises he knew existed and would reduce the services and facilities of Petitioner's unit.
16. Petitioner is entitled to a rent refund of $4,800, trebled to $14,400, plus interest on the $4,800 of $240, for a total refund of $14,640.

The hearing examiner reached the following conclusions of law:

1. Respondent failed to properly register the subject housing accommodation in violation of D.C. Code § 45-2515.
2. Respondent is charging rent for the subject rental unit in an amount above the maximum allowed by the Act, in violation of D.C. Code § 45-2516.
3. Respondent reduced the services and facilities of Petitioner's rental unit by failing to repair Housing Code violations existing in the unit, in violation of D.C. Code § 45-2521, 14 DCMR 400, and 14 DCMR 4211.
4. Petitioner is entitled to a rent roll back, a rent refund, plus interest, and trebled refund, pursuant to D.C. Code § 45-2591(a).

Evans v. 424 Q Street Ltd. Partnership, TP 24,597 (OAD Nov. 26, 1999) at 16.

On December 15, 2000, the housing provider filed a notice of appeal with the Commission. The Commission held the hearing on appeal on April 6, 2000.

II. ISSUES ON APPEAL

In the notice of appeal, the housing provider raised the following issues:

> The Hearing Examiner determined a "base rental" or "rent ceiling" of $240.00 per mo. [sic] after determining part of the facts prior to 1985 and to September 25, 1996 (Petitioner rents Apt. 1 to date). He avoids the 3 y[ea]r statute of limitations therein by deciding it applies only to rent increases. However, in Kennedy v. District of Columbia Rental Housing Commission, 709 A.2d 94 (1998), the Court held that no rent increase or adjustment could be challenged beyond 3 y[ea]rs. ....
>
> As to the Certificate of Occupancy, we admitted having none. When 424 Q St., N.W., was purchased by the partnership, I was not a licensed real estate agent. I was unaware of D.C.'s rent control requirements for a C of O [sic]. Later I did learn of them. Upon inquiry of the D.C. [government] and investors, I learned it would likely cost between $5,000 and $15,000 to qualify for a C of O. ... When I testified we could not afford the C of O, I meant it. Twice I started the application (c 1990 and 1998). The same block arose, insufficient square footage. .... Certainly I have not "wilfully" [sic] failed to obtain a C of O.
>
> The Hearing Examiner found a substantial reduction in facilities and services in Apt. 1 on the basis of pictures and testimony by Petitioner,

but makes no reference to Respondent's pictures and testimony, nor to the testimony of George Evans, repairman to most repairs in 424 Q [sic] and particularly Apt. 1 (See his written statement as no. 3 of 5 addressed by the hearing examiner.

...

In addition to more proofs of repairs by me and mine, there is the question of credibility. I told no lies, nor were any statements seriously question[ed] by Pet'r [sic]. Whereas Pet'r [sic] testified the rent should be 0, that no repairs were made (where is the inspection report?) ...

Further, I testified before the H.E. [sic] that Petitioner has at least 3 Social Security [numbers] ... These should indicate Petitioner has low credibility. Petitioner offered no explanation. ....

....

As to findings of fact, I contest no. 6 as to base rent & 7 & 8; 10 thru [sic] 14; and no. 15 & 16.

Every tenant in the building know[s] I have no C/O [sic]. [Three] 3 tenants have been residents for some 20 y[ea]rs. I have gone to great effects [sic] to keep the units and building safe and habitable. In effect, I loaned over $6,000 of my money to meet repairs and expenses. How can I be acting in bad faith? It is to our advantage to be registered. ... If I was charging more than the $406 or $450/mo., not less [sic] $395, that would be bad faith.

Housing Provider's Notice of Appeal at 1-5.[1]

III. DISCUSSION

A. Whether the hearing examiner erred when he disregarded the three-year statute of limitations and determined the base rent and rent ceiling based on facts prior to 1985.

The hearing examiner found the base rent[2] for the tenant's unit could not exceed

[1] The notice of appeal consisted of five unnumbered pages of handwritten, singled spaced text. The notice of appeal did not contain clear or concise statements of the issues raised on appeal. The Commission endeavored to extract the issues from the rambling text.

[2] Base rent is a term of art, which "means that rent legally charged or chargeable on April 30, 1985, for the rental unit which shall be the sum of rent charged on September 1, 1983, and all rent increases authorized for that rental unit by prior rent control laws or an administrative decision issued under those laws, and any rent increases authorized by a court of competent jurisdiction." D.C. Code § 45-2503(4).

the amount charged on September 1, 1983, because the housing provider never recorded a base rent or established a rent ceiling for the housing accommodation. The hearing examiner indicated the "best evidence available reflects that in September 1983, Respondent charged $240.00 a month for a two bedroom unit in the subject housing accommodation." OAD Decision at 7.[3] Based on this evidence, the hearing examiner found the base rent for the tenant's unit was $240.00 per month. Since the housing provider never registered the property, the hearing examiner found the housing provider never perfected a legal rent increase. Accordingly, the hearing examiner found the legal rent ceiling was $240.00. The hearing examiner determined the rent charged, $395.00 per month, was illegal; and he rolled the tenant's rent back to $240.00, which was the rent level of unit 5 in 1983.

The Act prescribes a three-year statute of limitations at D.C. Code § 45-2516(e), which provides:

> A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 45-2526. No 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, except that a tenant must challenge the new base rent as provided in § 45-2503(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

The "statute of limitations embodied in D.C. Code § 45-2516(e) bars any investigation of the validity of rent levels, or of adjustments in either rent levels or rent ceilings, implemented more than three (3) years prior to the date of the filing of the tenant petition." South Dakota Avenue Tenants' Ass'n v. Cowan, TP 23,085 (RHC Sept. 14, 1998) at 6; see also Johnson v. Moore TP 23,705 (RHC Mar. 23, 1999).

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[3] The record reflected and the hearing examiner noted that the housing provider offered evidence of the rent levels since 1994. See OAD Decision at 6; Respondent's Exhibit (R. Exh.) 2.

When the hearing examiner relied upon evidence of the 1983 rent levels to resolve an issue raised in the petition filed on October 16, 1998, he violated D.C. Code § 45-2516(e), Commission precedent, and the holding in Kennedy v. District of Columbia Rental Housing Comm'n, 709 A.2d 94 (D.C 1998).

> In Kennedy, ... the District of Columbia Court of Appeals affirmed the Commission's holding that tenants may not recover rent refunds based on rent adjustments occurring more than three years prior to the filing of the tenant petition. The Court stated the statute of limitations in the Act bars both the filing of the claim and the recovery of refunds under the Act, when the facts relied upon occurred more than three (3) years before the filing of the tenant petition.

Schultz v. Fred A. Smith Company, TP 24,241 (RHC July 16, 1999) at 5.

The hearing examiner is precluded by D.C. Code § 45-2516(e), from relying upon evidence of rent levels in effect more than three years before the tenant filed the instant petition. Since the hearing examiner relied upon evidence of 1983 rent levels that were implemented more than three years before the tenant filed the instant petition, the hearing examiner's determination that the base rent and rent ceiling were $240.00 is reversed. This matter is remanded to the hearing examiner for a determination of the rent ceiling for unit 1.

B. Whether Findings of Fact 6 through 8 were supported by substantial record evidence.

In Findings of Fact 6 through 8, the hearing examiner determined: 1) the base rent for unit 1 was $240.00 based upon the rent charged for unit 5 in September 1983;[4] 3) the housing provider did not perfect any rent increases after September 1, 1983; and 4) the rent ceiling for unit 1 was $240.00. In accordance with the foregoing discussion, the Commission reverses Findings of Fact 6 through 8, because they were based upon

[4] See supra note 2.

incompetent evidence that was invalidated by the three year statute of limitations. See discussion infra Part A; D.C. Code § 45-2516(e).

C. Whether the hearing examiner erred when he failed to include the housing provider's evidence in the decision and credited the testimony offered by the tenant over the testimony offered by the housing provider on the reduction in services and facilities issue.

The hearing examiner has a responsibility to weigh the record evidence. He has "discretion to reasonably reject any evidence offered," and the hearing examiner does not have to list every piece of evidence considered when rendering a decision. Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66; 69 (D.C. 1986) citing Roumel v. District of Columbia Bd. of Zoning Adjustment, 417 A.2d 405, 408-409 (D.C. 1980); Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372, 1386 (D.C. 1977). "In rendering a decision, the Examiner is entrusted with a degree of latitude in deciding how he shall evaluate and credit the evidence presented." Harris, 505 A.2d at 69.

The tenant testified that he continually complained to the housing provider about needed repairs. The tenant introduced a series of photographs, which depicted defects in the bathroom, kitchen, living room, porch, windows, ceilings and walls of the unit. The tenant also testified concerning electrical problems, vermin infestation, and inadequate heat.

The housing provider testified he was not aware of any housing code violations when the tenant moved into unit 1. The housing provider testified that he hired workers to make repairs, whenever he received complaints. One of his repairmen, George Evans, testified concerning the repairs he made in the tenant's unit. The housing provider testified he installed screens in the tenant's unit; repaired the ceilings and walls; repaired

a leaking kitchen faucet; replaced a lighting fixture in the bathroom; and hired repairmen to correct the electrical problems in the tenant's unit.

The record reflected the parties offered conflicting testimony concerning the conditions and repairs in the tenant's unit. In the decision and order, the hearing examiner recounted the evidence offered by the tenant concerning the reduction in services and facilities issue. The Commission reviewed the record and determined the hearing examiner's recitation of the tenant's evidence was in accordance with the record evidence. However, the hearing examiner did not recount the testimony or documentary evidence offered by the housing provider concerning the housing provider's repairs.

Since the hearing examiner is not required to list every piece of evidence considered when rendering a decision, the fact that the hearing examiner did not recount the housing provider's evidence concerning repairs is not necessarily fatal. The Commission is required to entrust the hearing examiner with "a degree of latitude in deciding how he shall evaluate and credit the evidence presented." Harris, 505 A.2d at 69. Consequently, the Commission will not reverse the hearing examiner's evaluation of the evidence that is in accordance with the substantial record evidence. Cf. Mersha v. Marina View Tower Apartments, TP 24,302 (RHC July 23, 1999) (where Commission reversed the hearing examiner when he misstated the evidence and omitted evidence that revealed the misstatements).

The Commission reviewed the record and determined the hearing examiner did not abuse his discretion when he credited the tenant's testimony over the testimony offered by the housing provider. Moreover, there was substantial record evidence to support the hearing examiner's finding of a substantial reduction in services and facilities.

See discussion infra Part D. Accordingly, this issue is denied, and the hearing examiner is affirmed.

D. Whether the findings of fact on the reduction in services and facilities claim were in accordance with the substantial record evidence.

The housing provider challenges Findings of Fact 10 through 14 concerning the reduction in services and facilities claim. The hearing examiner found the housing provider substantially reduced the services and facilities provided in connection with the rental unit, when he failed to correct housing code violations in the tenant's unit. See D.C. Code § 45-2521. The hearing examiner valued the reduction at $100.00 per month from October 1, 1997 through January 1, 1999.

The Commission is empowered to reverse a hearing examiner's decision if is not supported by substantial evidence. See D.C. Code § 45-2526(h).[5] Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Ferreira v. District of Columbia Dep't of Employment Services, 667 A.2d 310, 311 (D.C. 1995) quoting James v. District of Columbia Dep't of Employment Services, 623 A.2d 395, 397 (D.C. 1993) (citations omitted). The Commission will affirm the hearing examiner's "findings of fact and conclusions of law as long as they are supported by 'substantial evidence' notwithstanding that there may be contrary evidence in the record (as there usually is)." Ferreira, 667 A.2d at 311.

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[5] The Act, D.C. Code § 45-2526(h), provides:

> The Rental Housing Commission may reverse in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this chapter, or unsupported by the substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision.

In order to prove a claim for reduction in services and facilities, the tenant must present evidence of the existence, duration and severity of the reduced services or facilities. The tenant cannot prevail on the reduction in services or facilities claim unless the hearing examiner finds the housing provider reduced a service or facility that was previously provided and that the reduction was substantial. See Lustine Realty v. Pinson, TP 20,117 (RHC Jan. 13, 1989).[6] In addition, the tenant cannot prevail on the reduction in services and facilities claim unless the hearing examiner finds the tenant put the housing provider "on notice of conditions existing within [the] tenant's unit which are alleged to be reductions in service." William Calomiris Investment Corp. v. Milam, TP 20,144, 20,160, 20,248 (RHC Apr. 26, 1989) quoted in Gelman Co. v. Jolly, TP 21,451 (RHC Oct. 25, 1990) at 5.

The tenant submitted photographs and offered testimony concerning the conditions in each room of unit 1. The tenant stated he lodged complaints with the housing provider in July 1997. The tenant stated the living room door was off its hinges and did not have knobs. There were holes in the hardwood floor; and there were no screens in any of the windows. After the tenant complained, the housing provider installed small used screens that covered only one quarter of each window. One of the two living room windows automatically opened allowing cold air into the unit. The tenant stated there was no heat in the living room, because the housing provider removed

[6] D.C. Code § 45-2521 provides:

> If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.

the heating unit. The walls were not painted before he moved into the unit and still required painting.

The tenant testified that there was only one electrical outlet, with two prongs, in the kitchen. The tenant used one prong for the refrigerator. Whenever he used the second prong, the entire housing accommodation lost electrical power. The tenant stated the kitchen sink leaked and overflowed; the plastic kitchen window was loose; the screen did not fit the window; and the door leading from the kitchen to the outer porch did not close.

In addition, the tenant offered testimony concerning the bathroom. He indicated the plumbing in the unit above his unit failed, and water came through the ceiling and damaged the light fixture. The tenant testified the bathroom floor was not level, and pipes protruded from the floor and posed a safety hazard. The tenant submitted photographs that corroborated his testimony. See Petitioner's Exhibits (Pet. Exh.) 1 (a-k), 2 (a-r).

The housing provider offered testimonial and documentary evidence concerning the conditions in the tenant's unit and the repairs. The housing provider offered the testimony of George Evans, who served as the housing provider's repairman for approximately eight years. Mr. Evans testified he first made repairs in the tenant's unit approximately two years [before the OAD hearing]. Mr. Evans testified he repaired the porch using steel rods and concrete, reinforced and painted two spokes on the porch railing. He stated he scrapped, caulked and painted the windows in June or July 1998, and gave the tenant six screens in July 1998. Mr. Evans indicated he repaired a crack in

the tenant's door, placed wood putty in a crack in the floor, installed a globe, caulked the windows and installed loose corner points, on the Friday before the hearing.

Mr. Chamberlain testified he paid $500.00 for electrical work in 1997 and performed additional electrical work in 1998. The housing provider testified he caused an electrical outage in the entire housing accommodation approximately four weeks before the hearing, and he hired an electrician to correct the outage. In February 1998, the tenant complained the stove was not operational. The housing provider stated the tenant was cooking indoors with a grill and created noxious fumes. The housing provider agreed to replace the stove, but learned the tenant's gas was disconnected. The housing provider stated, "I made good faith efforts, not sufficient I know, but I am trying hard..." OAD Hearing Tape. The housing provider submitted photographs that depicted cracks in the top surface of the tenant's porch, the bottom of the porch that appeared to be collapsing, and a railing with duck tape. See R. Exh. 1 (a-i).

In Spevak v. District of Columbia Alcoholic Beverage and Control Bd., 407 A.2d 549, 553 (D.C. 1979), the Court held that the standard for reviewing an agency's decision consists of the following three part test: 1) the agency must make findings on all contested issues material to the underlying substantive statute or rule; 2) its findings must be supported by substantial evidence as a whole; and 3) the agency's conclusions of law must be derived rationally from the underlying statute.

The Court has noted the limited nature of its review of administrative proceedings and recognized that it "should not disturb a decision if it rationally flows from the facts relied upon and those facts or findings are substantially supported by the evidence of record." Selk v. District of Columbia Dep't of Employment Services, 497 A.2d 1056,

1058 (D.C. 1985) citing Washington Post v. District Unemployment Compensation Bd., 377 A.2d 436, 439 (D.C. 1977). In Shapiro and Company v. Poorazar, TP 22,427 (RHC June 10, 1996), the Commission noted the limited nature of its review, and declined to disturb the hearing examiner's finding of a substantial reduction in maintenance services. Citing Selk, the Commission affirmed the hearing examiner because his decision was supported by substantial record evidence. See also Mersha v. District of Columbia Rental Hous. Comm'n, TP 24,302 (RHC May 9, 2000).

In the instant case, the Commission's review revealed there was substantial record evidence to support the hearing examiner's finding of a reduction in services and facilities. The testimonial and documentary evidence submitted by the tenant and the housing provider evinced the myriad deficiencies in the tenant's unit.[7] Accordingly, the hearing examiner's finding of a substantial reduction in services and facilities is affirmed. In addition, the Commission affirms the imposition of treble damages. See discussion infra Part F. However, the Commission discovered several errors in the hearing examiner's calculation of the refund. Pursuant to 14 DCMR 3807.4, the Commission corrects the plain errors, reverses the hearing examiner's calculation of the refund, and remands for a recalculation of the refund.

The Commission noted plain error in the calculation period. In Finding of Fact 13, the hearing examiner indicated the violation period was October 1, 1997 to January 31, 1999. Since the tenant filed the petition on October 16, 1998, the violation period cannot exceed October 16, 1998. The tenant is entitled to interest on the refund from the

[7] In the notice of appeal, the housing provider wrote, "Where is the D.C. Housing Inspection Report?" In Watson v. Cofer, TP 21,253 (RHC Nov. 1, 1990), the Commission noted the record did not contain a notice of housing code violations, and held that it was not required.

date of the violation to the date of the final decision and order. See 14 DCMR 3826.2.[8] However, the violation period is limited to the three years immediately preceding the date the tenant filed the petition.

The hearing examiner also erred in the figures used to calculate the refund. Instead of determining the refund using the amount of money the housing provider charged as rent, the hearing examiner calculated the refund using the reduced amount of the Superior Court's protective order. In the months the tenant did not pay rent, the hearing examiner did not order a refund.

"Rent is defined 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. Code § 45-2503(28). The housing provider is liable for the amount by which the entire amount of money, demanded or received, exceeds the rent ceiling. D.C. Code § 45-2591(a). The fact that the tenant did not pay the full amount of the rent does not limit the refund. See Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997).

In Kapusta, the Court upheld the award of a refund of rent the housing provider charged, but never collected. The housing provider demanded rent for a nine-month period; however, he only received payment for one month. The hearing examiner awarded a rent refund for the entire nine months the housing provider demanded rent in excess of the rent ceiling. The Commission affirmed the hearing examiner's decision in

[8] After notice in the D.C. Register on August 15, 1997, the Commission amended Title 14 DCMR on December 22, 1997 with the adoption of a new section 3826 on the calculation of interest. The notice of final rule making was published in the D.C. Register on February 6, 1998.

accordance with D.C. Code § 45-2591.[9] The DCCA, in turn, affirmed the Commission's decision in Kapusta, because the award of a refund of rent demanded but never received was in accordance with D.C. Code § 45-2591.

In the instant case, the hearing examiner erred when he failed to use the actual monthly rent to calculate the refund. The hearing examiner's use of the amount of rent in the Superior Court protective order and his failure to award a refund for the months the tenant did not tender the full amount of rent was plain error. Accordingly, the Commission reverses the hearing examiner's calculations and instructs him to calculate the rent refund using the entire amount of money demanded, received, or charged as rent by the housing provider. D.C. Code § 45-2503(28).

After the hearing examiner determines the rent ceiling on remand in accordance with Section A supra, he is instructed to "decrease the rent ceiling to reflect proportionally the value of the change in services and facilities." D.C. Code § 45-2521. If the rent charged exceeds the reduced rent ceiling, the hearing examiner shall order a refund in accordance with Hiatt Place Partnership v. Hiatt Place Tenants' Ass'n, TP 21,149 (RHC May 1, 1991). The hearing examiner also erred when he determined the housing provider was entitled to credit the refund toward the tenant's rent. See OAD Decision at 16. Since the Act does not provide for a credit against the tenant's rent, the order to credit the refund against the rent is reversed.

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[9] D.C. Code § 45-2591(a) 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, or (2) substantially reduces or eliminates related services previously provided for a rental unit, 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.

E. Whether the housing provider's failure to register the property or obtain a certificate of occupancy can be excused because the housing provider could not afford to meet the registration requirements.

During the OAD hearing, Theodore Chamberlain testified 424 Q Street Limited Partnership purchased the housing accommodation in 1978. He stated the property was never registered and the partnership never acquired a certificate of occupancy or housing business license.[10] The housing provider testified that he started, but never completed, the application to secure a housing business license. The housing provider could not offer a definitive explanation for his failure to complete the application. However, he stated a lack of money may have been the cause. Mr. Chamberlain testified he did not secure a certificate of occupancy, because the housing accommodation does not have sufficient square footage to meet the [zoning] requirements. During the OAD hearing, Mr. Chamberlain stated he was instructed to seek a variance "last October." See 11 DCMR 3107.2 (concerning an application for a variance from the strict requirements of the zoning regulations). Mr. Chamberlain indicated he submitted an application and paid fees for a survey; however, the agency denied the application on January 30, 1998.

The Act, D.C. Code § 45-2515(f), provides:

> (f) Within 120 days of July 17, 1985, each housing provider of any rental unit not exempted by this act 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 rent or is 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

[10] In the notice of appeal, T.K. Chamberlain, who is a licensed real estate agent, indicated he was not a licensed real estate agent when the partnership acquired the housing accommodation; and he was not aware of the certificate of occupancy requirements. The housing provider cannot avoid the requirements for a certificate of occupancy as a result of ignorance. See Flores v. District of Columbia Rental Hous. Comm'n, 547 A.2d 1000 (D.C. 1987). Even if the initial failure to meet the registration requirements were excused, Mr. Chamberlain admits he did not satisfy the requirements after he became aware of the agency's registration requirements.

with the Rent Administrator. ... The registration form shall contain, but not be limited to:

(1) For each accommodation requiring a housing business license, the dates and numbers of that housing business license and the certificates of occupancy, where required by law, issued by the District government;

(2) For each accommodation not required to obtain a housing business license, the information contained therein and the dates and numbers of the certificates of occupancy issued by the District government, and a copy of each certificate;

(3) The base rent for each rental unit in the accommodation, the related services included, and the related facilities and charges;

(4) The number of bedrooms in the housing accommodation;

(5) A list of any outstanding violations of the housing regulations applicable to the accommodation or an affidavit by the housing provider or manager that there are no known outstanding violations; and

(6) The rate of return for the housing accommodation and the computations made by the housing provider to arrive at the rate of return by application of the formula provided in § 45-2522.

The housing provider admitted he never registered the housing accommodation, secured a certificate of occupancy, or housing business license. In the notice of appeal the housing provider wrote, "[w]hen I testified that we could not afford the C of O, I meant it. .... Certainly I have not 'wilfully' [sic] failed to obtain a C of O." Notice of Appeal at 2-3.

The regulation, 14 DCMR 200.4, provides "no person shall operate a housing business in any premises in the District of Columbia without first having been issued a housing business license for the premises by the District." Moreover, 14 DCMR 1401.1 prohibits the use of "any structure for any purpose ... other than a one-family dwelling, until a Certificate of Occupancy has been issued to that person stating that the use complies with the Zoning Regulations and related building, electrical, plumbing, mechanical and fire prevention requirements." (emphasis added.)

The housing provider has operated the housing accommodation in violation of the requirements of the Act and regulations for more than twenty years. Neither the Act nor

the regulations support the notion that the housing provider's failure to meet the registration and licensing requirements should be excused, because the housing provider professed a financial inability to meet the requirements. The regulations, which mandate compliance before beginning operations, prohibit a housing provider from operating a multi-family dwelling until the agency issued a certificate of occupancy. When a housing provider fails to comply with the laws and regulations governing the certificate of occupancy, the regulations provide an avenue to apply for an extension when there are special or unusual circumstances. See 14 DCMR 1404; see also 14 DCMR 109; 11 DCMR 3107.2. The regulations governing the certificate of occupancy provide several avenues for a housing provider to seek a variance under extraordinary or exceptional circumstances.

The hearing examiner found the housing provider "knowingly and willfully failed" to register the housing accommodation; and did not obtain a housing business license or certificate of occupancy. See OAD Decision at 14; Findings of Fact 3-4. Since there was substantial, uncontroverted record evidence to support these findings of fact, 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 registration violations. D.C. Code § 45-2591(b) 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 required under this chapter shall be subject to a civil fine of not more than $5000.00 for each violation. The hearing examiner abused his

discretion when he failed to impose a fine for the housing provider's long-standing violations of the registration requirements of the Act.

"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.[11]

When a housing provider fails to register, obtain a certificate of occupancy or housing business license, 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 acquired the housing accommodation in 1978. The Rental Housing Acts of 1977, 1980, and 1985 were in effect during the period the housing

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[11] 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).

provider owned the housing accommodation. Although the housing provider owned the housing accommodation under three rent stabilization acts, the housing provider never registered the housing accommodation. The housing provider's failure to register the housing accommodation in accordance with the current Act warrants the imposition of a substantial fine. Accordingly, the Commission imposes a $5000.00 fine.

F. Whether there was substantial record evidence to support the finding of bad faith.

The housing provider contests Findings of Fact 15 and 16 concerning the imposition of treble damages. The housing provider posits: "How can I be acting in bad faith? It is to our advantage to be registered. ... If I was charging more than the $406 or $450/mo., not less [sic] $395, that would be bad faith." Notice of Appeal at 5. The hearing examiner found the "Respondent knowingly acted in bad faith by failing to register the property, obtain a housing business license, obtain a certificate of occupancy, and correct defects in the subject premises he knew existed and would reduce the services and facilities of Petitioner's unit." OAD Decision at 16; Finding of Fact 15.

In order to determine if the housing provider acted in bad faith, and is consequently liable for treble damages, there must be a knowing violation of the Act coupled with egregious conduct. The tenant has the burden of proving there was a knowing violation of the Act. Knowing only requires knowledge of the essential facts which 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 Management v. D.C. Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986) cited in Third Jones Corp. v. Young, TP 20,300 (RHC March 22, 1990). The second prong of the analysis is 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).

The hearing examiner determined the housing provider knowingly violated the registration requirements of the Act and substantially reduced services and facilities provided in connection with the tenant's rental unit. The record evidence revealed the housing provider failed, for over two decades, to meet the registration requirements of the Act. His failure to register the property, obtain a certificate of occupancy and housing business license violated the Act and regulations.

The housing provider continued to operate a seven unit housing accommodation without the certificate of occupancy that would insure "that the use complies with the Zoning Regulations and related building, electrical, plumbing, mechanical and fire prevention requirements." 14 DCMR 1401.1. The housing provider and tenant testified to plumbing problems, electrical outages and costly electrical repairs. The hearing examiner found a substantial reduction in services and facilities, and determined the housing provider's conduct was egregious, because the housing provider failed to correct known housing code violations and register the property even after the tenant filed the petition. The hearing examiner also indicated the "conduct was especially egregious when the housing provider is an experienced real estate professional on notice that the housing accommodation is not exempt from rent control." OAD Decision at 13.

The record revealed there was substantial evidence to support the imposition of treble damages. Accordingly, the Commission affirms the hearing examiner's imposition of treble damages.

IV. CONCLUSION

The Commission affirms the hearing examiner in part, reverses in part, and remands for a determination of the rent ceiling and a proper calculation of the rent refund.

The Commission reverses the hearing examiner's calculation of the rent ceiling, because he relied upon 1983 rent levels in violation of D.C. Code § 45-2516(e). The Commission affirms the hearing examiner's finding of a substantial reduction in services and facilities; however, the Commission reverses and remands the hearing examiner's calculation of the rent refund. The Commission affirms the imposition of treble damages, and affirms the hearing examiner's finding that the housing provider failed to register the housing accommodation. The Commission reverses the hearing examiner's failure to impose a fine for the registration violations, and the Commission fines the housing provider $5000.00.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 24,597 was sent certified mail, postage prepaid, this 31st day of July 2000 to:

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