DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

In re: 116 P Street, S.W., Unit 1

Ward Two (2)

TP 24,726
TP 24,800

AHMED ASSALAAM
Tenant/Appellant

v.

DONALD LIPINSKI
BARBARA A. SCHAUER
Housing Providers/Appellees

DECISION AND ORDER

August 31, 2000

BANKS, CHAIRPERSON. This appeal is from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), 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

Ahmed Assalaam filed his first Tenant Petition (TP 24,726) on June 1, 1999, and filed his second Tenant Petition (TP 24,800) on September 1, 1999.

The first Tenant Petition (TP 24,726) alleged: 1) the housing accommodation was not exempt under the small housing provider exemption from the Act, and therefore, not properly registered, 2) reduction or elimination of services and facilities, 3) retaliation by the Housing Provider, 4) improper notice to vacate, and 5) a check mark was placed by preprinted text on the petition that the Act was being violated without a statement or explanation of how the Act was violated.

The second Tenant Petition (TP 24,800) alleged: 1) the housing accommodation was not properly registered as exempt from the Act, 2) retaliatory action, 3) improper notice to vacate based on a home occupation, and 4) the Housing Providers violated the Act in the second registration on August 26, 1999, by stating the property was exempt under the small housing provider exemption, while owning more than four rental units. In addition, the Tenant filed as an attachment to this Tenant Petition a document entitled, "MISCELLANEOUS COMPLAINTS" in which he stated that the housing providers: 1) retaliated against him by serving him with a notice to quit after he had them cited by housing inspectors, 2) retaliation by the Housing Providers' painters who were instructed to photograph his unit prior to painting it, 3) lack of a business license in violation of the Act, and 4) Lipinski was not licensed as a property manager in violation of D.C. Code § § 45-1926, 1929.

Hearing Examiner Gerald Roper held the hearings on August 30, 1999, for TP 24,726, and on November 8, 1999 for TP 24,800. He issued on January 19, 2000 the OAD consolidated decision and order on both Tenant Petitions.[1] "The record officially closed on September 17, 1999 in TP 24,726 and on November 30, 1999 in TP 24,800." Decision at 4.[2]

The Hearing Examiner made the following findings of fact:

1) The subject housing accommodation, 116 P Street, SW [sic] is registered with the RACD. The property was registered as exempt pursuant to section 205(a) of the Act, June 27, 1990 by Barbara Schauer and re-registered as non-exempted [sic] September 31, [sic][3] 1999 by Barbara Schauer.

2) Petitioner notified Respondent Lipinski in writing on April 22, 1997 of needed maintenance and repair service to the plumbing, the furnace, exterior doors, and a light fixture.

3) Petitioner notified Respondent Lipinski in writing on November 1, 1999 of needed maintenance and repair service to unsafe electrical lighting, plumbing in the kitchen and bathroom and defective exterior doors.

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[1] Counsel for the Housing Provider moved for the consolidation of the two Tenant Petitions into one decision for both petitions, since they involved identical issues. In the decision and order, the hearing examiner granted the motion. Decision at 2. See Hamilton House Assoc. of Resident Tenants/ Tenants of 1255 New Hampshire Avenue, N.W., HP 20,497 & HP 20,388 (RHC Dec. 22, 1994) (where the Commission consolidated two cases for decisional purposes based on the identity of issues.)

[2] Assalaam v. Lipinski, TP 24,726 & TP 24,800 (OAD Jan. 19, 2000).

[3] Pursuant to 14 DCMR 3807.4, the Commission noted plain error, because the month of September has only 30 not 31 days. Pursuant to D.C. Code § 1-1509, the Commission took official notice of the number of days in the month of September, and the parties have 10 days to file an objection.

4) Respondent was cited by the DCRA for housing code violations in Petitioner's rental unit.

5) Respondent has substantially reduced the service and facilities to Petitioner.

6) Petitioner requested a housing inspection of his rental unit by DCRA.

7) In May 1999, Respondent attempted to coerce the Petitioner into signing a statement concerning the condition of his rental unit after DCRA had inspected the unit. On August 31, 1999 Respondent sent painters to paint Petitioners [sic] rental unit to paint conditioned upon Petitioner allowing the painters to take pictures of the interior of the rental unit and the Petitoners [sic] personal property.

8) Respondent has retaliated against the Petitioner.

9) Petitioner is entitled to a rent refund of $1,550.00, plus $57.00 interest.

The hearing examiner concluded:

1) Respondent reduced the services and facilities of Petitioner's rental unit by failing to provide maintenance and repair services as needed in violation D.C. Code Section 45-2521, and 14DCMR 4211 [sic].

2) Respondent has retaliated against Petitioner in violation of D.C. Code [sic] 45-2552.

3) Petitioner is entitled to a rent refund plus interest pursuant to D.C. Code Section 45-2591(a) (1990).

Accordingly, the hearing examiner granted the petitions, ordered the rent refund of $1607.00, and fined the Housing Providers $500.00 for retaliation against the Tenant. Decision at 13-14.

On February 18, 2000, the Tenant filed his notice of appeal in the Commission. On February 25, 2000, the Housing Provider

filed an answer to the notice of appeal. On March 13, 2000, the Tenant filed a motion to amend the notice of appeal and the Commission issued its order on the motion to amend on April 18, 2000. The tenant filed his brief on April 3, 2000. The Commission held its hearing on April 27, 2000.

II. ISSUES:

1. Whether the fact that the hearing examiner was on vacation during the period for review of the Tenant's motion for reconsideration violated due process.
2. Whether, in TP 24,800, the omission of the issue of licensing the Property Manager, that was procedurally dismissed as not within the scope of the hearing examiner, was error in the decision and order.
3. Whether the hearing examiner's decision and order under Procedural History omitted in TP 24,726 the issue of Respondent's failure to provide the Tenant with a copy of Title 14 DCMR Chapters 1, Section 101, and Section 106, as required by Chapter 3, Section 300.1.
4. Whether the Hearing examiner's decision and order under Evidence and Pleadings Considered omitted in TP 24,800 evidence admitted into the official record as exhibits.
5. & 6. Whether the hearing examiner's decision and order contained error on the issues of proper registration and a

valid certificate of occupancy for the housing accommodation.

7. & 8. Whether the hearing examiner erred in determining the value of the reduction of services and facilities, and erred in consideration of the gas expense incurred by the Tenant.

9. & 10. Whether the hearing examiner erred in failing to find bad faith and trebling damages against the housing provider.

11. Whether the Housing Provider knowingly violated the Act by filing late with the hearing examiner the proposed decision and order, without a certificate of service and without contemporaneous service on the Tenant.

12. Whether the Housing Provider owes the Tenant the cost of two televisions, which were damaged due to defective electrical wires.

13. Whether the hearing examiner erred in the determination to pay Respondent rent on finding of bad faith where the housing code violations have to date to be abated, after taking official notice of exhibit #3 of Respondent's agreement with Petitioner to abate violations in exchange for rent.

III. DISCUSSION OF THE ISSUES:

1. Whether the fact that the hearing examiner was on vacation during the period for reviewing a timely filed "Motion for Reconsideration" thereby denied the Tenant's constitutional right of due process.

The OAD rules, 14 DCMR 4013.1-5, provide for motions for reconsideration. "Failure of a hearing examiner to act on a motion for reconsideration within the time limit prescribed by §4013.2 [sic] shall constitute a denial of the motion for reconsideration." 14 DCMR 4013.5. In this case, the motion for reconsideration was denied by agency rule. See CIH Properties v. Torain, TP 24,817 (RHC July 31, 2000) at 8.

Due process was not denied when the motion for reconsideration was denied by rule, since all of the Tenant's procedural rights, especially the Tenant's right to appeal the alleged errors in the consolidated OAD decision and order, were preserved. Kenneth Culp Davis & Richard J. Pierce, Administrative Law Treatise, §9.5, p. 47 (3rd ed. 1994) (stating due process at a hearing consists of an unbiased tribunal, notice, opportunities to present evidence, including witnesses, cross-examination, decision based only on the evidence, right to counsel, record of evidence, written findings of fact, and reasons for the decision). Due process does not include the "right" to have a written response to a motion for

reconsideration. Accordingly, this issue is denied, and the hearing examiner is affirmed.

2. Whether the hearing examiner committed error in the decision and order under Procedural History by omitting in TP 24,800 the issue of licensure of the property manager that was procedurally dismissed because it was not deemed to be within the scope of the "Examiner."

The hearing examiner made the following statement in the consolidated OAD decision and order under the section on Procedural History.

> At the hearing in TP 24, 726 [sic], the issue of whether a notice to vacate has been served on the tenant which violated the requirements of section 501 of the Act was procedurally dismissed because the notice to vacate complained of was dated after the date the tenant petition was filed with RACD. (emphasis added.)

No other statement was in the consolidated OAD decision and order about an issue that was "procedurally dismissed." However, on the tape of the hearing for TP 24,800, the hearing examiner asked the Tenant what violation of the Act caused him to check the preprinted text on the Tenant Petition for TP 24,800, that related to violations of other sections of the Act. See Record (R.) at 45. The Tenant testified that allegation related to the fact that neither the Housing Provider nor her manager was licensed or registered. This allegation was further explained by an attachment to the Tenant Petition, entitled "MISCELLANEOUS COMPLAINTS," which stated, "Mr. Lipinski as defined in D.C. Code 45-1922(10) is not licensed to practice

property management…." R. at 43. Further, the Tenant asserted that the owner of the housing accommodation, Barbara Schauer, violated the Act by maintaining Lipinski as her property manager.

The Commission holds the hearing examiner erred by ruling there is no issue on licensing under the Act, and by dismissing that allegation. In fact, D.C. Code § § 45-2518(a)(C)-(D) require that the housing provider be licensed and that the manager be properly registered, if required by other laws. The hearing examiner erred when he dismissed this allegation without consideration of the explanation of the allegation from the Tenant, who explained the allegation to the hearing examiner at the hearing, and who also inserted a written explanation with references to D.C. Code § § 45-1922, 1926 (another law) into the record, as an attachment to the Tenant Petition.

This issue is granted and the hearing examiner is reversed. This issue is remanded to the hearing examiner for findings of fact, conclusions of law, and fine, if appropriate, after analysis on whether the Housing Providers violated the licensure and registration sections of the Act. See D.C. Code § § 45-2518(a)(C)-D).

3. Whether the hearing examiner's decision and order under Procedural History omitted in TP 24,726 the issue of Respondent's failure to provide tenant with a copy of Title 14 DCMR Chapters 1, Section 101, and Section 106, as required by Chapter 3, Section 300.1.

This issue is denied for the following two reasons. The Commission reviewed the Tenant Petition for TP 24,726 and did not find in the petition "the issue of Respondent's failure to provide tenant with a copy of Title 14 DCMR Chapters 1, Section 101, and Section 106, as required by Chapter 3, Section 300.1," as stated by the Tenant in issue 3. The rule is an issue must first be properly raised at the hearing before it is raised on appeal. Since this issue was not first raised in the petition for TP 24,726 before OAD, it cannot be raised and ruled upon by the Commission. See 1880 Columbia Road, N.W., Tenants' Assoc. v. District of Columbia Rental Housing Comm'n, 400 A.2d 333 (D.C. 1979).

In addition, although the Tenant did not raise this issue in the petition, when he attempted to raise it at the hearing, the hearing examiner dismissed the issue, because the regulations were not promulgated under the Act. The hearing examiner was correct, because 14 DCMR 101, refers to the policy to have courts of competent jurisdiction resolve issues of public nuisances; that is not within the jurisdiction of the Act. Under 14 DCMR 106 the "Director" has duties not housing providers, and 14 DCMR 300.1 refers to other acts, not the Rental Housing Act of 1985. Accordingly, this issue is denied, because none of the regulations cited were promulgated pursuant

to the Rental Housing Act of 1985. The regulations pursuant to the Act are found at 14 DCMR 3800-4399. Accordingly, the hearing examiner is affirmed.

4. Whether the hearing examiner's decision and order under Evidence and Pleadings Considered omitted in TP 24,800 evidence admitted into the official record as exhibits.

The Tenant stated in his notice of appeal that Exhibits P-1 and P-2, which respectively were an updated "List of Properties owned by Barbara A. Schauer and/or Donald Lipinski" including frame numbers from the public record of the Office of the Recorder of Deeds, and, "Petitioner's Log" regarding painters, labeled E-40, were not mentioned as evidence considered by the Hearing Examiner in the decision and order. Notice (N.) at 2.

The hearing examiner stated that he considered, "Exhibit #1: A list of properties owned by the Respondent." Decision at 3. Next, the hearing examiner stated, "[a]ll testimony and documentary evidence submitted by the parties was admitted into evidence." Decision at 4. The hearing examiner is not required to list all of the evidence that he considered. Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66, 68-69 (D.C. 1986). Accordingly, this issue is denied and the hearing examiner is affirmed.

5 & 6. Whether the hearing examiner's decision and order contained errors on the issues of proper registration and a valid certificate of occupancy for the housing accommodation.

A. Registration.

The Act provides for registration of rental units as either covered by the Act or exempt from the Act. D.C. Code § 45-2515. There are several classes of housing accommodations or housing providers that are exempt, provided specific rules are followed. The exempt rental units include, housing subsidized or owned by the federal or District governments, newly constructed rental units with building permits issued after December 31, 1975, vacant property without a rental agreement since January 1, 1985, rental units in condominiums and cooperatives, and ownership of four or fewer rental units by four or fewer natural persons. D.C. Code § 45-2515(a). This case involves whether the Tenant's rental unit is in the last class of exempted rental units, and whether the Housing Provider's claim of exemption, based on ownership of four or fewer units, was valid. This type of exemption is known as the small housing provider exemption. Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293 (D.C. 1990); Hansen v. District of Columbia Rental Hous. Comm'n, 584 A.2d 592 (D.C. 1991); Blacknall v. District of Columbia Rental Hous. Comm'n, 544 A.2d 710 (D.C. 1988); Gibson v. Johnson, 486 A.2d 699 (D.C. 1985). Any shift from exempt status to non-exempt must be accompanied by registration as non-exempt. Revithes v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1007 (D.C. 1987).

The Act, D.C. Code § 45-2515(a)(1)(C), provides,

> [a]ny change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change. (emphasis added).

The Tenant stated in the notice of appeal:

> [t]he Hearing Examiner's decision and order under Whether the building in which the rental unit is located is not properly registered [in the] RACD? Page 5, quotes 14 DCMR 1401.1, and further states 'Failure to obtain a Certificate of Occupancy is deemed a failure to meet the registration requirements of the Act. Grayson v. Welch, TP 10,878 (RHC) [sic] June 30, 1989); Temple v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1024 (D.C. 1987).'

Notice at 2.

> According to exhibit P-1 in TP 24,800 the Respondent/Housing Provider owned more than four rental units including [the] purchase of the subject housing on or before 6-7-90…. Therefore a rent roll back reverts to the date of July 22, 1985…. Hearing Examiner did not determine the rent roll back [based on rent increases while the unit was not properly registered]. (emphasis added).

Notice at 3.

The Housing Provider testified in TP 24,800 that the housing accommodation was registered as exempt from the Act in 1991, when she purchased the property, and she also testified that after the Tenant filed TP 24,726 on June 1, 1999, she filed a false claim of small housing provider exemption on August 26, 1999. Moreover, the Housing Provider's counsel in TP 24,800 admitted that the Housing Provider was not properly registered

as exempt on August 26, 1999, because she owned more than four units. The Housing Provider testified that she did not change the registration to non-exempt or covered by the Act until late September or early October 1999, when she received advice to do so.

On the issue of whether the Housing Provider properly registered the housing accommodation, the hearing examiner wrote:

> [a]t the hearing in TP 24,726 Petitioner Assalaam testified that the [sic] Barbara Schauer owns more than four rental units in the District of Columbia and provided a list of properties owned by Ms. Schauer and Donald Lipinski.
>
> Barbara Schauer, Respondent [sic] testified that the rental accommodation was exempted from rent control under the small landlord exception provisions of the Act in 1991, but that status of the property has changed and the registered [sic] corrected October 1999 as being cover [sic] under the Act.
>
> Based on the evidenced [sic] presented the Hearing Examiner concludes that the subject rental unit housing accommodation is properly registered under the Act.

Decision at 5.

The Commission holds the hearing examiner failed to perform an analysis of whether the housing providers were ever exempt or to perform an analysis as to what date the housing providers should have reported the change in status from exempt to non-exempt or covered by Act. The hearing examiner stated in the decision and order that he took official notice of the registration file, but did not state what that file showed about

registration or ownership of rental units. Decision at 4. The hearing examiner merely noted that the Housing Provider's testimony was that the housing accommodation was exempt under the small landlord provision of the Act in 1991, and in 1999 the same housing accommodation was registered as covered under the Act. Decision at 4-5. The statements of the hearing examiner suggest to the reader that the housing accommodation was not properly registered for approximately eight years, 1991 to 1999.

Moreover, there is a conflict in the decision and order, wherein the hearing examiner states in Finding of Fact 1, Decision at 13, that the exemption was filed in 1990, but states in the discussion of the exemption that the filing for exemption occurred in 1991, Decision at 4. In either case, there was no analysis of a penalty under the Act for failure to properly notify the Rent Administrator of the change from exempt to covered by the Act. Revithes, supra. The requirement in the Act is that the change in the exempt status be reported to the Rent Administrator within 30 days. D.C. Code § 45-2515(a)(1)(C) cited supra at 13. See also, 14 DCMR 4106.1-8 & .12-.13 (regulations providing for filing claim of exemption, including small housing provider exemption, and fine for failure to provide accurate information). Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293, 1299, n.13 (D.C. 1990).

D.C. Code § 45-2591 provides for a fine whenever a part of the Act is violated, and the hearing examiner did not consider a fine for the failure to report the change in status from exempt within 30 days as required by the Act, nor did he consider a fine under D.C. Code § 45-2591(b)(2) for the false statement of exemption in the August 26, 1999 registration.

Accordingly, the Commission determined that Finding of Fact number one (1), page 3 supra, was not supported by the record, because the Housing Provider admitted that she was not properly registered, during the periods that were covered by the petitions. The hearing examiner relied upon the third registration filed by the Housing Provider as non-exempt, which was filed, according to the Housing Provider's testimony, in September or October 1999, after the two Tenant Petitions were filed. Therefore, the hearing examiner is reversed.

This issue is granted, and remanded to the hearing examiner for elimination of the conflicting dates in the decision on when the first claim of exemption was filed, the correction of the date September 31, 1999, and findings of fact on what date the Housing Provider's status as exempt from the Act ceased. The date the exemption ceased is the date the Housing Provider began ownership of the fifth unit, not when the Housing Provider registered as non-exempt. Goodman, supra, cf. Butt v. Vogel, TP 22,806 (RHC Jan. 17, 1995). Further, the hearing examiner must

determine the fine penalty against the Housing Providers for failure to properly register the property by not reporting the change in status until 1999, as stated in Finding of Fact number one (1). D.C. Code § 45-2591(b) provides for fines up to $5,000.00 for housing providers who fail to meet their obligations under the Act, and proper registration is one of the obligations in the Act. Johnson v. Moore, TP 23,705 (RHC Feb. 29, 2000).

Finally, the Tenant's issue that the hearing examiner failed to award a rent rollback for rent increases while the housing accommodation was improperly registered is denied, because the Tenant did not raise this issue in either of the two Tenant Petitions, nor did he present evidence of rent increases during either of the two hearings. See 1880 Columbia Road Tenants' Asso. v. District of Columbia Rental Hous. Comm'n, 400 A.2d 330, 339 (D.C. 1979). Improper registration merits a fine, not a rent rollback. D.C. Code § 45-2591(b), Revithes, supra.

B. Certificate of Occupancy

On the issue of certificate of occupancy, the Tenant stated:

> [a]t the time of the filing of T/P 24,726 and prior to August 26, 1999, Respondents had no Certificate of Occupancy for the subject housing. Pursuant to D.C. Code 1-1509(c), (1981), [sic] Hearing Examiner failed to take notice of the (public) registration records prior to August 26, 1999, which illustrates the last Certificate of Occupancy # 1891923, was issued for the subject housing to Roberta F. Marshall on 12/6/89 [sic]. Further, the (public) registration records

illustrate the last posted registration for the subject housing was issued to Doris L. Marshall and dated July 22, 1985…."

Notice at 2.

The Tenant also argued in his notice of appeal:

that "[a]t the time of the filing of TP 24,726 and prior to August 26, 1999, Respondents had no Certificate of Occupancy for the subject housing. Acting pursuant to D. C. Code 1-1509(c), the Hearing Examiner failed to take notice that according to the (public) registration records prior to August 26, 1999, the last Certificate of Occupancy # 1891923, was issued for the subject housing to Roberta F. Marshall on 12/6/89. Further, according to the (public) registration records the last posted registration for the subject housing was issued to Doris L. Marshall and dated July 22, 1985, where the rent ceiling was determined to be $211.00."

Notice at 2.

The law is that housing providers are "required to have a certificate of occupancy and a housing business license." Curry v. Dunbar House, Inc., 362 A.2d 686, 688 (D.C. 1976), D.C. § 45-2515(f). See also Temple v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1024 (D.C. 1987). The hearing examiner stated in the decision and order that in accordance with the DCAPA he took official notice of "[r]egistration records for 116 P Street, S.W." Decision at 4. However, the hearing examiner did not state what the file showed, as explained by the Tenant in the above quoted portion of the notice of appeal. The hearing examiner made no findings of fact or conclusions of law on the issue of whether the Housing Providers had a certificate of

occupancy for the rental accommodation. See excerpt of Decision above, pp. 3-4, and Decision at 13-14. However, he stated in the text of the decision, "[t]he evidence also shows that a Certificate of Occupancy was issued to Respondent Schauer on August 26, 1999." Decision at 5. This is a factual error. The evidence showed that the Housing Providers registered as exempt from the Act on August 26, 1999, and that registration was not valid, because the Housing Provider owned more than four rental units on August 26, 1999.

The Commission notes that August 26, 1999, is after the first petition (TP 24,726) was filed on June 1, 1999, and before the second petition (TP 24,800) was filed on September 1, 1999. Accordingly, the hearing examiner failed to make the proper finding of fact in TP 24,800 that the Housing Providers did not have a valid certificate of occupancy [nor a claim of exemption] at the time the second Tenant Petition, TP 24,800, was filed. As previously discussed, the Housing Providers did not have a valid claim of exemption until either September or October, 1999. See discussion of issues 5 & 6, § A, supra.

This issue is granted and remanded to the hearing examiner for a finding of fact, conclusion of law, and determination of fine for failure of the Housing Providers to obtain a certificate of occupancy prior to the Tenant's filing the petition in TP 24,800.

7. & 8. Whether the Hearing examiner erred by determining the value of the reduction of services and facilities, and erred in denying consideration of the expenses for gas service incurred by the Tenant.

The Tenant stated in his appeal brief:

> The Hearing Examiner erred in substituting his personal judgement [sic] of value determination for that of Appellant. Based upon the facts, evidence and pleadings submitted, Hearing Examiner's personal judgement [sic] of value determination is inadequate.

Tenant's Brief at 3. The Tenant argued for a monthly value of more than $450.00 each month for the reduction of services and facilities. Tenant's Brief at 5.

The law is that there is no scientific, mathematical, or actuarial way of measuring the value of reduction of services and facilities. Academy Spires v. Brown, 268 A.2d 556, 561 (N. J. 1983), KJSG Assoc. v. Breed, TP 4870 (RHC Aug. 25, 1982). There is no law to support the Tenant's view that the hearing examiner must accept the Tenant's determination of the value of the reduced services and facilities, and that it was error to fail to accept the Tenant's valuation. Indeed, a fact finder may find that the Tenant's valuation is exaggerated. Academy Spires, 268 A.2d at 562. "[W]e rely on the hearing examiner's knowledge, expertise and discretion, as long as there is substantial evidence in the record regarding the nature of the violation, its duration and substantiality." Taylor v.

Chase Manhattan Mortgage, TP 24,303 & TP 24,420 (RHC Sept. 9, 1999) at 7. The hearing examiner is entrusted with weighing the evidence and making the valuation judgment, not the Tenant. McKenzie v. McCulloch, 634 A.2d 430 (D.C. 1993); City Wide Learning Center v. William C. Smith, 488 A.2d 1310 (D.C. 1985). Therefore, this issue is denied.

Further, neither the Commission nor the Rent Administrator has jurisdiction to reimburse a tenant for expenses related to the housing accommodation or harm to the tenant's credit rating. Whitmore v. Myers, TP 20,355 (RHC Sept. 17, 1987). Therefore, the Commission denies this issue and affirms the hearing examiner. Moreover, the Commission ruled in the order on the motion to amend the notice of appeal that it did not have jurisdiction to review issues related to expenses incurred by the Tenant. Order at 5-6.

9. & 10. Whether the hearing examiner erred in failing to find bad faith and trebling damages against the housing provider.

The Tenant stated in his notice of appeal that the hearing examiner failed to make findings of fact on bad faith. N. at 5, ¶ 10. The Tenant requested that the Commission award treble damages.

The Commission is limited to reviewing findings of fact, and cannot make the findings of fact. Meir v. District of Columbia Rental Accommodations Commission, 372 A.2d 566 (D.C. 1977).

However, since no findings of fact were made by the hearing examiner on this issue, it is granted and remanded to the hearing examiner to make findings of fact on whether the Housing Providers acted in bad faith when the Housing Providers reduced services and facilities. D.C. Code § 45-2591(a). The hearing examiner has already made the finding of fact that the Housing Providers reduced services and facilities. See Finding of Fact numbers 4 and 5 on page 4 above.

"Bad faith" does not relate to improper registration; it relates to reduction of services and facilities, and rent overcharges. Ayers v. Landow, TP 21,273 (RHC Oct.4, 1990); Third Jones Corp. v. Young, et al.; TP 20,300 (RHC Mar. 22, 1990); Velray Properties v. Wallace, TP 20,431 (RHC Sept. 11, 1989). Treble damages based on bad faith for failure to properly register a housing accommodation are not permitted by the Act, only a fine. D.C. Code § 45-2591(a)-(b). This issue is remanded for detailed findings of fact in accordance with 14 DCMR 4217.2. Revithes.

11. Whether the Housing Providers knowingly violated the Act by filing late with the hearing examiner the proposed decision and order, without a certificate of service, and without contemporaneous service on the Tenant.

The Act does not provide for filing proposed decision and orders, certificate of service, nor contemporaneous service on a party. However, the rules that implement the Act make specific

provisions for each of those items. The Tenant did not appeal under the regulations therefore, those issues are not before the Commission. Cf. Kamerow v. Baccous, TP 24,470 & TP 24,471 (RHC Jan. 28, 2000) at 13, where the Commission required counsel for the housing provider to comply with the service requirements in 14 DCMR 3801.8 in future proceedings. Counsel in this case is similarly required to comply in the future with Commission rules. This issue is denied and the hearing examiner is affirmed.

12. Whether the Housing Provider owes the Tenant the cost of two televisions, which were damaged due to defective electrical wires.

This issue was raised in the Tenant's motion to amend notice of appeal and denied in the Commission's April 18, 2000 order wherein it was stated: "[t]here is no provision in the Act for reimbursement of security deposits and expenses. Newton Towers Ltd. Partnership v. Newton House Tenants Association, TP 20,005 (RHC Feb. 1, 1988), Whitmore v. Myers, TP 20,355 (RHC Sept. 17, 1987) cited in Goldsten v. 1736 - 18th Street Tenants' Ass'n, TP 11,537 (Dec. 26, 1996) (Banks, Chairperson. Concurring, in part, and dissenting, in part, at 24). This issue is dismissed from the appeal. Since this issue was previously dismissed, it is now moot and no further ruling is necessary. See Order at 6.

13. Whether the hearing examiner erred in the determination to require the Tenant to pay the Housing Provider rent on finding of bad faith where the housing code violations have not been abated to date, after taking official notice of exhibit 3, Respondent's agreement with the Tenant to abate violations in exchange for rent.

There was no finding of bad faith in this case. See Findings of Fact, pp. 3-4, supra, and issues 9 and 10, supra.[4] Therefore, this issue is denied as to bad faith. After taking out the "bad faith" element of this issue, the issue remains whether the Commission can decide an issue about housing code violations to date. The answer is no, since the Commission is limited to reviewing the record up to the time the record is closed. Harris, supra. D.C. Code § 45-2526(h). The Commission cannot consider new evidence that was not in the OAD record at the time the OAD record closed. 14 DCMR 3807.5. Johnson v. Moore, TP 23,705 (Feb. 29, 2000). Moreover, housing providers may collect rent, although there are housing code violations in the housing accommodation, Curry, 362 A.2d at 689. Accordingly, this issue is denied, because the Commission cannot review evidence of housing code violations that have not been abated to date. The hearing examiner is affirmed.

[4] The examiner discussed the law pertaining to remedies, which included the remedy of treble damages for bad faith. Decision at 9. However, in the decision, there is no discussion of facts related to bad faith or a finding of bad faith against the Housing Provider.

IV. CONCLUSION

In summary, the Commission affirmed the hearing examiner on: issues one (1), three (3), four (4), seven (7), eight (8), eleven (11) and thirteen (13). The Commission reversed and remanded the hearing examiner on issues: two (2), five (5), and six (6), and remanded issues nine (9) and ten (10). Issue twelve (12) is moot, since it was ruled upon in the motion to amend the notice of appeal.

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 TPs 24,726 & 24,800 was mailed by certified mail on the **31st day of August, 2000** to:

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