DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,827

In re: 1801 16th Street, N.W., Unit 405

Ward One (1)

PINNACLE MANAGEMENT COMPANY
Housing Provider /Appellant

v.

PEARL-ALICE MARSH
Tenant/Appellee

DECISION AND ORDER

September 7, 2000

YOUNG, COMMISSIONER: This case is on appeal 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 Commission's rules, 14 DCMR 3800 et seq., also apply.

I. PROCEDURAL HISTORY

Pearl-Alice Marsh, the tenant/appellee, and others[1] filed Tenant Petition (TP) 24,827, with the Rental Accommodations and Conversion Division (RACD), on October 13, 1999. In the petition Marsh, who occupies unit 405 at the housing accommodation,

[1] In addition to the named tenant, Pearl-Alice Marsh, tenants Linda Z. Dalton, Asensork Teklehaimanot, Miguel Castro, Ruth E. Jones, and Jim Voltz filed tenant petitions alleging that the housing provider reduced their services by permanently closing the roof deck at the housing accommodation on July 1, 1997. Tenants Linda Z. Dalton, Asensork Teklehaimanot, Miguel Castro and Ruth E. Jones failed to appear at the OAD hearing and tenant Jim Voltz withdrew his petition on the date of the hearing.

alleged that the housing provider, Pinnacle Management Company (Pinnacle), the managing agent of the 84 unit housing accommodation located at 1801 16th Street, N.W., permanently reduced the services and facilities at the housing accommodation by closing a roof deck previously available to the tenants.

On November 29, 1999 an OAD hearing was held with hearing examiner Gerald J. Roper presiding. The hearing examiner issued his decision and order on March 30, 2000. In his decision the hearing examiner found as a matter of fact:

> 1. The subject housing accommodation, 1801 16th Street, NW [sic] is registered pursuant to the Rental Housing Act of 1985.
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> 2. The landlord registration statement on file does not list the roof deck.
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> 3. Petitioner took possession of apartment 405 in 1994 and used the roof deck on a regular basis until the housing provider notified the tenants in July 1997 that it was being closed for revocations [sic].
>
> 4. Management has advertised vacant rental units in the housing accommodation as having a roof deck available for the tenants.
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> 5. The roof deck has been part of the housing accommodation and available for the tenants use for over 37 years.
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> 6. There has never been a fee or a charge associated with the use of the roof deck, and the roof deck has always been maintained and equipped by the housing provider for the use of the tenants.
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> 7. On June 6, 1998 the Petitioner and tenants of the housing accommodation were notified by management that the roof deck would not be installed.
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> 8. The roof deck is a part of the extended common area of the housing accommodation.
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> 9. Petitioners Linda Dalton, Asensork Teklehaimanot, Ruth Jones, and Miguel Castro did not appear at the hearing.
>
> 10. Petitioner Jim Voltz withdrew his tenant petition prior to the hearing.

Marsh v. Pinnacle Management Company, TP 24,827 (OAD Mar. 30, 2000) at 12.

The hearing examiner concluded as a matter of law: "Respondent reduced the facilities to Petitioner by failing to restore the roof deck to its original use in violation of D.C. CODE Section 45-2521, and 14 DCMR 4211." Id. The hearing examiner ordered that the housing provider refund a total of $3855.00, plus $231.00 in interest to the tenant and reduced the tenant's rent ceiling to $566.00.

II. ISSUES ON APPEAL

In its timely filed notice of appeal to the Commission, the housing provider argues the hearing examiner: a) erred in his conclusion that the housing provider's failure to replace the roof deck was a reduction of services; b) reached a decision contrary to the evidence presented at the hearing; c) erred in concluding that the roof deck was a related facility/service at the housing accommodation, in that it was not listed in the registration statement or in the tenant's lease; d) erred by not finding that the claim of reduction in services was barred by the applicable statute of limitations; e) erred by not finding that the roof deck was an optional service/facility which could be removed without consequence to the rent ceiling at the housing accommodation; f) erred by not finding that the language of the lease was enforceable; g) erred in improperly calculating the damages awarded to the petitioner, Pearl-Alice Marsh; h) reached a decision which was arbitrary and capricious; i) erred by failing to indicate the date from which interest would run and the interest calculation made in the decision and order; j) awarded damages to the tenant where the tenant failed to offer any evidence at the hearing with respect to the rent ceiling or the rent charged; k) erred in speculating on the rent ceiling of the tenant's unit, as well as the rent for the tenant's unit; and l) reached a decision which failed to comply

with the law of the District of Columbia, including, the D.C. Administrative Procedure Act.

III. DISCUSSION OF THE ISSUES

A. Whether the hearing examiner erred, as a matter of law, when he concluded that the housing provider's failure to replace the roof deck at the housing accommodation was a reduction of services.

C. Whether the hearing examiner erred in concluding that the roof deck was a related facility in that it was not listed in either the Rental Accommodations registration statement or the tenant's lease.

The housing provider argues that the roof deck was an optional service which it could remove without consequence to the rent ceilings at the housing accommodation. In support of its argument the housing provider contends that the roof deck was not listed in its registration statement filed with RACD as a service related to the rental units at the accommodation.

That the roof deck was permanently removed as a facility available to the tenants at the housing accommodation is not an issue in dispute. At the OAD hearing both the tenant and her witness, Stephen Woodward, provided unrefutted testimony that the roof deck, which had previously been available to the tenants, was closed to the tenants on July 1, 1997. Further, evidence entered into the record by the housing provider, Respondent's Exhibit (R. Exh.) 1, contains a memorandum dated June 8, 1998, from the housing provider, Pinnacle, to the tenants of the housing accommodation which states: "Please be advised that the owner of Somerset House has decided that due to liability issues the roof deck will not be installed." The evidence in the record reflects that the tenants' access to the roof deck was curtailed by the housing provider in order to effect

repairs to the roof. However, as the June 8, 1998 memorandum reflects, access to the roof deck was later permanently eliminated.

With respect to related services and facilities listed by a housing provider in his registration file, the Commission has held that a housing provider is bound by the information contained in that registration file. Therefore, the Commission has concluded that where a housing provider's registration statement lists specific services and facilities as "related," the housing provider is obligated to provide those services and facilities and will not be permitted to later disavow the information contained in the registration statement. See Bonheur v. Oparaocha, TP 22,970 (RHC Feb. 4, 1994); Hagan Management Co. v. Hawkins, (RHC July 29, 1987). The Commission has also determined that related services and facilities may be required by a written agreement. See Peerless Properties, Inc. v. Hashim, TP 21,159 (RHC Aug. 24, 1992). However, the Commission notes that the evidence of record, the housing provider's registration form, R. Exh. 3, does not list the roof deck as a related or optional service provided by the housing provider.

The Act, D.C. CODE § 45-2503(26), provides the following definition of a related facility:

> "Related facility" means any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area. (emphasis added).

The unrefutted testimony in the record by the tenant and her witnesses was that the roof deck was a common area provided by the housing provider and made available

to the tenants of the housing accommodation for their use as tenants in conjunction with the payment of their rent.

The standard of review applied by the Commission in a decision issued by the Rent Administrator is stated in D.C. CODE § 45-2526(h) which 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 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.

The hearing examiner determined that the unrefutted evidence of record showed that the roof deck, while not listed as either a related or optional facility, was a "related" facility provided and maintained by the housing provider, without additional fees or charges, and made available to the tenants of the housing accommodation for their use as tenants in conjunction with the payment of their rent.

There was substantial evidence in the record to support the findings by the hearing examiner that the roof deck was a related facility, because it was a common area used by the tenants without an additional fee. Accordingly, the decision of the hearing examiner is affirmed and the appeal of this issue by the housing provider is denied.

B. Whether the decision and order of the hearing examiner was contrary to the evidence presented at the hearing on TP 24,827.

H. Whether the decision and order of the hearing examiner was arbitrary and capricious.

The Commission's regulation concerning the initiation of appeals, 14 DCMR 3802.5(b), provides that the notice of appeal shall contain the following: "The Rental Accommodations and Conversion Division (RACD) case number, the date of the Rent

Administrator's decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator." (emphasis added).

The appeal issues raised by the housing provider in issues B and H generally characterize the hearing examiner's decision and order as "contrary to the evidence presented at the hearing," or "arbitrary and capricious." The housing provider has failed to state which findings of fact or conclusions of law found in the hearing examiner's decision, in these issues, are contrary to the evidence presented at the hearing, or arbitrary and capricious. The Commission has previously held that an appeal, which fails to provide the Commission with a clear and concise statement of the alleged errors in the decision as required by 14 DCMR 3802.5(b), will be dismissed. Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000). Accordingly, the Commission dismisses these appeal issues as violative of the Commission's rules on appeals.

D. Whether the hearing examiner erred by not determining that the tenant's claim of reduction of services was barred by the statute of limitations found in the Act.

The housing provider argues that the tenant's claim was barred by the Act at D.C. CODE § 45-2516(e), because, the housing provider asserts, a challenge regarding related facilities listed in the registration form is akin to a base rent challenge. D.C. CODE § 45-2516(e), provides, in part: "[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 regulation promulgated pursuant to D.C. CODE § 45-2516(e), 14 DCMR 4215.5, provides:

> When adjudicating a base rent challenge, the issues to be determined by the Rent Administrator are limited to the following:
>
> ...

(d) Whether the housing provider's registration statement accurately states the related services or facilities provided to the rental unit or housing accommodation on September 1, 1983.

The regulations governing base rent challenges requires that a tenant seeking to challenge a base rent must file a tenant petition on a form approved by the Rent Administrator.[2] The regulations also require that the decision in a base rent challenge be published in the form of a proposed order,[3] and where the parties disagree with the proposed order, they may file objections and exceptions within twenty (20) days of the receipt of the proposed order.[4]

Contrary to the housing provider's argument, the tenant has not initiated a base rent challenge to the housing provider's registration statement. Rather the tenant, asserting that the roof deck was a related facility, argued that the housing provider reduced services at the housing accommodation without reducing the rent ceiling in

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[2] The regulation, 14 DCMR 4215.1, provides:

> A tenant petition to challenge the base rent for a rental unit established by a housing provider under §103(4) of the Act and §4201, which shall be filed by the tenant of the rental unit with the Rent Administrator in duplicate copies on a base rent challenge form approved by the Rent Administrator. (emphasis added).

[3] The applicable regulation, 14 DCMR 4215.7, provides:

> In arriving at a proposed order disposing of a base rent challenge, the Rent Administrator shall base his or her decision on documentary evidence contained in the records of the RACD and other divisions within the Department of Consumer and Regulatory Affairs.

[4] The applicable regulation, 14 DCMR 4215.9, provides:

> Where parties to a base rent challenge disagree with the proposed order of the Rent Administrator, they may file objections and exceptions with the Rent Administrator within twenty (20) days of the receipt of the proposed order.

violation of D.C. CODE § 45-2521.[5]

The Commission has previously determined that the three (3) year statute of limitations provided by D.C. CODE § 45-2516(e), applies in tenant petitions filed with respect to reductions of services and facilities. See Peerless Properties, Inc. v. Hashim, supra. In this case, the tenants were notified that the roof deck was discontinued on June 8, 1998, and the tenant's petition was filed on October 13, 1999, which was within the three (3) year statute of limitations in the Act. Therefore, the hearing examiner's decision not to treat the tenant's petition as a base rent challenge is affirmed and the housing provider's appeal of this issue is dismissed.

E. Whether the hearing examiner erred when he failed to determine that the roof deck was an optional service/facility which could be removed without reducing the rent ceiling at the housing accommodation.

The housing provider argues that the hearing examiner erred when he failed to find that the roof deck was an optional service. The housing provider asserts that as an optional service the removal of the roof deck cannot be considered as a basis of a claim for reduction in services.

In the section of his decision entitled "Evaluation and Legal Analysis of the Evidence," the hearing examiner stated:

> Here, the evidence shows the roof deck was available to the tenants of the housing accommodation for 37 years before it was removed. The evidence shows there was no fee charged for the use of the sun deck nor is there any evidence that the deck was open to the general public. The evidence also shows that the roof deck was maintained by management and equipped by management. The evidence shows there was no fee for this service. The undisputed evidence shows that over

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[5] D.C. CODE § 45-2521 provides:

> If the Rent Administrator determines that the related services or related facilities ... 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 years when there were vacancies at the housing accommodation the property was advertised as having a roof deck.

Marsh v. Pinnacle Management Company, TP 24,827 (OAD Mar. 30, 2000) at 5. In Finding of Fact number six (6), the examiner stated: "There has never been a fee or a charge associated with the use of the roof deck, and the roof deck has always been maintained and equipped by the housing provider for the use of the tenants." Id. at 12. The Act, D.C. CODE § 45-2503(26), provides that a related facility includes, "the common use of any common room, yard, or other common area," the use of which, "is authorized by the payment of the rent charged for a rental unit."

The Commission's decision in Saul v. Polinger Management Co. Inc., TP 2089 (RHC Aug. 17, 1982), provides further clarification of the distinction between optional and related services. In Saul, the Commission held that optional services are those services which tenants may elect to use and pay for separately in addition to their monthly rent, and that those services are outside the terms of the Rental Housing Act.

Pursuant to D.C. CODE § 45-2526(h), the Commission may reverse any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of the Act, or unsupported by substantial evidence on the record, or it may affirm, in whole or in part, the Rent Administrator's decision. The regulations, 14 DCMR 3807.1, establish a similar standard of review by the Commission of decisions rendered by the Rent Administrator. The Commission is bound by law to sustain the action of a hearing examiner that is supported by substantial evidence in the record. Stancil v. Carter, TP 23,265 (RHC July 30, 1997); Tenants of 1601 Argonne Pl., N.W. v. Columbia Really Venture, HP 20,377 (RHC May 16,1989).

In the instant case, the hearing examiner determined, based on the substantial evidence in the record, that there had never been a fee or a charge associated with the tenants' use of the roof deck, and the roof deck had always been maintained and equipped by the housing provider for the use of the tenants. He also determined that pursuant to D.C. CODE § 45-2503(26), a "related facility" included, the common use of any common room, yard, or other common area, which was used by the tenants and authorized by the payment of the rent charged for their rental units.

Accordingly, we affirm the hearing examiner's decision which found that the roof deck was a related service/facility at the housing accommodation. The housing provider's appeal issue is denied.

F. Whether the decision and order of the hearing examiner erred in finding that the language of the tenant's lease was not enforceable.

The housing provider also argues that the hearing examiner erred when he found that the provisions of the tenant's lease were not enforceable.[6] Paragraph 26 of the lease agreement, R. Exh. 2, provided:

> If a swimming pool or other recreational facilities are available, I, my family, and guests will use such facilities at our own risk and MANAGEMENT [sic] will not be responsible for any damage resulting from the use of such facilities to persons or property except as a result of MANAGEMENT'S [sic] actual negligence, wanton or willful misconduct. MANAGEMENT [sic] may interrupt or discontinue the use of such facilities at any time, at its sole discretion. If the use of such recreational facilities is interrupted or discontinued, I will not be entitled to a reduction in my rent.

The decision of the hearing examiner stated:

> The clause in the lease agreement concerning a reduction in service is given little weight [because] a tenant may not contract away his or her rights imposed by

[6] The tenant did not enter her lease into evidence at the OAD hearing. However, the tenant agreed that the lease entered into evidence by the housing provider contained the same or a similar provision.

statute. Thus, if there were a reduction in service, a clause of this nature does not preclude the filing of a tenant petition for reduction in service under the Act.

Marsh, supra, at 5.

In Capitol Park Plaza Tenants Assoc. v. Capitol Park Tower Interstate General Corp., TP 3271 (RHC Sept. 27, 1982) (where the housing provider included in the lease an exculpatory clause which purported to hold the landlord blameless for the discontinuance of air-conditioning services), the Commission held that the Act addressed reduction in services with the intention that the Rent Administrator have jurisdiction over questions pertaining to reduction in services, regardless of the provisions of the lease agreement between the parties. The Commission concluded, "[t]o the extent that [a] lease provision is in conflict with a duly enacted law, the provision [of the lease] is of no force or effect. Were the parties allowed to contract away rights granted under the Act, the Act would be rendered meaningless." Id. at 4.

In the instant case, the Act, D.C. CODE § 45-2521, was duly enacted to provide the Rent Administrator jurisdiction over questions pertaining to reduction in services, notwithstanding provisions contained in a lease. Accordingly, the decision of the hearing examiner rejecting paragraph 26 of the lease as contrary to the provisions of the Act is affirmed, and the housing provider's appeal issue is denied.

G. Whether the hearing examiner erred in his calculation of the rent refund awarded the tenant.

I. Whether the hearing examiner erred in his calculation of the interest and the date from which interest on the rent refund was to run.

The housing provider argues on appeal that the hearing examiner's calculation of the rent refund awarded the tenant contained mathematical errors. In the decision and order the hearing examiner stated:

> Based upon the method of computing a rent reduction, supra for the reduction in service. The reduction shall be based on 1996 Certificate of Election of Adjustment of General Applicability [sic] $692.00 less the amount established as the value established of the reduction in facility $85.00. This figure is being used because this is the rent ceiling that was in effect at the time the facility was reduced. The result is the adjusted rent ceiling of $541.00.

Marsh v. Pinnacle Management Co., TP 24,827 (OAD Mar. 30, 2000) at 7-8. In his decision the hearing examiner determined that the rent ceiling for the tenant's unit was $692.00 and reduced the rent ceiling by $85.00 as a result of the elimination of the roof deck facility. Inexplicably, he determined that the result of the mathematical equation $692.00 less $85.00 was $541.00 rather than $607.00.

It is the statutory duty of the Commission, pursuant to D.C. CODE 45-2526(h), to review the record to, "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 substantial evidence in the record of the proceeding before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision." The hearing examiner's mathematical calculation is clearly erroneous, and is reversed. As a consequence, the interest calculation which was based on the hearing examiner's erroneous calculation of the "new" rent ceiling is also reversed, because the interest was calculated on an erroneous "principal."

The housing provider's assertion that the hearing examiner's decision failed to correctly establish the date from which interest, on the refund, was to be calculated is in error. In his decision and order the hearing examiner determined that the tenant was entitled to a rent refund and interest on the refund from July 1997 through March 30, 2000. "Interest is calculated from the date of the violation (or when service was

interrupted) to the date of the issuance of the decision." 14 DCMR 3826.2.[7] See also Marshall v. District of Columbia Rental Hous. Comm'n, 533 A.2d 1271 (D.C. 1987). In Marshall, the District of Columbia Court of Appeals (DCCA) held interest on damages should be awarded from the date of the violation until the present. In Redmond v. Majerle Management, Inc., TP 23,146 (RHC June 4, 1999), the Commission held that interest shall be awarded for the entire period of the litigation, which covers the period from the date of the violation to the date of the decision.

In the instant case, the tenant alleged in her petition, which was filed on October 13, 1999, that the housing provider reduced her services starting on July 1, 1997. The hearing examiner awarded a rent refund for the period from July 1997 through the date of his decision. Accordingly, the housing provider's appeal issue that the hearing examiner failed to identify the date from which interest was to be calculated is denied.

The Commission notes that in his decision and order the hearing examiner stated:

> The 1996 Certificate of Election of Adjustment of General Applicability filed June 11, 1996, list [sic] the rent ceiling for Petitioner Pearl-Alice Marsh's rental unit, apartment 405 as $692.00 per month and the rent charged as $618.00 effective November 1, 1996.

Marsh v. Pinnacle Management Co., TP 24,827 (OAD Mar. 30, 2000) at 7-8. As previously stated, the evidence of record reflects that the housing provider removed the roof deck as a related facility on July 1, 1997. Therefore, the Commission notes this error by the hearing examiner who failed to state the tenant's rent and rent ceiling as of July 1, 1997. The Commission remands this issue for findings of fact and conclusions of law by the hearing examiner regarding the tenant's rent and rent ceiling on July 1, 1997,

[7] After giving 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.

the day on which the housing provider removed the roof deck facility. Further, on remand, the hearing examiner is ordered to perform the calculation of interest in the decision, pursuant to 14 DCMR 3826, in order to show the evidence in the record that supports his calculations.

J. Whether the hearing examiner erred when he awarded the tenant a rent refund when the tenant failed to present evidence at the hearing regarding her rent or rent ceiling.

K. Whether the hearing examiner erred when he speculated as to the tenant's rent and rent ceiling.

L. Whether the decision and order of the hearing examiner failed to comply with the DCAPA.

The housing provider argues that the tenant failed to present evidence of her rent or rent ceiling and further, that the hearing examiner speculated regarding the tenant's rent and rent ceiling. The housing provider also argued that the decision of the hearing examiner violated the DCAPA.

In the section of his decision and order entitled, Evidence and Pleadings Considered the hearing examiner stated:

> The Examiner took official notice of this item, in accordance with the District of Columbia Administrative Procedures [sic] Act, D.C. CODE Section 1-1509 (c) [sic] (1981) and Carey v. District of Columbia Unemployment Compensation Bd., 304 A.2d 18 (D.C. 1973):
>
> Registration records for 1801 16th Street, NW [sic]

Marsh v. Pinnacle Management Co., TP 24,827 (OAD Mar. 30, 2000) at 3.

Before making his determination of the rent refund owed the tenant, the hearing examiner stated that he reviewed the official RACD housing provider registration files for the housing accommodation. Based on his review of the housing provider's RACD registration file the hearing examiner's decision stated, in part:

> The RACD registration records show that the 1997 Certificate of Election of Adjustment of General Applicability dated October 3, 1997, list [sic] the rent ceiling for Petitioner Pearl-Alice Marsh's rental unit, apartment 405 as $711.00 per month effective November 1, 1997. The rent charge is listed as $635.00 per month. There was no Certificate of Election of Adjustment of General Applicability on file for 1998.

Id. at 8.

Pursuant to the provisions of the DCAPA the hearing examiner was permitted to take official notice of facts which did not appear in the record of the OAD proceedings; however, the DCAPA requires that before taking official notice of material facts in contested cases the hearing examiner provide the parties in the case an "opportunity to show the contrary." The applicable section of the statute, D.C. CODE § 1-1509(b), provides in part:

> Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

A review of the record (tape) of the November 29, 1999, OAD hearing does not reflect that the hearing examiner notified the parties that official notice was taken of the housing provider's official RACD records. Further, there is no evidence in the record that the hearing examiner provided the parties an opportunity to show the contrary.

In Johnson v. District of Columbia Rental Hous. Comm'n, 642 A.2d 135 (D.C. 1994), the DCCA reversed a Commission decision where the Commission, in its decision, indicated it took official notice of a RACD file, but failed to give the parties an opportunity to show the contrary. The DCCA held that the Commission's action, in taking official notice without giving the parties an opportunity to rebut the facts officially

noticed, was contrary to D.C. CODE § 1-1509(b) and the court's decision in Carey v. District of Columbia Unemployment Compensation Bd., 304 A.2d 18 (D.C. 1973). The hearing examiner erred when he did not give the parties an opportunity to challenge the documents officially noticed as required by the DCCA in Johnson and Carey.

Accordingly, the hearing examiner's decision is reversed and remanded to provide the parties an opportunity to rebut the facts officially noticed, as required by D.C. Code § 1-1509(b) and the DCCA decision in Carey, supra.

D. CONCLUSION

The decision of the hearing examiner is affirmed, in part, reversed, in part, and remanded to the hearing examiner for a correction of the mathematical errors in his refund award to the tenant. On remand the hearing examiner is ordered to base his refund on the tenant's rent and rent ceiling on the date the roof deck facility was removed; and state, in the decision and order, the computation of interest on the rent refund awarded the tenant. Finally, the hearing examiner is ordered to provide the parties with an opportunity to show the contrary of the facts officially noticed in his decision.

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 24,827 was mailed postage prepaid, by certified mail, this **7th day of September, 2000** to:

Stephen H. Abraham, Esq.
Richard W. Luchs, Esq.
Greenstein DeLorme & Luchs
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036

Pearl-Alice Marsh
1801 16th Street, N.W.
Apartment 405
Washington, D.C. 20009

LaTonya Miles
Contact Representative