

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,919

In re: 1908 Florida Avenue, N.W.

Ward Two (2)

RONALD BAKER  
Tenant/Appellant

v.

BERNSTEIN MANAGEMENT CORP.  
Housing Provider/Appellee

ORDER ON MOTION TO DISMISS APPEAL

August 16, 2000

CHAIRPERSON BANKS. 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.

On February 28, 2000, Ronald Baker, Tenant/Appellant, (Tenant) filed Tenant Petition (TP) 24,919 in the Rental Accommodation and Conversion Division (RACD) of DCRA. Its single allegation was "[t]he rent being charged exceeds the legally calculated rent ceiling for my ... unit." TP 24,919 at

3. The selection of this preprinted allegation, was followed by the explanation, "I have always paid \$300 for rent charged now the new management is trying to charge me at a \$400 rent charge with a \$28 increase. I am being charged a total of \$128 on a rent charge that I was only paying \$300." Id.

This case was scheduled for hearing in OAD on May 1, 2000, when Bernstein Management Corp./Appellee, (Bernstein) obtained a continuance after informing Hearing Examiner Carl Bradford, that a decision in another case, TP 24,779, between these same parties had "the very same issue raised in this petition" and would be issued soon. Decision at 1.<sup>1</sup> "The Examiner sua sponte reviewed the decision [in TP 24,779] issued May 8, 2000, and found that the case had been dismissed by Examiner Word after determining that no illegal rent increase had been taken. Accordingly, the Examiner dismisses [sic] this petition [with prejudice]." Decision at 1-2.

On June 23, 2000, the Tenant filed an appeal in the Commission. In the appeal the Tenant states, "Mr. Carl Bradford did not see all of the evidence. Mr. Bradford was combining this case with another case. [sic] and did not see the evidence. See exhibits 1-5." Appeal at 1. The Tenant's exhibits were as follows: 1) a letter dated June 20, 2000, to

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<sup>1</sup> Baker v. Bernstein Management Corp., TP 24,919 (OAD June 20, 2000).

the Tenant from Bernstein listing unpaid rent from October 1999 through February, 2000, 2) another letter dated June 13, 2000, from the manager of the housing accommodation stating that the Tenant owed \$400.00 in unpaid rent, 3) a "Tenant Notice of Increase of General Applicability" dated January 26, 2000, effective March 1, 2000, stating a rent ceiling of \$681.00, current rent of \$400.00, a new rent ceiling of \$688.00, and new rent of \$428.00, 4) a notice dated September 22, 1999, for \$100.00 credit due to the Tenant's overpayment of rent in September 1999, and 5) an earlier notice dated July 23, 1999 of rent increase from \$300.00 per month to \$400.00 per month, effective September 1, 1999, without a change in the current rent ceiling of \$681.00. See item 3 above.

On August 9, 2000, Bernstein, the Housing Provider, filed in the Commission a motion to dismiss the appeal. The motion stated the appeal should be dismissed because "...all claims asserted by Tenant in Tenant Petition 24,919 are barred under the doctrine of res judicata and/or collateral estoppel as a result of the disposition of an earlier Tenant Petition, 24,779." Motion at 1.

#### THE COMMISSION'S ORDER

The Housing Provider's motion to dismiss the Tenant's appeal is denied for the following reasons. First, pursuant to the DCAPA, D.C. Code § 1-1509(b), the hearing examiner had

no authority to take official notice of another decision without giving the opposing party (the Tenant) the opportunity to object and present reasons why the tenant petition should not be dismissed.<sup>2</sup> Cary v. District Unemployment Comp. Bd., 304 A.2d 18 (D.C. 1973), DCAPA cited in Johnson v. District of Columbia Rental Hous. Comm'n, 642 A.2d 135, 138 (D.C. 1994). Second, the examiner had no authority to officially notice another decision for the sole purpose of interposing the defense of res judicata. Johnson at 138. Alexandria Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000). Finally, the hearing examiner did not make findings of fact, and conclusions of law as required by the DCAPA, D.C. Code § 1-1509(e).<sup>3</sup> Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n, 402 A.2d 36 (D.C. 1979). There was no analysis, finding of fact, or conclusion of law on whether the notices of rent increases met the requirements of the Act, D.C. Code §§ 45-2516, 2518 and the relevant regulations.

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<sup>2</sup> D.C. Code § 1-1509(b) states:

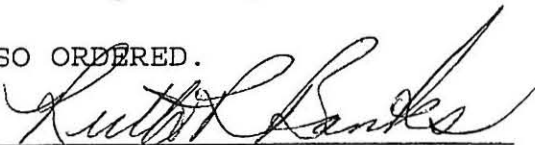
Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

<sup>3</sup> D.C. Code § 1-1509(e) states:

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

Moreover, there was no analysis in the decision and order of whether or how the first case, TP 24,779, involved "the very same issue raised in this petition," as stated by the hearing examiner in the decision and order in this case. No OAD hearing tape on the motion to dismiss in OAD was certified to the Commission in violation of 14 DCMR 3804.1, 3804.3(b), 4006. Therefore, no record exists of the OAD motion to dismiss and consequently, there is nothing for the Commission to review. D.C. Code § 45-2526(h). Accordingly, the motion to dismiss is denied, and the Commission's hearing scheduled for August 17, 2000 was not cancelled.

SO ORDERED.

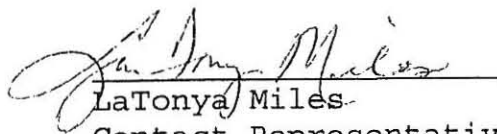
  
RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the Order on Motion to Dismiss was mailed by certified mail this 16th day of August, 2000, to the following parties:

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