DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,979

In re: 6980 Maple Street, N.W., Unit 12

Ward Four (4)

GBUTU-KLA BEDELL
Tenant/Appellant

v.

JOHN CLARKE
Housing Provider/Appellee

DECISION AND ORDER

April 29, 2003

LONG, COMMISSIONER. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

I. PROCEDURAL HISTORY

Gbutu-Kla Bedell filed Tenant Petition (TP) 24,979 with the Rental Accommodations and Conversion Division (RACD) on May 22, 2000. In the petition, the tenant alleged that the housing provider, John Clarke, did the following: 1) imposed a rent increase that was higher than the amount of increase allowed by any provision of the Act; 2) increased the rent in less than180 days; 3) failed to file the proper rent increase

forms with the RACD; 4) charged rent that exceeded the legally calculated rent ceiling; 5) filed an improper rent ceiling with the RACD; 6) increased the rent while the unit was not in substantial compliance with the housing regulations; 7) permanently eliminated and substantially reduced services and facilities provided in connection with the rental unit; and 8) directed retaliatory action against the tenant in violation of § 502 of the Act. Two days after the tenant filed the tenant petition, the housing provider filed an action for possession in the Superior Court of the District of Columbia, Landlord and Tenant Branch.

The Office of Adjudication scheduled this matter for an evidentiary hearing on November 7, 2000. On that date, the tenant appeared without counsel, and the housing provider appeared with his attorney, Morris Battino. The parties entered an agreement, which purportedly settled the claims in the tenant petition. Consequently, Hearing Examiner Word dismissed the tenant's petition with prejudice.

The tenant appealed the dismissal of the petition, because the housing provider did not fulfill the terms of the settlement agreement. When the Commission attempted to review the agreement in accordance with Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542 (D.C. 1984), the Commission discovered that the terms of the agreement were absent. The agreement simply stated, "please dismiss this case with prejudice as settled." Proctor requires the agency "to consider the settlement agreement on its merits as a possible basis for the agency's order." Id. at 547 (citations omitted). When the hearing examiner issued the decision and order, he held that the terms of the agreement were incorporated by reference into the record. Since there were no terms to incorporate, and for other reasons outlined in its decision, the Commission reversed

Hearing Examiner's Word's decision and remanded the petition to the Office of Adjudication for a hearing de novo. See Bedell v. Clark, TP 24,979 (RHC June 27, 2001).

Hearing Examiner Bradford presided over the matter, following the Commission's remand. The hearing de novo was initially schedule for November 1, 2001. As a preliminary matter, the housing provider's attorney, Mr. Battino, made an oral motion to dismiss based on the doctrine of res judicata. The tenant's attempt to respond to Mr. Battino's argument caused the hearing examiner to assess the tenant's need for counsel. The hearing examiner continued the hearing to December 13, 2001 to enable the tenant to retain counsel.

On December 13, 2001, the hearing examiner reconvened the hearing. The tenant, who appeared pro se, stated he could not afford to retain counsel. At the outset of the hearing, the housing provider's attorney renewed the motion to dismiss. Mr. Battino argued that all issues in the tenant petition were resolved by the dismissal of a small claims case and by the settlement of a landlord and tenant action in the Superior Court of the District of Columbia. In support of his argument, he introduced the Complaint for Possession of Real Estate, a Consent Judgment Praecipe for the landlord and tenant action, three transcripts from hearings concerning the consent judgment, and an Order from the District of Columbia Court of Appeals dismissing the tenant's appeal in the landlord and tenant action. In addition, the housing provider's attorney submitted a Statement of Claim for a small claims action and the Praecipe dismissing the small claims action.

On March 5, 2002, the hearing examiner issued a decision and order, which granted the housing provider's motion and dismissed the petition with prejudice. The tenant appealed the decision,[1] and the Commission held a hearing on the appeal on August 15, 2002.

II. ISSUES ON APPEAL

The tenant, pro se, filed a six-page notice of appeal in narrative form. The tenant raised innumerable issues throughout the narrative. The Commission extracted the primary issues, which are discussed below. The remaining issues were rendered moot by the resolution of the following issues.

III. DISCUSSION OF THE ISSUES

A. Whether the hearing examiner erred when he stated that the issues raised in TP 24,979 were or could have been litigated in the Landlord and Tenant action, LT 20546-00.

The hearing examiner erred when he ruled that the issues raised in TP 24,979 could have been litigated in the Superior Court of the District of Columbia, Landlord and Tenant Branch, and dismissed the petition based on the doctrine of res judicata.

The doctrine of res judicata, a doctrine of claim preclusion, provides that "a final judgment on the merits of a claim bars relitigation in a subsequent proceeding of the same claim between the same parties or their privies." Patton v. Klein, 746 A.2d 866, 870 (D.C. 1999) (citations omitted). In order to determine whether the doctrine of res judicata serves as a bar to an action, the hearing examiner must consider the following:

(1) Whether the claim was adjudicated finally in the first action;

[1] The Commission received the notice of appeal on March 25, 2002. When the hearing examiner issued the decision, he advised the parties the last day to file the appeal was March 22, 2002. However, the agency closed early on March 22, 2002.

(2) Whether the present claim is the same as the claim which was raised or which might have been raised in the prior proceeding; and

(3) Whether the party against whom the plea is asserted was a party or in privity with a party in the prior case.

Patton, 746 A.2d at 870. See also Henderson v. Snider Bros., Inc., 439 A.2d 481(D.C. 1981).[2] In Issue A, the tenant argues that the hearing examiner did not properly consider the second prong of Patton, because the claims raised in the tenant petition could not have been raised in the Superior Court proceedings. The Commission agrees.

When the hearing examiner convened the hearing, the housing provider, through counsel, moved to dismiss the petition, arguing that the tenant's claims were barred by the doctrine of res judicata. Mr. Battino, stated, "There is no jurisdiction to hear anything in this tenant petition because all issues were resolved in the landlord and tenant case and the smalls claims case, and he's gotten the benefit of the bargain." OAD Hearing Tape (Dec. 13, 2001). The housing provider did not delineate the issues raised in the landlord and tenant action, and he did not identify the claims raised in the tenant petition. The housing provider's attorney merely argued that the landlord and tenant and small claims actions were dismissed or settled, and he introduced the documents evidencing the resolution of the actions.

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[2] In Henderson v. Snider Bros., Inc., 439 A.2d 481, 484-485 (D.C. 1981), the Court held:

> When the parties are the same, and the essence of the claim and the evidence necessary to establish it are the same, res judicata applies. The doctrine of res judicata (direct estoppel) requires that a valid, final judgment when rendered on the merits be considered an absolute bar to a subsequent action based on the same claim or demand between the same parties. ... Under the doctrine of res judicata ". . . a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented ..." Cromwell v. County of Sac, supra at 383.

In addition, the housing provider's attorney introduced three transcripts. In order to determine if res judicata is applicable, the Commission reviews the transcripts containing the "testimony of the parties in the Superior Court trial" to determine "the nature of and to what extent the issues ... w[ere] litigated and adjudicated" in Superior Court. Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000) at 25 quoted in Alexander Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000). The Commission reviewed the three transcripts that the housing provider submitted. None of the transcripts contained testimony from a trial, and they did not relate to the actual claims in the landlord and tenant action. The transcripts concerned the terms of a non-redeemable judgment in the landlord and tenant action, and the parties' efforts to enforce and stay the tenant's eviction. In the transcript dated April 16, 2001, Judge Duncan-Peters pointedly stated, "But this doesn't have anything to do with any rent increase." Tr. at 14-15.

When the hearing examiner issued the decision and order, he did not identify the claims in the petition or the landlord and tenant action, and he did not conduct an analysis of the claims to determine if, in fact, the claims in the tenant petition could have been raised in Superior Court. At the heart of the examiner's error was his failure to consider the doctrine of primary jurisdiction. See Fisher v. Peters, TP 23,261 (RHC Sept. 5, 1996).

> The doctrine of primary jurisdiction ... is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. "Primary jurisdiction," ... comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views.

United States v. Western Pacific R.R., 352 U.S. 59, 1 L.Ed.2d 126, 77 S.Ct. 161 (1956) (citations omitted) quoted in Mack v. Zalco Realty, Inc., 630 A.2d 1136, 1140 n.9 (D.C. 1993).

"The Rental Housing Act confers primary jurisdiction over rent overcharge petitions upon the Rent Administrator, the designated head of the Rental Accommodations and Conversion Division (RACD). ... [As a result a] Superior Court judge may not undertake to adjudicate the validity of a rent increase." Kennedy v. District of Columbia Rental Hous. Comm'n, 709 A.2d 94 n.1 (D.C. 1998) (citing Drayton v. Porestsky Mgmt., Inc., 462 A.2d 1115, 1120 (D.C. 1983)) (emphasis added).

The Rent Administrator and the Superior Court exercise concurrent jurisdiction over various claims that a party may raise in a tenant petition. For example, the Superior Court and the Rent Administrator have concurrent jurisdiction over claims related to a reduction of services and facilities, which may be proven by showing violations of the housing code. Robinson v. Edwin B. Feldman Co., 514 A.2d 799 (D.C. 1986); Interstate General Corp. v. District of Columbia Rental Accommodations Comm'n, 441 A.2d 252 (D.C. 1982).

In order to properly determine if the claims raised pursuant to the Act could have been litigated in the Superior Court, the examiner had to consider the tenant's claims in accordance with the doctrine of primary jurisdiction. The tenant contended that the housing provider: 1) imposed a rent increase that was higher than the amount of increase allowed by any provision of the Act; 2) increased the rent in less than180 days; 3) failed to file the proper rent increase forms with the RACD; 4) charged rent that exceeded the legally calculated rent ceiling; 5) filed an improper rent ceiling with the RACD; 6)

increased the rent while the unit was not in substantial compliance with the housing regulations; 7) permanently eliminated and substantially reduced services and facilities provided in connection with the rental unit; and 8) directed retaliatory action against the tenant in violation of § 502 of the Act. Tenant Petition at 3-5.

The Rent Administrator and the Rental Housing Commission have "primary jurisdiction over the interpretation and implementation of the District of Columbia's rent control law." Mack, 630 A.2d at 1139-1140. Since claims one (1) through five (5) fall within the "special competence of an administrative body," the principle of primary jurisdiction precluded the Superior Court judges from adjudicating the validity of claims 1 through 5. Id. at 1140; Kennedy, 709 A.2d at 94. Claims six (6) through eight (8), on the other hand, could have been litigated in Superior Court; Superior Court and the Rent Administrator have concurrent jurisdiction over claims that may be proven by showing violations of the housing code and claims of retaliation. Robinson, 514 A.2d at 800.

When the hearing examiner issued the decision and order, he made the following findings of fact:

1. The subject property is located at 6980 Maple St., NW Washington [sic].
2. Petitioner Gbutu-Kla Bedell, has resided at the premises since January 15, 2000.
3. Respondent John F. Clark III was the owner.
4. In May 24, 2000, Respondent filed a suit for possession in D.C. Superior Court, Landlord/Tenant Branch against Petitioner for non-payment of rent, 20546-00.
5. The parties in LT 20546-00 and T/P 24,979 are the same.
6. The issues raised in T/P 24,979 were or could have been litigated in LT 20546-00.

7. There were three hearing [sic] in this matter by two different judges.

8. The examiner finds res judicata applies in this case.

Bedell v. Clark, TP 24,979 (OAD Mar. 5, 2002) at 4.

The Act empowers the Commission to reverse any decision of the Rent Administrator that is arbitrary, capricious, an abuse of discretion, not in accordance with the law, or is unsupported by the substantial evidence on the record of the proceedings. D.C. OFFICIAL CODE § 42-3502.16(h) (2001). Finding of Fact 6 is not supported by the substantial record evidence or the law. The first five claims could not have been litigated in LT 20546-00, because they came within the primary jurisdiction of the Rent Administrator. Robinson, 514 A.2d at 800 (holding that a Superior judge errs when he undertakes to determine the validity of rent increases, because the Rent Administrator and the Commission have primary jurisdiction over rent control issues). As a result, the judges of the Superior Court could not adjudicate the validity of the tenant's first five claims, which are governed by the Act. In addition, there was no record evidence, which showed that any of the claims raised in the petition were or could have been litigated in LT 20546-00.

The hearing examiner erred when he concluded, as a matter of law, that "[r]es judicata is a bar to further adjudication of the instant tenant petition because a valid, final disposition[3] was made in the prior Landlord and Tenant Court Case LT 20546-00, [the] parties are the same and the issues and evidence necessary to prove the issues could have

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[3] The hearing examiner did not issue a finding of fact concerning the final adjudication of the claims. In Issue A, the tenant only challenged the hearing examiner's finding that the issues could have been litigated in the landlord and tenant action. Since the tenant prevails on Issue A, the Commission does not reach the issue of whether a final judgment was rendered on the merits of the claims filed in Superior Court.

been the same, as in T/P 24,979." Bedell at 5. Accordingly, the Commission reverses the hearing examiner and remands the petition for a hearing de novo.

B. Whether the hearing examiner erred when he did not hold a full hearing on the claims raised in the petition.

The hearing examiner erred when he did not hold a full hearing on the claims raised in the petition. First, res judicata did not serve as a bar to the claims that came within the Rent Administrator's primary jurisdiction. In addition, the housing provider did not submit evidence to demonstrate that the claims, which fell within the concurrent jurisdiction of Rent Administrator and Superior Court, were or could have been adjudicated finally in the first action. See Patton v. Klein, 746 A.2d 866 (D.C. 1999); Robinson v. Edwin B. Feldman Co., 514 A.2d 700 (D.C. 1986).

The hearing examiner permitted the housing provider, through counsel, to present evidence on the motion to dismiss. The housing provider elected to present legal argument and submit documents from the Superior Court. Neither the housing provider's arguments, nor documents, supported the housing provider's contention that res judicata served as a bar to the claims raised in the tenant petition. As a result, the hearing examiner erred when he failed to hold a full hearing on the claims raised in the tenant petition.

For the reasons stated in Issue A supra, the Commission remands this matter for a hearing de novo on all of the claims raised in the tenant petition.

C. Whether the hearing examiner mishandled the case by permitting the housing provider's attorney to present his case first and denying the tenant an opportunity to present his case.

When the hearing examiner convened the hearing, the housing provider moved to dismiss the appeal pursuant to the doctrine of res judicata, as a preliminary matter. Since

the housing provider was the proponent of the motion to dismiss, he had the burden of presenting evidence in support of the motion to dismiss. 14 DCMR § 4003.1 (1991). Consequently, the hearing examiner did not err when he permitted the housing provider to present his motion, before the tenant offered evidence on the underlying claim.

On remand, the hearing examiner will give the tenant an opportunity to present evidence to support his claims. Since the tenant bears the burden of proof, the hearing examiner will permit the tenant to present his evidence first, after any preliminary matters are addressed. See D.C. OFFICIAL CODE § 2-509(b) (2001).

D. Whether the Rent Administrator and the Chief Administrative Law Judge should have replied to or granted the tenant's verbal request and remove Hearing Examiner Bradford from the case because the tenant could not receive a fair hearing before Mr. Bradford.

The regulations governing the disqualification of hearing examiners permit a party to file a written motion, with the hearing examiner, requesting the hearing examiner to withdraw from a proceeding. 14 DCMR § 4001.1 (1991). When a party files a written motion in accordance with the regulations, §§ 4001.2 and 4008.5, require the hearing examiner to render a written decision on the motion. If the hearing examiner denies the motion, the tenant may file a written request for the Rent Administrator to review the hearing examiner's denial. 14 DCMR § 4001.3 (1991).

In the notice of appeal, the tenant stated that he lodged a verbal complaint with the Rent Administrator and Chief Administrative Law Judge. Since the request was oral, there is no record evidence of the complaint. Moreover, § 4001.1 required the tenant to file a written motion for disqualification with the hearing examiner. If the hearing examiner denied the tenant's motion, § 4001.3 permitted the tenant to file a written request for review by the Rent Administrator. Since the tenant did not follow the dictates

of the regulations, the Rent Administrator and Chief Administrative Law Judge were not compelled by the regulations to respond to the tenant's oral request.

E. Whether the hearing examiner erred when he stated, inappropriately, that the tenant would lose his appeal before the hearing examiner read the housing provider's documents.

When the hearing examiner convened the hearing on November 1, 2001, the housing provider's attorney made an oral motion to dismiss the tenant petition. Attorney Battino made proffers and offered to introduce several documents from the Superior Court. Before the housing provider's attorney submitted the documents or called any witnesses, the hearing examiner stated he was inclined to grant the motion to dismiss. Additionally, the hearing examiner informed the tenant that the Commission was more likely than not to affirm the hearing examiner's decision. As the tenant endeavored to respond to the housing provider's motion to dismiss, the hearing examiner interrupted the tenant and made several statements, which revealed that the hearing examiner was predisposed to decide the motion in the housing provider's favor.

Following the tenant's initial attempt to respond to the housing provider's motion to dismiss, the hearing examiner stated the following:

> HEARING EXAMINER BRADFORD: Superior Court basically is a higher court than myself. They have made a decision, and so I have to follow their decision. Of course once I write a decision here, reflecting my decision here, you can have an opportunity, like you did before, you can appeal to the Rental Housing Commission and make your argument to the Rental Housing Commission. The Rental Housing Commission more likely than not will tell you what I have told you. But you will have an opportunity to submit that to them. But based on what I heard thus far from counsel, I haven't heard anything from you that persuades me ... that I should make a finding for you. Basically from what I heard here I'm gonna [sic] have to grant the counsel for the landlord's motion to dismiss based on res judicata.
>
> MR. BEDELL: My argument is that the court was only basing

HEARING EXAMINER BRADFORD: I want to hear your argument so that we have it on record so that when you file your appeal with the Commission they will have an opportunity to listen to it.

MR. BEDELL: Will you allow me to start with what I brought before November 7th.

HEARING EXAMINER BRADFORD: Well, [snicker] that's a waste of time with me, but I am going to allow you, for the record, just to do that. I know I am taking up their time, but I am going to allow you to make your argument.

OAD Hearing Tape (Nov. 1, 2001) (emphasis added).

When the tenant attempted to continue his argument, the hearing examiner asked the tenant if he understood the nature of the motion to dismiss. To his credit, the hearing examiner offered to continue the hearing to permit the tenant to retain counsel to respond to the motion to dismiss. However, the hearing examiner gave voice to his predisposition to grant the motion, notwithstanding his offer to grant the tenant an opportunity to retain counsel.

MR. BATTINO: I don't see any way, with or without counsel, that he could overcome the burden of res judicata in this case.

HEARING EXAMINER BRADFORD: I don't either, but I am going to allow him to have an opportunity to get counsel.

...

HEARING EXAMINER BRADFORD: You are operating at a disadvantage not having an attorney. The landlord has an attorney, that's why I'm giving you an opportunity to get you an attorney, so you won't not be operating at a disadvantage. You're a pro se person. So I'm giving you the benefit of the doubt, but ain't [sic] nothing I can do based on the evidence that's been presented to me by counsel for the landlord and you have not overcome that burden so I am giving you an opportunity to seek counsel and you will understand what your burden is.

Id. (emphasis added). When the hearing examiner made the remarks quoted above, the housing provider had not submitted any evidence. The housing provider, as an officer of the court, made a proffer concerning the contents of the documents from the Superior Court. However, he had not called a witness or moved any of the documents into evidence, when the hearing examiner stated, "there was nothing [he] could do based on the evidence presented ... by counsel." Id. Thereafter, the following exchange occurred.

> MR. BEDELL: I also have a DC housing inspector's report.
>
> HEARING EXAMINER BRADFORD: Unless your attorney [snicker] can bring in some overwhelming evidence, you won't even get to that.

After the hearing examiner made the above quoted remarks, Mr. Battino introduced the Superior Court documents and transcripts. In response, the tenant attempted to introduce a housing inspector's report. The hearing examiner responded in the following manner:

> HEARING EXAMINER BRADFORD: "Ain't [sic] no problem man, there's no problem. But I'm telling you, we won't get to that. I'll enter that, but we won't get to that. So you can enter all you want to enter it into the record.

Id.

At the conclusion of the hearing, in response to a point of clarification by Mr. Battino, the hearing examiner advised Mr. Battino to be prepared for a full hearing on December 13, 2001. The hearing examiner stated, "If he's gonna [sic] have his attorney and his attorney comes in and sways me any differently, you need to be prepared for a full hearing." Id.

When the hearing examiner reconvened the hearing on December 13, 2001, the tenant appeared pro se. The housing provider renewed and argued the motion to dismiss. The hearing examiner granted the motion based on the doctrine of res judicata.

As discussed in Issue A supra, the hearing examiner's decision to dismiss the petition based on the doctrine of res judicata did not enjoy the support of the law or the record evidence. The hearing examiner's statements on November 1, 2001, manifested his predisposition to grant the motion, before he received the housing provider's documents as evidence, read them, or received a complete argument from the tenant. Moreover, the hearing examiner erred when he advised the tenant, inappropriately and incorrectly, that the Commission would affirm his decision to grant the housing provider's motion to dismiss.

F. Whether the hearing examiner abused his authority by being biased against the tenant and making inappropriate comments in the hearing against the tenant.

The hearing examiner abused his discretion when he inappropriately expressed his decision to grant the motion to dismiss, before the housing provider established the facts to affirmatively prove that the doctrine of res judicata barred the tenant's action. 14 DCMR § 4003.1 (1991). The hearing examiner's oral decision to grant the motion, when the record was devoid of substantial evidence to support his decision, and his comments that the Commission would affirm his decision, were inappropriate.

"'The essence of the judicial role is neutrality.' Judges must remain disinterested and objective participants throughout a … proceeding in order to ensure public confidence in the integrity of the [administrative] system." Garrett v. United States, 642 A.2d 1312, 1315 (1994) (quoting Byrd v. United States, 377 A.2d 400, 404 (D.C. 1977).

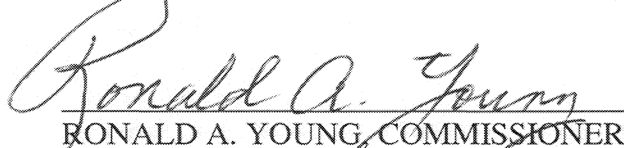
The hearing examiner departed from his role as a neutral and detached adjudicator and impacted the tenant's confidence in the administrative process.

Accordingly, the Commission finds good cause to depart from the general rule that remanded cases shall be returned to the hearing examiner who originally heard the matter. 14 DCMR § 3822.3 (1991). The Commission directs the Rent Administrator to assign this matter to a hearing examiner, other than Mr. Bradford, and afford the case the expedited and priority treatment prescribed by 14 DCMR § 3822.2 (1991).

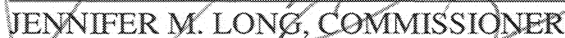
IV. CONCLUSION

For the foregoing reasons, the Commission reverses the hearing examiner's decision and remands this matter for a hearing de novo.

SO ORDERED.



RONALD A. YOUNG, COMMISSIONER



JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 24,979 was sent by priority mail with delivery confirmation, postage prepaid, this 29th day of April 2003 to:

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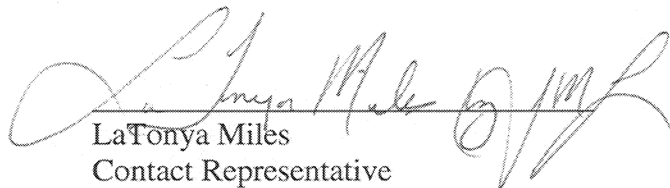

LaTonya Miles
Contact Representative