

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 25,070

In re: 2948-3000 Albemarle Street, N.W.

Ward Three (3)

JAMES G. BARNES, et al.
Housing Providers/Appellants

v.

DONALD G. MACDONALD, et al.
Tenants/Appellees

DECISION AND ORDER

October 10, 2001

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. Official Code § 42-3501.01 et seq., and the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code § 2-501, et seq.¹ The regulations, 14 DCMR § 3800 et seq., also apply.

I. THE PROCEDURES

On August 30, 2000, the Tenants filed tenant petition TP 25,070. The hearing was held on October 27, 2000, and the Rent Administrator's proposed decision and order was issued on July 9, 2001. The Housing Providers filed this appeal in the Commission on July 18, 2001, from the

¹ The Council for the District of Columbia issued a new code in 2001. It is referred in this decision and order as the "D.C. OFFICIAL CODE." However, since the counsel for the Housing Provider referred to the former code in her notice of appeal and arguments, that code reference will be used when referring to counsel's arguments and assertions. Moreover, the case law cited in this decision and order refers to the former code.

Rent Administrator's proposed decision and order dated July 9, 2001. The Commission held its hearing on August 30, 2001.

The Commission's decision and order remands this case for a hearing de novo, because the Rent Administrator failed to issue a final decision and order. The Rent Administrator issued a proposed decision and order, which did not comply with the requirements of the DCAPA. This case is remanded, also because the certified record did not support a determination that proper notice of the Rent Administrator's hearing was delivered to the Housing Providers or their counsel. Therefore, because of those procedural errors, the Commission's decision and order does not list the allegations of the Tenants in the tenant petition, nor refer to the content of the hearing examiner's findings of fact and conclusions of law in the Rent Administrator's proposed decision and order.

II. THE ISSUES

The Housing Providers' notice of appeal listed the following issues:

1. Whether the examiner erred in proceeding with and rendering a decision when the record reveals that a notice of the hearing was neither sent to the Housing Provider/Respondents nor their legal counsel?
2. Whether the examiner was in error in the failure to note the definition of a "Housing Accommodation" that is consistent with the [sic] D.C. CODE 45-1603 [sic]?
3. Whether the Notice to Vacate violated the provisions of the Act?
4. Whether the examiner erred in establishing a rent ceiling for premises that were unoccupied and for which the subject premises would be exempt from rent control?
5. Whether the examiner erred in receiving into evidence [] and exhibits at a hearing wherein the respondents did not receive notice of the hearing?
6. Whether a Sales Contract created a leasehold interest in real property in an Option [sic] to purchase that had expired?

7. Whether the examiner erred in deciding that respondents did not dispute the leasehold when the facts and evidence showed that the respondents rejected and returned checks tendered for rent by the petitioners?

III. PRELIMINARY ISSUE

Whether the appeal in this case is from a final decision and order of the Rent Administrator.

The decision and order in this case has the caption, "PROPOSED DECISION AND ORDER." On the face of the decision, the first words under the word, "Jurisdiction" are "THOMAS WORD, HEARING EXAMINER." On July 9, 2001, when this proposed decision and order was issued, Mr. Word had retired,² and was no longer a hearing examiner. On July 9, 2001, the proposed decision and order was issued and signed by Christina Northern, Rent Administrator.

Counsel for the Housing Providers stated in the notice of appeal in the first argument on lack of proper notice, "[a]dditionally, in this case the decision-maker, who did not hear the evidence, did title the decision as a proposed Order **did not** include in the Order any statement that would comply with D.C. CODE § 1-1509(a)[sic]."³ (Notice of Appeal at 2.) That code section relates to notice. However, D.C. CODE § 1-1509(d)⁴ relates to proposed decisions or orders and states:

Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to the party to the case ... shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the

² Mr. Word retired on February 28, 2001.

³ D.C. OFFICIAL CODE § 2-509.

⁴ Id.

exclusive record, as provided in subsection (c) of this section, as may be designated by a party. (emphasis added).

This code section was interpreted by the court in Meier v. District of Columbia Rental Accommodations Comm'n, 372 A.2d 566 (D.C. 1977); Wallace v. District of Columbia Unemployment Comp. Bd., 289 A.2d 885 (D.C. 1972) aff'd App. D.C. 294 A.2d 177 (D.C. 1972); Carey v. District Unemployment Comp. Bd., 304 A.2d 18 (D.C. 1973). Specifically, in Meir, the court stated:

[T]he Act] and DCAPA clearly provide the vehicle for utilization of such hearing examiners to hear the evidence with the 'decision' being made by another. Such a bifurcated decision-making process however is fettered with certain limitations. A major one is contained in § 1-1509(d) of [the] DCAPA.

Here, it is conceded that the Acting Rent Administrator heard no evidence or argument. Rather the decision rendered by him was based on the evidence presented before the hearing examiner. It is further conceded that the hearing examiner did not issue to the parties a proposed order, including findings of fact and conclusions of law; nor did they have opportunity to file exceptions, present arguments, and direct the Acting Rent Administrator's attention to designated portions of the record prior to the entry by him of his 'decision'....

Meir, 372 A.2d at 568.

The court in Meir concluded:

[i]f the Rent Administrator's Decision ... is a final order or decision within the meaning of § 1-1509(d) of the DCAPA, it was entered without compliance with the requirements thereof.

Id.

The court in Meir held:

[w]e have previously held that failure to comply with the 'proposed order' procedure of this section requires reversal. (citation omitted).

Id.

The Commission holds that the Rent Administrator's decision and order in this appeal was a proposed decision and order, as stated on its face. This is factually supported by substantial evidence in the record that Hearing Examiner Thomas Word held the hearing in this case⁵ and that the Rent Administrator issued and signed the decision and order. (Decision at 1 & 9.) As a proposed decision and order, it did not comply with the DCAPA at D.C. CODE § 1-1509(d)⁶ due to the failure of the Rent Administrator to give the parties the opportunity to file exceptions to the proposed decision and order, present arguments, and direct the Rent Administrator's attention to designated portions of the record prior to entry by her of the final decision and order. Meir at 568, DCAPA at D.C. CODE § 1-1509(d).⁷

Based on the DCAPA, the Act, and case law, the Commission concludes the proposed decision and order did not comply with the DCAPA and the Act. Accordingly, this issue is granted and the Rent Administrator is reversed.

IV. DECISION ON THE ISSUES

1. **Whether the examiner erred in proceeding with and rendering a decision when the record reveals that a notice of the hearing was neither sent to the Housing Provider/Respondents nor their legal counsel?**

Counsel for the Housing Providers asserted on appeal that neither counsel nor the Housing Providers received proper notice of the Rent Administrator's hearing on the petition. Counsel for the Housing Providers wrote as the first argument in the notice of appeal that notice of the

⁵ OAD hearing tapes (OAD Oct. 27, 2000).

⁶ D.C. OFFICIAL CODE § 2-509(d).

⁷ Id.

Rent Administrator's hearing was required by regulation under the Act, 14 DCMR § 4000,⁸ and by the D.C. Administrative Procedure Act, D.C. CODE § 1-1509.

The DCAPA is applicable to the Rent Administrator's contested case proceedings by the Act at D.C. Official Code § 42-3502.16(g). The Commission also notes that the Act at D.C. Official Code § 42-3502.16(c) states:

If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing. (emphasis added).

The Commission reviewed the OAD certified record. It showed that there was a record of two Receipts for Certified Mail addressed to the counsel for the parties. However, the receipts did not have a postmark date from the United States Postal Service. That would have indicated the notices were mailed, but would not indicate service. The document that indicates service is the Domestic Return Receipt, commonly referred to as the green card. The certified file did not contain the Domestic Return Receipts for this case. They would have shown whether the notice of hearing was delivered to the Housing Providers or their counsel in accordance with D.C. OFFICIAL CODE § 42-3502.16.

The failure of the certified record to contain proof of delivery of the certified mail notice of the hearing to the Housing Providers or their counsel prevents the Commission's determination that the Housing Provider received notice of the hearing by certified mail or other method that ensures delivery, as required by the Act and the DCAPA. See Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999), Dias v. Perry, TP 24,379 (RHC Dec. 27, 1999). Therefore, this issue is granted and the Rent Administrator is reversed.


⁸ 14 DCMR § 4000 has the title, "Hearings." It is the section of the title for rules related to hearings under the Act. However, 14 DCMR § 4000.2, states, "[a]ll hearings shall be conducted in accordance with the procedures for contested cases set forth in the D.C. Administrative Procedure Act, D.C. CODE § 1-1501, *et seq.* (1981)."

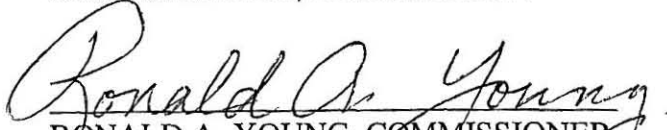
determination that the Housing Provider received notice of the hearing by certified mail or other method that ensures delivery, as required by the Act and the DCAPA. See Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999), Dias v. Perry, TP 24,379 (RHC Dec. 27, 1999). Therefore, this issue is granted and the Rent Administrator is reversed.

V. CONCLUSION

This case is remanded for a hearing de novo with instructions for the Rent Administrator to ensure delivery of the hearing notices before holding the hearing, and to issue a final decision and order. All other issues listed in the notice of appeal are denied as moot. See McChesney v. Moore, 78 A.2d 389, 390 (D.C. 1951). There the court stated when there is a lack of finality in a lower court decision, the appeals court will not render a decision on the appeal. Likewise, in the instant case, the proposed decision and order was not a final appealable decision, because of the failure of the Rent Administrator to follow the requirements of the DCAPA as stated herein.

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, TP 25,070, was mailed by certified mail this **10th day of October, 2001** to:

Barbara L. Smith, Esquire
2600 Virginia Avenue, N.W.
Suite 208
Washington, D.C. 20037

Richard Luchs, Esquire
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036-5605


LaTonya Miles
Contact Representative