

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 26,191

In re: 430 M Street, S.W., Unit N-106

Ward Six (6)

MANN FAMILY TRUST
Housing Provider/Appellant

v.

MARTHA JOHNSON
Tenant/Appellee

DECISION AND ORDER

November 21, 2005

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, 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 (DCMR), 14 DCMR §§ 3800-4399 (2004), govern the proceedings.

I. THE PROCEDURES

On January 5, 2001, Martha Johnson, Tenant, filed Tenant Petition (TP) 26,191 in the Housing Regulation Administration. The petition alleged: 1) the rent increase was larger than the amount of increase allowed by any provision of the Rental Housing Act of 1985, 2) a proper thirty (30) day notice of rent increase was not provided before the rent

increase became effective, 3) the Housing Provider failed to file the proper rent increase forms with RACD, 4) the rent being charged exceeds the legally calculated rent ceiling for my unit, 5) a rent increase was taken while the unit was not in substantial compliance with the housing regulations, 6) the building in which my rental unit is located is not properly registered with RACD, and 7) services and facilities provided in connection with the rental of my unit has been substantially reduced. On November 27, 2001, a hearing was held before Hearing Examiner Henry McCoy. On October 1, 2002, the hearing examiner issued the decision and order which contained:

Findings of Fact

1. Petitioner signed her lease for her rental unit with a previous landlord on July 29, 1998. Her monthly rent was \$850.00.
2. Dr. and Mrs. Marion Mann established the Mann Family Trust in 1996 for estate planning purposes. The Manns are the Co-Trustees and the only beneficiaries under the trust.
3. The Trust was not created to operate a real estate business.
4. The Manns purchased the housing accommodation on November 9, 2000, through the Mann Family Trust.
5. On November 20, 2000, Marion Mann filed, in his name only, a Registration/Claim of Exemption Form to exempt the housing accommodation.
6. The other person with an interest in the property, Mrs. Mann, was not listed on the [R]egistration/[C]laim of [E]xemption [F]orm.
7. On November 21, 2000, Marion Mann, gave Petitioner written notice of a monthly rent increase from \$850 [sic] to \$1,500.00, effective January 1, 2001.
8. The legal rent ceiling for Petitioner's rental unit is \$800.00.
9. Respondent did not file a Certificate of Election of Adjustment of General Applicability for the January 1, 2001 rent increase.
10. On December 11, 2000, Petitioner gave Respondent written notice of repairs Petitioner deemed necessary.

11. Petitioner filed her tenant petition on January 5, 2001.
12. On January 9, 2001, Respondent gave Petitioner a written status report as to the repairs Petitioner requested.
13. On March 13, 2001, Respondent filed an Amended Registration form to correct that he signed the initial registration form as trustee of the Mann Family Trust.
14. Respondent completed all of the requested repairs except the patio door, pest extermination, and cleaning the carpet.
15. The repairs to the patio door were completed on February 5, 2001.
16. Respondent served Petitioner with a notice of increase within a month after purchasing the rental unit.
17. Between November 9, 2000 and November 21, 2000, Petitioner did not exercise any of her protected rights under the Act.

Johnson v. Mann Family Trust, TP 26,191 (RACD Oct. 1, 2002) (Decision) at 4-5.

Conclusions of Law

1. The Mann Family Trust is a natural person with in the meaning of the Act, D.C. Code § 42-3502.05(a)(3) and the Trust is entitled to claim the exemption intended for small landlords.
2. The Trust is not entitled to an exemption in this instance because both trustees had an interest in the rental unit, but only one trustee signed the claim of exemption form, in violation of D.C. Code Section 42-3502.05(a)(3)(C).
3. Petitioner failed to prove, by a preponderance of the evidence, that Respondent substantially reduced services or facilities in Petitioner's unit.
4. The housing accommodation is not exempt from regulation under D.C. Code § 42-3502.05(a)(3), and Respondent is limited in the amount of a rent increase it may impose.
5. Respondent met the 30-day notice requirement for implementing a rent increase.
6. The housing accommodation is not exempt from regulation under D.C. Code § 42-3502.05(a)(3), and Respondent was required to file forms with DCRA relating to the rent increase.

7. The housing accommodation was exempt from regulation under D.C. Code § 42-3502.05(a)(3) when Respondent purchased it, but the failure of both trustees to sign the Claim of Exemption Form brought the Trust under the rent regulation provisions of the Act.
8. Petitioner failed to establish, by a preponderance of the evidence, that her unit was not in substantial compliance with housing regulations when Respondent imposed a rent increase.
9. The housing accommodation was properly registered before the rent increase was noticed, on November 21, 2000, and implemented, on January 1, 2001.
10. Petitioner failed to meet her burden of proving, by a preponderance of the evidence, that Respondent retaliated against her in any way.

Decision at 13-14.

On October 21, 2002, the Housing Provider filed a notice of appeal in the Commission. After several requests for continuances, the Commission held hearings on February 12, 2004 and July 8, 2004.

II. THE PRELIMINARY ISSUE

Whether the decision issued in Johnson v. Mann, TP 27,140 (RACD Mar. 12, 2002) precluded the Commission's jurisdiction over the instant appeal in Mann Family Trust v. Johnson, TP 26,191 (RACD Oct. 1, 2002), based on *res judicata* or collateral estoppel.

In Johnson v. Mann, TP 27,140 (RACD Mar. 12, 2002), the hearing examiner made a finding of fact that the Tenant's rental unit was exempt under the Act. Decision at 6. There was no appeal of this decision by the Tenant.

In Mann Family Trust v. Johnson, the instant appeal, a different hearing examiner, Mr. McCoy, made the opposite finding of fact that the same Tenant's rental unit was not exempt under the Act. The Housing Provider, through counsel, for the first time raised the defense of issue preclusion at the appeal hearing held by the Commission, not in the

notice of appeal. Counsel claimed that he received notice of the first decision (TP 27,140) a few minutes before the Commission's hearing. The Commission allowed the parties to submit post hearing briefs on the issue preclusion defense and later appellate argument, noting that an issue must be first raised below at the hearing, before it can be considered on appeal. 1880 Columbia Road v. Dist. of Columbia Rental Hous. Comm'n, 400 A.2d 333, 339 (D.C. 1979). Issue preclusion in this appeal, based on the decision in TP 27,140, was not first raised at the hearing before the hearing examiner. Instead, it was first raised before the Commission in this appeal at the Commission's hearing.

“Res judicata is an affirmative defense that must be pleaded and established by the proponent.” Johnson v. District of Columbia Rental Hous. Comm'n, 642 A.2d 135, 139 (D.C. 1994). “To evaluate a claim of preclusion, the trier of fact must ‘have before it the exhibits and records involved in the prior cases....’” Id. at 139 citing Block v. Wilson, 54 A.2d 646, 648 (D.C. 1947). See Hines v. Brawner Co., TP 27,707 (RHC Sept. 7, 2004) (where the Commission reversed the hearing examiner because of the lack of identity of parties). When the parties are the same, res judicata applies to not only the claim that was decided, “but also as to every ground which might have been presented.” Henderson v. Snider Bros., Inc., 439 A.2d 481 (D.C. 1981) (emphasis added). “Under the doctrine of claim preclusion or res judicata, when a valid final judgment has been entered on the merits, the parties or those in privity with them are barred, in a subsequent proceeding, from relitigating the same claim or any claim that might have been raised in the first proceeding.” (emphasis added). Davis v. Davis, 663 A.2d 499, 501 (D.C. 1995), cited in CT Assocs. v. Campbell, TP 27,231 (RHC Aug. 15, 2003); Mooskin v. Bourge, TP 27,809 (RHC Dec. 11, 2003).

The Mann Family Trust consists of both Marion Mann and his wife, Ruth Mann. Marion Mann participated as a party in both cases. His wife, Ruth Mann, did not participate in this case or TP 27,140. Both petitions were heard on the same date, November 27, 2001. TP 27,140 was heard in the morning and TP 26,191 was heard in the afternoon. However, in the instant appeal, TP 26,191, according to his counsel, Mr. Mann did not introduce at the trial hearing below, held on the afternoon of November 27, 2001, any evidence supporting the petition in TP 27,140, which was decided on March 12, 2002, which was after the hearings on both petitions on November 27, 2001. The court in Johnson, 642 A.2d at 139, required the trier of fact to have records and evidence involved in the prior case before it to determine whether res judicata applied. There is nothing in this appeal record about the evidence involved in the prior petition in TP 27,140. In Johnson, the court held that the decision alone was insufficient to carry the burden of proof on res judicata, and the Commission could not properly take official notice of the file in a prior case. Id.

Likewise, here in this appeal, counsel for Mr. Mann offered the Commission only the prior decision in TP 27,140, but that alone does not prove res judicata under Johnson, which requires that the trier of fact, the hearing examiner below in this case, has the evidence and records submitted in TP 27,140 before him. Since the hearing in TP 27,140 was held in the morning of November 27, 2001,¹ and the hearing below for this case, TP

¹ Counsel for the Housing Provider informed the Commission at its appellate hearing that the hearing below for TP 27,140 was held in the morning of November 27, 2001. The hearing examiner's decision and order corroborates the Housing Provider's counsel by stating, "The hearing in this matter was scheduled for 9:00 am [sic] on November 27, 2001." See Johnson v. Mann, TP 27,140 (RACD Mar. 12, 2002) at 1. Counsel for the Housing Provider also advised the Commission that the hearing below for this appeal, TP 26,191, was held in the afternoon on the same day. The hearing day, November 27, 2001, is stated on the hearing examiner's decision for TP 26,191, but not the time. However, the Attendance Sheet for the hearing in TP 26,191 (this appeal) stated "11/27/01 @ 11:00 AM [sic]." Record (R.) at 48. The time on the Attendance Sheet corroborates the Housing Provider's counsel's statement that the hearing in this

26,191, was held on the same day in the afternoon, it was possible for the evidence and records of TP 27,140 be submitted into evidence at the hearing in this case, TP 26,191, to present the defense of res judicata. The Commission cannot accept new evidence on appeal. See Johnson, supra and 14 DCMR § 3807.5 (2004).

Mann Family Trust submitted a supplemental brief that argued the law of the case applied to this appeal, and precluded the Commission from consideration of the exemption issue. The brief explained law of the case to mean:

The law of the case doctrine prevents relitigation of the same issue in the same case by courts of coordinate jurisdiction. Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n, 641 A.2d 495, 503 (D.C. App. 1994). The doctrine merely expresses the practice of courts to refuse to reopen what has been decided. Messinger v. Anderson, 225 U.S. 436, 444, 32 S.Ct. 739, 56 L.Ed. 1152 (1912). (emphasis added.)

Appellant's Supplemental Brief at 4.

The law of the case refers to the first case, TP 27,140, not this appeal, because this appeal is not final until all appeals have been exhausted by the parties or the time to appeal has expired. That is the significance of the words "in the same case" in the quote above. Accordingly, since only TP 27,140 is final, it is the only one of the two cases that, in theory, an attempt could be made to reopen. Therefore, law of the case applies only to TP 27,140, not the instant appeal. TP 27,140 is not before the Commission and therefore, it is not in jeopardy of being reopened, because all periods for appeal of TP 27,140 have expired.

The Tenant's counsel filed a reply to the Housing Provider's supplemental brief. Tenant's counsel raised the following: 1) the Mann Family Trust failed to raise issue preclusion in its notice of appeal; 2) the request to consider the decision in TP 27,140 is a

appeal was after the hearing in TP 27,140, since the Attendance Sheet states the time was two (2) hours after the 9:00 a.m. scheduled hearing in TP 27,140.

request to consider new evidence, which violates the Commission's rule, 14 DCMR § 3807.5 (2004), which prohibits new evidence on appeal; 3) counsel for the Housing Provider failed to amend his brief [notice of appeal]; 4) the law of the case does not refer to this case, rather it refers to TP 27,140, which is not before the Commission; and 5) the facts and evidence are different in the two cases, TP 27,140 and TP 26,191.

The Commission agrees with the first four (4) points raised by the Tenant's attorney. Point number 5, cannot be determined because the Commission does not have in its certified record the hearing record or exhibits for TP 27,140. Accordingly, the preliminary issue is denied, because it was not first raised before the hearing examiner or in the notice of appeal, and new evidence cannot be submitted on appeal.

III. THE ISSUES

- A. Whether the Hearing Examiner committed reversible error when he held that signature by only one of two trustees, who were married, on the Claim of Exemption form, invalidated the Housing Provider, a trust, and natural person, from claiming an exemption under the Act.
- B. Whether the Hearing Examiner committed reversible error by holding that the housing accommodations [sic] in this case, was not exempt from the rent stabilization program and the rent increase was improper because the Housing Provider was limited in the amount of rent increase it may impose.
- C. Whether the Hearing Examiner committed reversible error when he held that the housing accommodation was not exempt from registration under the Act, and was required to file a registration form relating to rent increases.
- D. Whether the Hearing Examiner committed reversible error in awarding damages to the date of the Decision and Order, without determining that Petitioner/Appellee had in fact vacated the subject unit in December 2001, and not returned to the unit thereafter.
- E. Whether the oversight of Mrs. Mann not to sign the Claim of Exemption was a mere technical violation of the Act.
- F. Whether the Hearing Examiner committed reversible error when he denied the Housing Provider's motion to dismiss.

- G. Whether one spouse can be considered an agent of the other and lawfully sign a Claim of Exemption Form on behalf of both spouses.

Decision at 4-5.

IV. THE DISCUSSION

- A. Whether the Hearing Examiner committed reversible error when he held that signature by only one of two trustees, who were married, on the Claim of Exemption Form, invalidated the Housing Provider a trust, and natural person, from claiming an exemption under the Act.**
- E. Whether the oversight of Mrs. Mann not to sign the Claim of Exemption was a mere technical violation of the Act.**
- G. Whether one spouse can be considered an agent of the other and lawfully sign a Claim of Exemption Form on behalf of both spouses.**

The hearing examiner in the decision held:

The Manns' duties and obligations to Petitioner as Trustees are no different than they would be had they purchased the unit as joint tenants. As Co-Trustees, the Manns owe an equitable obligation to deal with the trust property for the benefit of the beneficiaries, in this case, themselves. [footnote omitted]. The Trust is not treated as a separate entity for tax purposes; since they are the sole beneficiaries, the Manns account for the income from the rental unit on their individual tax returns. [footnote omitted]. The Hearing Examiner finds that the Trust was not established to operate a real estate business. The circumstances of the Trust argues for the conclusion, as a matter of law, that the Mann Family Trust is a natural person within the meaning of the Act, and making it entitled to claim the exemption intended for small landlords.

However, Petitioner also contends that the exemption claim is procedurally flawed because the Co-Trustee, Mrs. Mann did not sign the claim form. The statute requires the signatures of all owners with an interest in the property to sign the Claim of Exemption Form to assure their confirmation of the accuracy of all information on the form, and to affirm the validity of the claim of exemption...

[T]he statute is unambiguous in its requirement that each person having an interest in the housing accommodation must sign the Claim of Exemption Form. Since Mrs. Mann did not sign the form and has an interest in the property, the Trust was not entitled to an exemption.

Decision at 7-8.

The Act, D.C. OFFICIAL CODE § 42-3502.05(a)(3)(C) (2001), states:

The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any 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 Commission's rules, 14 DCMR § 4106.1, .6, & .12 (2004), state:

4106.1 Each housing provider who claims a rental unit is exempt from the Rent Stabilization Program of the Act shall file a Registration/Claim of Exemption Form with the Rent Administrator.

4106.6 Failure to file or failure to provide accurate information in accordance with the Act and this subtitle, may result in the denial of the claim of exemption and/or the imposition of other penalties and sanctions.

4106.12 The Rent Administrator shall approve a claim of exemption under § 205(a)(3) of the Act, if it meets the following requirements:

...

(c) Where the exemption includes the name and address of each person having a direct or indirect interest in the rental unit[.] (emphasis added).

The court has addressed "direct or indirect interest" in several cases. The court held in Cambridge Mgmt. Co. v. Dist. of Columbia Rental Hous. Comm'n, 515 A.2d 721 (D.C. 1986), that some form of ownership must exist for there to be "indirect interest" in property. The court also held that the Commission must follow its rule interpreting "indirect interest" to mean "indirect ownership." See also Remin v. Dist. of Columbia

Rental Hous. Comm'n, 471 A.2d 275 (D.C. 1984) (where the court held that a husband had indirect interest in his wife's rental property).

In this appeal, both owners of the rental unit were trustees who owned the rental property for the benefit of the other trustee. Only one trustee, Marion Mann, was listed as the owner and signed the Claim of Exemption Form. The other trustee, his wife, was not listed as an owner and did not sign the Claim of Exemption Form, and therefore, she violated the requirement in the Act that “[t]he claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation.” § 42-3502.05(a)(3)(C). (emphasis added).

The Housing Providers had the burden of proof on exemption from the Act. Revithes v. Dist. of Columbia Rental Hous. Comm'n, 536 A.2d 1007 (D.C. 1987). The hearing examiner held that Marion Mann and his wife, Ruth Mann, were natural persons. However, the inquiry of the requirements for exemption from the Act does not stop there. Also relevant, according to the Act and the Commission's rules, was they both were obligated by law to be listed as owners and both sign the exemption form. It is uncontested that Ruth Mann did not sign the exemption form, and therefore, the exemption form was not properly filed, as required by the law in the Act and the Commission's rules.

Under the Mann Family Trust each person owned the property and held it for the benefit of the other person. The Trust Agreement states, Marion Mann and/or Ruth Mann [are] Trustors and/or Trustees.” Abstract of Trust at 1. The primary beneficiaries of this Trust are Marion Mann and Ruth R. Mann. Id. The Trustees had the power:

To possess, manage, develop, subdivide, control, partition, mortgage, lease or otherwise deal with any and all real property; to satisfy

and discharge or extend the term of any mortgage thereof; to execute the necessary instruments and covenants to effectuate the foregoing powers (emphasis added).

Abstract of Trust at 7-8.

The identity of Housing Providers is required for proper regulation under the rent stabilization program. The fact that the Housing Providers are husband and wife does not make one the agent of the other for signatures, where the law requires signatures of each person with an interest in the housing accommodation. Under the Abstract of Trust, Ruth Mann had the power to sign the Claim of Exemption Form. Under the law, Ruth Mann had the legal duty to be listed as an owner and to sign the Claim of Exemption Form. That was important because the Abstract of Trust was a “Trust Agreement” between the Trustees. Id. at 1. They had no obligation to file the Trust Agreement in a public place, such as RACD, where their Tenants could determine the identity of the Trustees, as Housing Providers, from the Abstract of Trust. Therefore, the identity of the Housing Providers must be on the Registration/Claim of Exemption Form for the benefit of the Tenants, who may need the information to file grievances or complaints to be addressed by RACD.

In conclusion, the three issues, A, E, and G, are decided by affirming the hearing examiner, because the law required Ruth Mann, an owner, to be listed on and sign the Claim of Exemption Form. The violation of law in the Act is not a mere technical error. Under the Act and rules, Marion Mann was not her agent. See Kornblum v. Zegeye, TP 24,338 (RHC Aug. 19, 1999) (where the Commission held that a Claim of Exemption Form was improper, because all of the owners of the rental unit had not signed the Claim of Exemption Form). See also Montgomery v. Offurum, TP 27,676 (RHC Apr. 18, 2005)

(where the Commission noted that the Housing Provider's name was on the Registration/Claim of Exemption Form, but not her address, as an owner of the rental unit; the Commission allowed 30 days to cure the defect.) In this appeal, there is no basis for deeming the absence of the signature of Ruth Mann to be a defect, when her name is not listed, as an owner, who could be notified of the defect.

B. Whether the Hearing Examiner committed reversible error by holding that the housing accommodations [sic] in this case, was not exempt from the rent stabilization program and the rent increase was improper because the Housing Provider was limited in the amount of rent increase it may impose.

The hearing examiner held:

The Hearing Examiner's conclusion of law that the housing accommodation is not exempt from regulation subjects the rental unit to rent ceiling regulation. [citing D. C. OFFICIAL CODE § 42-3502.06(a)]. Since Respondent was led to believe that its rental unit was exempt from regulation, it did not calculate a rent ceiling. Under these circumstances, the rent charged at the time of the increase became the legal rent ceiling. Respondent was restricted to a rent ceiling adjustment based on the Consumer Price Index percentage for that year and in case [sic] would the increase be more than 10%. Respondent increase [sic] Petitioner's rent by 76%, from \$850.00 to \$1,500.00. Therefore, the rent increase taken on January 1, 2001 was greater than the amount allowed under the Act and must be refunded with interest.

Decision at 10.

The housing accommodation was not exempt, because one of the Housing Providers, Ruth Mann, failed to sign the Claim of Exemption Form. Since the housing accommodation was not properly registered as exempt, it was subject to the rent stabilization program. See D.C. OFFICIAL CODE § 42-3502.05(a) (2001), which states, “[s]ections 42-3502.05(f) through 42-3502.19, except § 3502.17, shall apply to each rental unit in the District except:” [the list of exemptions follows, including the small housing provider exemption at § 42-3502.05(a) (3)]. (emphasis added).

The hearing examiner is affirmed, because Ruth Mann did not properly execute the Claim of Exemption Form, which caused the rental unit to be subject to the rent stabilization program, under § 42-3502.05(a), which states the Act applies “to each rental unit in the District.” Before increasing the rent charged under the Act, the Housing Provider must determine the existing rent ceiling, or increase the rent ceiling by filing a Certificate of Election of Adjustment of General Applicability in conformity with 14 DCMR § 4204.9 & .10 (2004) or file for a vacancy increase under § 42-3502.13 in accordance with 14 DCMR § 4207 (2004). The Housing Provider must implement the increase in rent charged as provided in 14 DCMR § 4205 (2004). Since the Manns did not properly establish the rent ceiling or increase the rent ceiling, the Tenant is owed a rent refund. The hearing examiner is affirmed.

C. Whether the Hearing Examiner committed reversible error when he held that the housing accommodation was not exempt from registration under the Act, and was required to file a registration form relating to rent increases.

The Act provides for registration at § 42-3502.05(f), which states:

Within 120 days of July 17, 1985, each housing provider of any rental unit not exempted by this chapter and not registered under the Rental Housing Act of 1980, shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District for which the housing provider is receiving rent or is entitled to receive rent. Any person who becomes a housing provider of such a rental unit after July 17, 1985 shall have 30 days within which to file a registration statement with the Rent Administrator. No penalties shall be assessed against any housing provider who, during the 120-day period, registers any units under this chapter, for the failure to have previously registered the units. (emphasis added.)

The Act, § 42-3502.08, provides for increases above the base rent by stating:

(a) (1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:

(B) The housing accommodation is registered in accordance with § 42-3502.05.

See Temple v. Dist. of Columbia Rental Hous. Comm'n, 536 A.2d. 1031 (D.C. 1987), where the court held “[n]o increases above a ‘base rent’ are permitted unless a building is properly registered with the RACD.”

In Revithes v. Dist. of Columbia Rental Hous. Comm'n, 536 A.2d 1007 (D.C. 1987) the court held, “[u]nless a rental unit is properly exempt from the Rent Stabilization Program, one of the pre-conditions for increasing rent above the base level is proper registration with the RACD.” [footnote omitted] (emphasis added). Id. at 1010. “[S]mall landlords have been required to file a Claim of Exemption Statement affirming their eligibility for exemption.” Id. “Thus, to the extent the RHC invalidated Revithes’ claim of exemption based on a *per se* rule that following a period of a bad faith claim of exemption, a change in status from non-exempt to exempt will become effective only upon the filing of a valid Claim of Exemption Statement, the conclusion is supported by the rental housing laws in effect then and now by sound administrative policy.” Id. at 1018.

In the instant appeal, Marion Mann filed and signed the Claim of Exemption Form within 30 days of the purchase of the rental unit. See findings of fact 4 & 5. The hearing examiner’s finding of the non-exempt status of the rental unit was based solely on the fact that Ruth Mann was not listed (nor did she sign) on the Claim of Exemption Form. Finding of fact 6. Both Marion and Ruth Mann own the property and both have a direct interest in the property. Consequently, both had the legal obligation to list their names and sign the Claim of Exemption Form for the rental unit to become exempt from regulation of rents. The failure to list the name of Mrs. Mann, as an owner on the exemption form, was not a defect that could be cured with her signature, because her

name was also absent from the exemption form. See 14 DCMR § 4104.3(a) (2004), which states the claim of exemption is defective if it is not signed. The Rent Administrator could not notify Ruth Mann, in accordance with § 4104, to cure the defect of her failure to sign the form, because the Rent Administrator had no notice or knowledge of the existence of Ruth Mann, as an owner, because Ruth Mann's name was not on the form. Therefore, the rent increase on the rental unit was invalid, because the rental unit was not properly registered pursuant to § 42-3502.08(a)(1)(B), quoted above. Accordingly, the hearing examiner is affirmed.

D. Whether the Hearing Examiner committed reversible error in awarding damages to the date of the Decision and Order, without determining that Petitioner/Appellee had in fact vacated the subject unit in December 2001, and not returned to the unit thereafter.

The hearing examiner can award damages up to the date of the hearing for continuing violations, because that is the date the record closes. It is cause for reversal to award damages beyond the hearing date, or if at the hearing, damages were limited to the date the petition was filed, then the hearing examiner cannot award beyond the date the petition was filed. See Redman v. Graham, TP 24,681 & TP 24,681A (RHC July 1, 2004) at 17; Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995).

The Housing Provider asserts in the notice of appeal and brief before the Commission that the Tenant moved out of the rental unit before the decision was issued. That is a factual assertion which is not in the Commission's certified record. The hearing below was held on November 27, 2001, and the hearing date is normally the cut off date for calculating rent overcharge damages. Accordingly, this issue is remanded for

findings of fact, conclusions of law, and decision on the correct period and the correct amount for damages for rent overcharges.


F. Whether the Hearing Examiner committed reversible error when he denied the Housing Provider's motion to dismiss.

The hearing examiner held, "Since Mrs. Mann did not sign the form and has an interest in the property, the Trust was not entitled to an exemption. Therefore, Respondent's motion to dismiss shall be denied." Decision at 8. This Commission decision affirmed the hearing examiner in issues A, B, C, E, and G, because Mrs. Mann was not listed on the Claim of Exemption Form and did not sign the Claim of Exemption Form. Therefore, the rental unit was not exempt from rent regulation. Thus, the hearing examiner did not commit reversible error when he denied the Housing Provider's motion to dismiss, because Mrs. Mann was not listed and did not sign the Claim of Exemption Form. The hearing examiner is affirmed.

IV. THE CONCLUSION

The Commission affirmed issues A, B, C, E, F and G. Issue D was remanded for findings of fact and conclusions of law on the date the Tenant vacated the rental unit and the calculation of the correct damages, based on the hearing date or the date the Tenant vacated the rental unit, if that date is earlier than the hearing date.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER


JENNIFER M. LONG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W.
6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 26,191 was mailed by priority mail, with confirmation of delivery, postage prepaid this 21st day of November, 2005, to:

Elizabeth Figueroa, Esquire
1700 – 17th Street, N.W.
Suite 301
Washington, D.C. 20009

Morris Battino, Esquire
1200 Perry Street, N.E.
Suite 100
Washington, D.C. 20017



LaTonya Miles
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