DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,084

In re: 116 P Street, S.W., Unit 1

Ward Six (6)

BARBARA A. SCHAUER
Housing Provider/Appellant

v.

AHMED ASSALAAM
Tenant /Appellee

DECISION AND ORDER

December 31, 2002

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). 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 these proceedings.

I. PROCEDURAL HISTORY

Ahmed Assalaam, the tenant of unit 1 at the housing accommodation located at 116 P Street, S.W., filed Tenant Petition (TP) 27,084, on April 26, 2001. In his petition the tenant alleged that the housing provider, Barbara A. Schauer: 1) permanently eliminated services or facilities provided in connection with his rental unit; 2) substantially reduced services or facilities provided in connection with his rental unit; 3)

took retaliatory action against him for exercising his rights in violation of section 502 of the Act; and 4) violated the provisions of §§ 211 and 502 of the Act.

An Office of Adjudication (OAD) hearing on the petition was held on September 25, 2001, with Hearing Examiner Henry McCoy presiding. The hearing examiner issued his decision and order on July 15, 2002. In his decision the hearing examiner made the following findings of fact:

> 4. On February 15, 2000, D.C. Housing Inspector Linda Ellis issued a Housing Deficiency Notice identifying twenty (20) housing code violations in Petitioner's apartment.
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> 5. The housing code violations cited were windows in the living room and bedroom with defective hardware and missing parts, no weatherproofing, and not fitting well within their frames; living room walls with loose and peeling paint and with dampness; entrance door not fitting in its frame, defective hardware, and no weatherproofing; rear door with no weatherproofing and defective hardware, kitchen floor covering with missing parts; and, rear porch ceiling with missing rotten parts.
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> 6. On February 25, 2000, in the Landlord & Tenant branch [sic] of Superior Court, Petitioner informed Respondent of the conditions in his apartment needing repair including those cited in the housing deficiency notice and the malfunctioning furnace.
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> 7. On April 11, 2001, Washington Gas inspected the furnace and wrote a notice of potentially hazardous condition associated with the pilot light.
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> 8. Respondent had knowledge of the conditions in Petitioner's unit that required repairs for the period February 25, 2000 through April 26, 2001.
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> 9. Respondent has installed new windows into occupied and unoccupied rental units she owns that are next to or across the street from Petitioner's apartment.
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> 10. Respondent has not installed new windows in Petitioner's unit.
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> 11. Respondent has failed to make repairs in Petitioner's apartment after being requested to do so by Petitioner.

Assalaam v. Schauer, TP 27,084 (OAD July 15, 2002) at 4.

Based on his findings, the hearing examiner made the following conclusions of law:

1. Petitioner has failed to prove by a preponderance of the evidence that related services and/or facilities provided in connection with the rental of Petitioner's unit have been permanently eliminated, in violation of D.C. [OFFICIAL CODE] § 42-3502.11.

2. Petitioner has proven by a preponderance of the evidence that related services and/or facilities provided in connection with his rental unit have been substantially reduced, in violation of D.C. [OFFICIAL CODE] § 42-3502.11.

3. Respondent has retaliated against Petitioner in violation of D.C. [OFFICIAL CODE] § 42-3505.02.

Id. at 11. The hearing examiner granted the tenant's petition and ordered the housing provider to refund to the tenant $3150.00, plus $274.05 in interest for a total refund of $3424.05 for violation of the Act, D.C. OFFICIAL CODE § 42-3502.11 (2001). The hearing examiner further ordered the housing provider to pay a fine in the amount of $1000.00, for knowingly reducing the tenant's services and facilities in violation of D.C. OFFICIAL CODE § 42-3509.01(a) (2001). The hearing examiner also ordered the housing provider to pay a fine in the amount of $1000.00, for retaliating against the tenant in violation of D.C. OFFICIAL CODE § 42-3505.02 (2001).

II. ISSUES ON APPEAL

On appeal to the Commission, the housing provider, through counsel, argues:

> The hearing examiner erred in awarding the tenant a refund of rent when the tenant had not paid the rent to be refunded; in awarding interest on the rent never paid and in trebling the award, as more fully set out in the Motion for Reconsideration filed herewith.[1] The hearing examiner erred in fining the housing provider $2,000 for retaliation and reduction of services which were not

[1] The housing provider incorporated by reference its Motion for Reconsideration filed with OAD on the same day she filed her Notice of Appeal with the Commission. The Commission has accepted the motion as the housing provider's brief on appeal.

authorized by law and were unwarranted. The hearing examiner's award was excessive under the existing precedent.

Notice of Appeal at 1-2.

III. DISCUSSION OF THE ISSUES

A. Whether the hearing examiner erred when he awarded the tenant a rent refund when the tenant was paying rent into the registry of the court and not to the housing provider.

The housing provider argues on appeal that the tenant did not pay to her all the rent for use and occupancy of his unit. The housing provider asserts that the evidence in the record reflects that the tenant did not pay rent of $450.00 to the housing provider from February 25, 2000 through April 26, 2001. Rather, the housing provider argues, the tenant paid $375.00 into the registry of the court, pursuant to a protective order issued by the Landlord and Tenant Branch of Superior Court in L&T 00-4521. The housing provider finally contends that the $375.00 paid into the registry of the court from February 25, 2000 through April 26, 2001 was the same amount of rent the hearing examiner found to be the proper rent ceiling during the period of the dispute, and therefore, the tenant was not entitled to a refund.

The Act, D.C. OFFICIAL CODE § 42-3501.03(28) (2001), defines rent as, "the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities." A housing provider is liable for the amount by which the entire amount of money, demanded or received, exceeds the rent ceiling. See

D.C. OFFICIAL CODE § 42-3509.01(a) (2001).[2] In 424 Q St. Ltd. P'ship/T.K. Chamberlain v. Evans, TP 24,597 (RHC July 31, 2000), the Commission determined that the hearing examiner in that case erred when he calculated a refund due the tenant using the reduced amount of the Superior Court's protective order, which is the method advanced by the housing provider in the instant case. In 424 Q St. Ltd. P'ship, the Commission stated:

> The hearing examiner also erred in the figures used to calculate the refund. Instead of determining the refund using the amount of money the housing provider charged as rent, the hearing examiner calculated the refund using the reduced amount of the Superior Court's protective order. In the months the tenant did not pay rent, the hearing examiner did not order a refund. The fact that the tenant did not pay the full amount of the rent does not limit the refund. See Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997).
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> In Kapusta, the Court upheld the award of a refund of rent the housing provider charged, but never collected. The housing provider demanded rent for a nine-month period; however, he only received payment for one month. The hearing examiner awarded a rent refund for the entire nine months the housing provider demanded rent in excess of the rent ceiling. The Commission affirmed the hearing examiner's decision in accordance with D.C. [OFFICIAL CODE § 42-3509.01 (2001)]. The DCCA, in turn, affirmed the Commission's decision in Kapusta, because the award of a refund of rent demanded but never received was in accordance with D.C. [OFFICIAL CODE § 42-3509.01 (2001)].

Id. at 14-15. (emphasis added) (footnotes omitted). In the instant case, the hearing examiner properly used the actual monthly rent demanded by the housing provider to calculate the refund. The use of the amount of rent in the Superior Court protective

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[2] The Act, D.C. OFFICIAL CODE § 42-3509.01(a) (2001), provides:

> Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines. (emphasis added).

order, $375.00, to determine the amount of the tenant's refund, as argued by the housing provider, would have been contrary to the DCCA's decision in Kapusta and the Commission's decision in 424 Q St. Ltd. P'ship, because the amount of rent demanded by the housing provider, and not the amount determined by the court in a protective order, is used to determine the amount of the rent refund. Accordingly, the decision of the hearing examiner on this issue is affirmed.

B. Whether the hearing examiner erred when he awarded the tenant interest on the rent refund he ordered.

The housing provider argues that the tenant was not entitled to a refund for excess rent paid. The housing provider also argues the tenant was not entitled to interest, because interest is payable for the loss of money, and the tenant did not suffer a loss of money since the rent paid into the registry of the court was the same amount of rent determined by the hearing examiner to be the tenant's rent obligation.[3] Housing Provider's Brief (Brief) at 3. See Issue "A" supra, where the Commission determined that the hearing examiner's award of a rent refund to the tenant was proper.

The Act, D.C. OFFICIAL CODE § 42-3509.01 (2001), and the Commission's regulation, 14 DCMR § 3826 (1998), permit the Rent Administrator to impose interest on rent refunds, or treble that amount, through the date of the hearing examiner's decision and order. The applicable regulation, 14 DCMR § 3826 (1998), provides:

> 3826.1 The Rent Administrator or the Rental Housing Commission may impose simple interest on rent refunds, or treble that amount under § 901(a) or § 901(f) of the Act.

[3] Counsel for the housing provider incorporated by reference the housing provider's motion for reconsideration of the hearing examiner's decision and order as a part of the housing provider's notice of appeal. Pursuant to 14 DCMR § 4013.3 (1991), the motion, which was denied, is not subject to appeal to the Commission. Accordingly, the Commission treated the motion as a brief on appeal to the Commission.

3826.2 Interest is calculated from the date of the violation (or when service was interrupted) to the date of the issuance of the decision.

3826.3 The interest rate imposed on rent refunds or treble that amount, if any, shall be the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. [OFFICIAL] CODE § 28-3302(c), on the date of the decision.

3826.4 Post judgment interest shall continue to accrue until full payment, or an intervening decision, order, or judgment modifies or amends the judgment or accrual of interest.

See 45 D.C. Reg. 686-87 (Feb. 6, 1998). In the instant case, pursuant to the applicable regulations, the hearing examiner imposed simple interest on the rent refund awarded the tenant. The housing provider has failed to show that the award of interest contained mathematical error or that the hearing examiner's action was arbitrary, capricious, or an abuse of his discretion.[4] Accordingly, the hearing examiner's award of simple interest to the tenant on his rent refund is affirmed.

C. Whether the hearing examiner erred when he trebled the rent refund awarded the tenant.

The housing provider, in her motion for reconsideration that was incorporated by reference into her notice of appeal, and treated as a brief on appeal by the Commission, argues:

> 17. As Petitioner [the tenant] has no right to a rent refund, his refund trebled is zero. The hearing examiner stated that when a Respondent acts in bad faith, 'the refund shall be trebled.' [Order, page 7].

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[4] The Act, D.C. OFFICIAL CODE § 42-3502.16(h) (2001), 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.

18. The hearing examiner's Order thus acknowledged that treble damages apply only to a refund, not a rollback. See Interstate General Corp. v. District of Columbia Rental Hous. Comm'n, 501 A.2d 1261, 1264 (D.C. 1985) (distinguishing a 'refund' from a 'rollback.' In Interstate General, the relief awarded was a refund, so the Court found treble damages appropriate.)

19. As Petitioner is not entitled to a refund, the Hearing Examiner should reconsider the remedy of treble damages it ordered.

Housing Provider's Brief at 4.

As we previously stated in Issue "A" supra, the hearing examiner's award of a rent refund to the tenant was proper. Therefore, pursuant to the Act, D.C. OFFICIAL CODE § 42-3509.01(a) (2001), the award of treble damages is an appropriate remedy where a rent refund is ordered, if bad faith is found.

In his decision and order the hearing examiner summarized the testimony and evidence adduced at the hearing as follows:

> In the case at bar, there is record evidence that Petitioner informed Respondent of the poor conditions in his apartment and Respondent failed to take any corrective action. In addition, there is testimony by both parties that Respondent has made capital improvements, i.e. window replacement, in adjacent occupied apartments and nearby vacant apartments owned by her but no such improvements have been [made] to Petitioner's apartment.
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> Respondent claims the financial return on the Petitioner's apartment does not make it economically viable to replace Petitioner's windows. Specifically, Respondent said that the cash flow from Petitioner's unit did not provide sufficient funds for the installation of new windows. ... Petitioner claims Respondent's obvious omission in replacing his windows when Respondent owned apartments all around him, both occupied and unoccupied, [which] have had theirs replaced is a form of retaliation and an attempt to get him to move.
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> Respondent's economic argument is somewhat specious given those provisions in the Act that allow her to recoup the cost of substantial repairs to her rental properties. Respondent is a seasoned rental property owner in the District of Columbia. In addition, she and Petitioner have a history of actions against one another in Superior Court and RACD. Respondent is well aware of the requirements to maintain the habitability of her occupied properties regardless of the perceived economic feasibility. Therefore, it is determined that Respondent's

> conscious action to delay making needed repairs to Petitioner's apartment with specific emphasis on her glaring refusal to replace his apartment's window which would have abated some of the housing code violations constitute actions on her part serious enough to warrant a finding of bad faith.

Assalaam v. Schauer, TP 27,084 (OAD July 15, 2002) at 8. In his decision and order the hearing examiner provided a summary of the evidence in the record which led him to conclude that the housing provider acted in bad faith and was therefore subject to a trebling of the damages awarded tenant. However, absent from the hearing examiner's decision and order were findings of fact on the issue of bad faith.

The DCAPA, D.C. OFFICIAL CODE § 2-509(e) (2001), provides:

> 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. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence.

The Commission has previously held:

> Findings of fact are the bases of meaningful review, and serve to inform the parties of the facts relied upon by the hearing examiner. Consequently, 'generalized, conclusory or incomplete findings' are unacceptable.[5] 'Neither repetition of the statutory language nor a simple summary of the evidence satisfy the requirements of the Administrative Procedure Act.' Hedgman v. District of Columbia Hackers' License Appeal Bd, 549 A.2d 720, 723 (D.C. 1988) citing Wheeler v. District of Columbia Bd. of Zoning Adjustment, 395 A.2d 85, 88 (D.C. 1978).

...

> The examiner's responsibility to issue findings of fact and conclusions of law in the decision and order is well settled in this jurisdiction. In order to meet the requirements of the DCAPA, D.C. [OFFICIAL CODE § 2-509(e) (2001)], '(1) the decision must state findings of fact on each material, contested, factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings." Perkins v. District of Columbia

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[5] Kennedy v. District of Columbia, 654 A.2d 847, 853 (D.C. 1994) quoting Newsweek Magazine v. District of Columbia Comm'n on Human Rights, 376 A.2d 777, 784 (D.C. 1977).

> Dep't of Employment Servs., 482 A.2d 401, 402 (D.C. 1984) quoted in Nursing Servs v. District of Columbia Dep't of Employment Servs., 512 A.2d 301, 302-303 (D.C. 1986). When a decision and order does not contain findings of fact, the reviewing body is compelled to remand the matter, because the record is insufficient for review. Hedgman, 549 A.2d at 723; Nursing Servs., 512 A.2d at 303.

Thorpe v. Independence Federal Savings Bank, TP 24,271 (RHC Aug. 19, 1999) at 7-8. Because the decision of the hearing examiner did not include findings of fact on the issue of bad faith, this issue is remanded to the hearing examiner for findings of fact and conclusions of law, on the present record, regarding the issue of whether the housing provider acted in bad faith warranting the imposition of treble damages as permitted by the Act, D.C. OFFICIAL CODE § 42-3509.01(a) (2001). Accordingly, the decision of the hearing examiner on this issue is reversed and remanded for action consistent with this decision.

D. Whether the hearing examiner erred when he levied a fine on the housing provider for retaliating against the tenant in violation of the Act.

E. Whether the hearing examiner erred when he levied a fine on the housing provider for reducing the services and facilities of the tenant.

In her Notice of Appeal and brief on appeal the housing provider states, "[t]he hearing examiner erred in fining the housing provider $2,000 for retaliation and reduction of services which were not authorized by law and were unwarranted." Notice of Appeal at 1.

A. The Law

The housing provider's assertion that the fines imposed by the hearing examiner for retaliation and a reduction of services and facilities were not authorized by law is in error. The Act, D.C. OFFICIAL CODE § 42-3509.01(b) (2001), provides: "Any person who wilfully ... commits any other act in violation of any provision of this chapter or of

any final administrative order issued under this chapter, or (fails to meet obligations required under this chapter shall be subject to a civil fine of not more than $5000.00 for each violation. Further, the District of Columbia Court of Appeals has stated:

> It has long been established that an administrative agency may be authorized to impose penalties in the form of fines to enforce public rights created by statutes. ... [P]ursuant to an amendment to the 1985 Act, the RHC [Commission] is indisputably authorized to impose fines pursuant to subsection (b) or any other provision of the penalty section.

Revithes v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1007, 1021-1022 (D.C. 1987).

B. Retaliation

In his petition the tenant asserted that the housing provider retaliated against him for exercising his rights in violation of section 502 of the Act.

The Act, D.C. OFFICIAL CODE § 42-3505.02 (2001), prohibits a housing provider from retaliating against tenants who exercise one of several rights expressly enumerated within that section or by any other provision of law.[6] In order to trigger the protection of § 42-3505.02, a tenant must perform one of the six listed actions. Thereafter, any

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[6] D.C. OFFICIAL CODE § 42-3505.02(b) (2001) provides:

> In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:
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> 1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;
> 2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;
> 3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing of a violation of the housing regulations;

apparent act or "threat or coercion" taken by the housing provider within the statutory time period of six months is presumed to be retaliation.[7] In the instant case, the hearing examiner found that the tenant on February 25, 2000, made a witnessed oral statement in Superior Court regarding the lack of repair services in his rental unit. Assalaam v. Schauer, TP 27,084 (OAD July 15, 2002) at 4. The hearing examiner also found that the housing provider had knowledge of the required repairs in the tenant's unit, for the period from February 25, 2000 through April 26, 2001. Id. Finally, the hearing examiner found that the housing provider failed to install windows in the tenant's unit, while she installed windows in other units. Id. The hearing examiner was correct when he concluded that pursuant to § 42-3505.02(a) a reduction in repair services triggers a presumption of retaliation.

The Commission has determined that to meet the burden of proof and rebut the presumption of retaliation housing providers must present clear and convincing evidence. Baxter v. Jackson, TP 24,370 (RHC Sept. 15, 2000); D.C. OFFICIAL CODE § 42-3505.02(b) (2001). Where the allegation of retaliation involves the absence of repairs, the Commission held that clear and convincing evidence to rebut the presumption

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4) Organized, been a member or, or been involved in any lawful activities pertaining to a tenant organization;
5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or
6) Brought legal action against the housing provider.

[7] D.C. OFFICIAL CODE § 42-3505.02(a) (2001) provides in pertinent part:

> Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

includes presenting receipts for repairs, statements by repairmen, or the introduction of documents, signed by the tenant, acknowledging completion of the repairs. See Watson v. Cofer, TP 21, 253 (RHC Nov. 1, 1990). In the instant case, the record of the hearing reflects that the housing provider failed to rebut the presumption of retaliation with clear and convincing evidence. In fact, the housing provider testified at the OAD hearing that the financial return on the tenant's unit made correcting the window problem uneconomical. Because the housing provider failed to rebut the presumption of retaliation with clear and convincing evidence, the decision of the hearing examiner concluding that the housing provider retaliated against the tenant is affirmed.

The Act, D.C. OFFICIAL CODE § 42-3509.01(b), requires that the record contain facts that show the housing provider acted willfully to violate the Act in order to impose a civil fine. See Gillian v. Powell, TP 27,042 (RHC Dec. 14, 2002). The hearing examiner found that the housing provider had knowledge of the required repairs in the tenant's unit, and that the housing provider failed to make the necessary repairs. Finally, the hearing examiner found that the reason given by the housing provider for failing to effect the necessary repairs, "that the financial return on the [tenant's] apartment does not make it economically viable," was a knowing and intentional attempt to force the tenant to vacate his unit. See Assalaam at 8.

There must be substantial evidence in the record of intention to violate the law in order to support a civil fine. Quality Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 505 A.2d 75-76 & n.6 (D.C. 1986), cited in Gillian, supra. In the instant case, there is sufficient record evidence to show that the housing provider intentionally and willfully retaliated against the tenant. Further, there is sufficient record evidence to

support the imposition of a $1000.00 fine on the housing provider for retaliation. Accordingly, the decision of the hearing examiner is affirmed.

C. Reduction of Services and Facilities

In the decision the hearing examiner states: "It is **FURTHER ORDERED** that Respondent shall pay a fine in the amount of ONE THOUSAND DOLLARS ($1,000.00) for knowingly reducing Petitioner's services and facilities in violation of D.C. [OFFICIAL CODE] § 42-3509.01(a)." Assalaam v. Schauer, TP 27,084 (OAD July 15, 2002) at 11. The section of the Act cited by the hearing examiner, D.C. OFFICIAL CODE § 42-3509.01(a) (2001), provides:

> Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

The section of the Act cited by the hearing examiner, D.C. OFFICIAL CODE § 42-3509.01(a) (2001), provides for rent refunds, "for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent." D.C. OFFICIAL CODE § 42-3509.01(a) (2001), does not provide for fines for the reduction of services and facilities. The hearing examiner committed plain error[8] when he imposed a fine on the housing provider pursuant to § 42-3509.01(a), for reducing the tenant's services and facilities. The Act, D.C. OFFICIAL CODE § 42-

[8] The Commission's rule, 14 DCMR § 3807.4 (1991) provides: "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error."

3509.01(b), does provide for the imposition of civil fines for violations of the Act. The Act provides:

> Any person who wilfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than $5,000 for each violation.

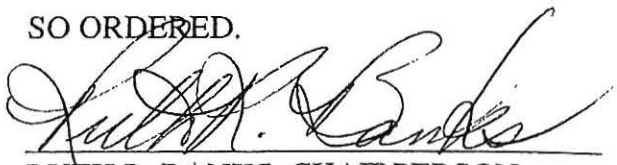
D.C. OFFICIAL CODE § 42-3509.01(b) (2001). However, the hearing examiner improperly imposed the civil fine pursuant to § 42-3509.01(a) rather than § 42-3509.01(b), which governs civil fines. Therefore, the decision of the hearing examiner on this issue is reversed and remanded for a determination of whether the housing provider willfully violated the Act.

IV. CONCLUSION

On issue one (1), based on the evidence in the record, the Commission affirms the hearing examiner's award of a rent refund of $1050.00 to the tenant. On issue two (2), based on the evidence in the record, the Commission affirms the hearing examiner's award of interest on the refund to the tenant. On issue three (3), the award of treble damages, the Commission reverses and remands the decision of the hearing examiner for findings of facts and conclusions of law, on the present record, regarding the issue of whether the housing provider acted in bad faith warranting the award of treble damages as permitted by D.C. OFFICIAL CODE § 42-3509.01(a) (2001). The Commission affirms the decision of the hearing examiner which imposed a civil fine of $1000.00 for retaliation. Finally, the Commission reverses the decision of the hearing examiner which

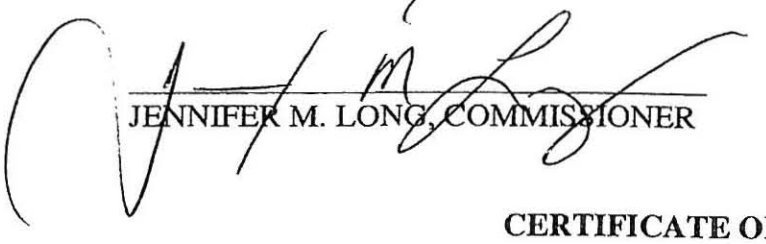
imposed a civil fine of $1000.00, pursuant to D.C. OFFICIAL CODE § 42-3509.01(a) (2001), and remands this issue to the hearing examiner for a determination of whether the housing provider willfully violated the Act.

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 27,084 was sent by priority mail, with delivery confirmation on the **31st day of December, 2002** to:

Carol S. Blumenthal, Esquire
1700 17th Street, N.W.
Suite 301
Washington, D.C. 20009

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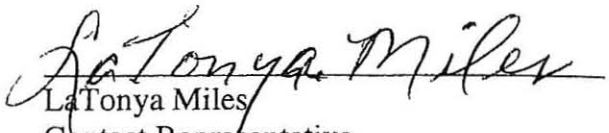

LaTonya Miles
Contact Representative