

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,188

In re: 706 Brandywine Street, S.E., Unit 201.

Ward Eight (8)

DONNA HINTON  
Tenant/Appellant

v.

MARY A. VICENTE  
Housing Provider/Appellee

**DECISION AND ORDER**

October 31, 2003

**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**

On July 5, 2001, Donna Hinton, a tenant at the housing accommodation located at 706 Brandywine Street, S.E., filed Tenant Petition (TP) 27,188 with the Rental Accommodations and Conversion Division (RACD). In her petition the tenant alleged that the housing provider, Mary A. Vicente: 1) took a rent increase larger than the amount of increase permitted by the Act; 2) charged rent which exceeded the legally

calculated rent ceiling for her unit; 3) filed an improper rent ceiling for her unit with RACD; 4) increased her rent while a written lease was in effect which prohibited an increase; 5) directed retaliatory action against her for exercising her rights in violation of § 502 of the Act; 6) served on her a Notice to Vacate which violated the requirements of section 501 of the Act; and 7) violated the provisions of §§ 501 and 502 of the Act.

An Office of Adjudication (OAD) hearing on the petition was held on November 19, 2001. Hearing Examiner Henry W. McCoy conducted the OAD hearing. The hearing examiner issued the decision and order on September 24, 2002. The hearing examiner made the following findings of fact:

1. Petitioner signed her lease for her rental unit with a previous landlord, the Hope Community Cooperative Association, Inc. ("Hope") on November 25, 1992. Her monthly rent was \$315.00.
2. Hope was exempt from regulation under the predecessor to D.C. Code § 42-3502.05(a)(2).
3. Respondent purchased the housing accommodation at a HUD foreclosure auction on January 31, 2001, and settled on the property on March 5, 2001.
4. At the time Respondent purchased the building, Petitioner's rent charge was \$420.00.
5. Respondent obtained a certificate of occupancy for the building on March 21, 2001.
6. Respondent filed her Registration/Claim of Exemption Form on March 26, 2001, and claimed an exemption from rent control based on new units in an existing building for which the initial Certificate of Occupancy was issued after January 1, 1980. The property was assigned Exemption #528898.
7. On March 31, 2001, Respondent gave Petitioner notice of a rent increase from her current rent of \$420.00 to \$1400.00 effective May 1, 2001.
8. Respondent filed with RACD and served on Petitioner a 30-Day Notice to Vacate on April 10, 2001.
9. Respondent filed with RACD and served on Petitioner another 30-Day Notice to Vacate on June 6, 2001.

10. On July 5, 2001, Petitioner filed her Petition. The Petition was date-stamped on July 6, 2001.
11. Respondent filed a Complaint for Possession of Real Estate, L&T 023985-01.
12. On August 13, 2001, the Rent Administrator issued an Advisory Opinion on the exempt status of the subject property.

Hinton v. Vicente, TP 27,188 (OAD Sept. 24, 2002) at 3-4. The hearing examiner's

September 24, 2002, decision and order contained the following discussion:

In this case, the housing accommodation was a newly created rental unit added to an existing housing accommodation in 1992. The building permit was issued on December 13, 1991, and the renovations were completed on November 13, 1992. The Certificate of Occupancy for the housing accommodation was issued on November 25, 1992. In addition to granting an exemption to the previous owner of the building, the Rent Administrator issued an Advisory Opinion to Respondent on August 13, 2001 explaining the justification for the exemption:

I granted this exemption to you based on information contained in our files that indicated that this property is exempt. The original Certificate of Occupancy was issued for this property is (sic) 1953. Hope Community Cooperative Association took over this property in 1990. At that time it consisted of 13 units. Between 1990 and 1992 the property was gutted and converted to ten units by Hope Community Cooperative Association.

I consider this to be a property in which newly created rental units were added to an existing structure that was covered by a certificate of occupancy for housing use after January 1, 1980. The applicable section of the D.C. Code is section 42-3505(a)(2) [sic]. These units clearly went into use after January 1, 1980. Based on this information, I found this property exempt.

At the hearing, Petitioner challenged the Rent Administrator's determination on the grounds that the original Certificate of Occupancy was issued in 1953, which predated the January 1, 1980 threshold for the building's Certificate. However, the Rent Administrator's Opinion implies that a new Certificate of Occupancy would have been issued when Hope purchased the building in 1990. At any rate, a new Certificate of Occupancy was issued in 1992 after the completion of the renovation. The Hearing Examiner concludes, as a matter of law, that the housing accommodation is exempt from regulation under D.C. Code § 42-3502.05(a)(2).

Hinton v. Vicente, TP 27,188 (OAD Sept. 24, 2002) at 5-6 (footnotes omitted). The

hearing examiner then concluded as a matter of law:

1. The housing accommodation is exempt from rent control under D.C. Code § 42- 3502.05(a)(2).
2. The housing accommodation is exempt from regulation under D.C. Code § 42-3502.05(a)(2), and respondent is not limited in the amount of rent increase that may be imposed.
3. As exempt property pursuant to D.C. Code § 42-3502.05(a)(2), there was no requirement to establish a rent ceiling or file a rent ceiling with the RACD.
4. Petitioner failed to meet her burden of proving, by a preponderance of the evidence, that Respondent violated a notice to vacate in violation of D.C. Code Section § 42-3505.01.
5. Petitioner failed to meet her burden of proving, by a preponderance of the evidence, that the rent increase violated the terms of Petitioner's lease agreement in violation of D.C. Code § 42-3502.08(e).
6. Petitioner failed to submit sufficient evidence to raise the presumption that Respondent retaliated against her in violation of D.C. Code § 42-3505.02.
7. Neither Respondent nor any agent action on her behalf violated sections 501 and 502 of the Act.

Id. at 9-10.

## **II. ISSUES ON APPEAL**

The tenant filed a timely notice of appeal in the Commission on October 11, 2002.

On appeal, the tenant raised three (3) issues, the notice stated:

1. Whether the examiner erred in determining that the housing accommodation ("the Housing Accommodation") is exempt from rent control under D.C. Code § 42-3502.05(a)(2), despite undisputed evidence that renovation of the building resulted in a reconfigured housing accommodation with fewer rental units than before the renovation?
2. As a result of the error in ruling that the current owner is exempt from rent control, whether the examiner erred in determining that the rent increase from \$420.00 per month to \$1400.00 per month was not larger than that allowed under the Rental Housing Act of 1985 ("the Act")?

3. Whether the examiner erred in determining that the rent charged did not exceed the legally calculated rent ceiling?

Notice of Appeal at 1.

### III. DISCUSSION OF THE ISSUES

- A. Whether the hearing examiner erred in determining that the housing accommodation was exempt from the Act, D.C. OFFICIAL CODE § 42-3502.05(a)(2) (2001), despite evidence that renovation of the building resulted in a reconfigured housing accommodation with fewer rental units than before the renovation.

In her application for exemption the housing provider relied upon D.C. OFFICIAL CODE § 42-3502.05(a)(2) (2001), which provides, in relevant part:

(a) Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District except:

(2) Any rental unit in any newly constructed housing accommodation for which the building permit was issued after December 31, 1975, or any newly created rental unit, added to an existing structure or housing accommodation and covered by a certificate of occupancy for housing use issued after January 1, 1980, provided, however, that this exemption shall not apply to any housing accommodation the construction of which required the demolition of a[] housing accommodation subject to this chapter, unless the number of newly constructed rental units exceeds the number of demolished rental units (emphasis added).

The undisputed evidence in the record reflects that the housing accommodation was constructed in 1953. The 1953 certificate of occupancy reflects the housing accommodation at 706 Brandywine Street, S.E., was a basement and three (3) floor structure containing 13 rental units. A building permit was issued for the renovation of the housing accommodation on December 13, 1991. The renovation was completed on November 13, 1992. Record (R.) at 15. A new certificate of occupancy for the housing accommodation was issued to the Hope Community Cooperative Association on November 25, 1992. R. at 17. The certificate reflects that the renovation of the housing

accommodation maintained the basement, first, second and third floor configuration of the structure, but reduced the number of units from 13 rental units to ten (10) rental units. When the housing provider acquired the housing accommodation on March 5, 2001, there were ten (10) rental units in the housing accommodation. On March 26, 2001, the housing provider filed a Registration/Claim of Exemption Form for the housing accommodation at 706 Brandywine Street, S.E. The housing provider claimed exemption from the Act based upon, “[n]ew units in existing building for which the initial Certificate of Occupancy was issued after January 1, 1980. § 205(a) (2).” R. at 72, Respondent’s Exhibit 1.

A housing provider bears the burden of proving qualification for an exemption. The standard for satisfying a housing provider’s burden of proof of exemption is “credible, reliable evidence.” See Revithes v. District of Columbia Rental Hous. Comm’n, 536 A.2d 1007, 1017 (D.C. 1987), citing Bernstein v. Lime, 91 A.2d 841, 843 (D.C. 1952). The Court has held that statutory exemptions in the Act are to be narrowly construed. See Goodman v. District of Columbia Rental Hous. Comm’n, 573 A.2d 1293 (D.C. 1990), cited in Charles E. Smith Residential Realty, L.P. v. Filippello, TP 24,401 (RHC July 30, 1999). The housing provider in the instant case failed to meet her burden of providing credible, reliable evidence that she was entitled to an exemption. In the instant case, the housing provider relied upon the provisions of § 42-3502.05(a)(2) in her application for exemption from the Act. However, § 42-3502.05(a)(2) requires that, in order to obtain an exemption pursuant to that provision of the Act, the number of newly constructed rental units must exceed the number of demolished rental units in the housing accommodation. The undisputed record evidence in this case is that the housing

accommodation at 706 Brandywine Street, S.E., contained 13 rental units prior to its reconfiguration in 1992, and only ten (10) rental units thereafter.

Accordingly, the Commission reverses the decision of the hearing examiner, who concluded that the tenant's unit qualified as exempt, because "the housing accommodation was a newly created rental unit added to an existing housing accommodation in 1992." The substantial evidence in the record reflects that the tenant's unit was not newly created and added to the housing accommodation, but one of 13 rental units constructed in 1953 and reduced to ten (10) rental units in the housing accommodation in 1992. Therefore, the number of newly constructed rental units did not exceed the number of demolished rental units in the housing accommodation. Cf. Barnes v. Taylor, TP 23,476 (RHC Aug. 22, 1995), cited in Charles E. Smith Residential Realty, L.P. v. Filippello, *supra*, where the Commission approved a newly created rental unit, which was previously an uninhabitable garage converted to a housing accommodation.

- B. Whether the hearing examiner erred in determining that the rent increase from \$420.00 per month to \$1400.00 per month was not larger than that allowed under the Act.
- C. Whether the hearing examiner erred in determining that the rent charged did not exceed the legally calculated rent ceiling.

In his decision and order the hearing examiner concluded that the housing accommodation was exempt from regulation pursuant D.C. OFFICIAL CODE § 42-3502.05 (a)(5) (2001). The hearing examiner further concluded, "respondent is not limited in the amount of rent increase that may be imposed ... [t]here was no requirement to establish a rent ceiling or file a rent ceiling with the RACD." See Hinton v. Vicente, TP 27,188 (OAD Sept. 24, 2002) at 10.

The record reflects, before the housing accommodation was acquired by the housing provider, the housing accommodation was owned by the Hope Community Cooperative Association, and therefore exempt pursuant to D.C. OFFICIAL CODE § 42-3502.05(a)(5) (2001), which provides:

(a) Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District except:

...

(5) Any rental unit in any structure owned by a cooperative housing association.

However, the exempt status of the housing accommodation, granted pursuant to § 42-3502.05(a)(5), terminated when it was acquired by the current housing provider. The Act, D.C. OFFICIAL CODE § 42-3502.09 (2001)<sup>1</sup>, which governs rent ceilings upon the termination of a § 42-3502.05(a)(5) exemption, provides the following:

(c) The rent ceilings for any rental unit exempted under § 42-3502.05(a)(5) upon the expiration or termination of the exemption shall be the rent ceiling on the date the unit became exempt plus each subsequent adjustment of general applicability authorized under § 42-3502.06(b).<sup>2</sup>

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<sup>1</sup> The Act, D.C. OFFICIAL CODE § 42-3502.09(a) (2001), provides in part:

Except as provided in subsection (c) of this section, the rent ceiling for any rental unit in a housing accommodation exempted by § 42-3502.05, except subsection (a)(2) or (a)(7) of that section, upon the expiration or termination of the exemption, shall be the average rent charged during the last 6 consecutive months of the exemption, increased by no more than 5% of the average rent charged during the last 6 consecutive months of the exemption. The increase may be effected only in accordance with the procedures specified in §§ 42-3502.08 and 42-3509.04.

<sup>2</sup> The Act, D.C. OFFICIAL CODE § 42-3502.06(b) (2001), provides:

On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent ceiling established by subsection (a) of this section. This adjustment of general applicability shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year. No adjustment of general applicability shall exceed 10%. A housing provider may not implement an adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent ceiling for that unit within 12 months of the effective date of the previous adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent ceiling for that unit.



Therefore, the rent ceiling for the tenant's unit upon the termination of the Hope Community Cooperative Association's, § 42-3502.05(a)(5) exemption is the rent ceiling on the date the unit became exempt, plus each subsequent adjustment of general applicability authorized under the Act, D.C. OFFICIAL CODE § 42-3502.06(b).

Because the hearing examiner erroneously determined that the housing accommodation was exempt pursuant to the Registration/Claim of Exemption Form filed by the current housing provider, Mary A. Vicente, his conclusions of law numbered two (2) and three (3) determining that the housing provider was not limited in the amount of rent increase that may be imposed, and that there was no requirement to establish a rent ceiling or file a rent ceiling with the RACD was also error. Pursuant to D.C. OFFICIAL CODE § 42-3502.09(c) (2001) the hearing examiner was required to make findings of fact and conclusions of law regarding the rent ceiling on the date the unit became exempt, plus each subsequent adjustment of general applicability authorized under § 42-3502.06(b) of the Act.

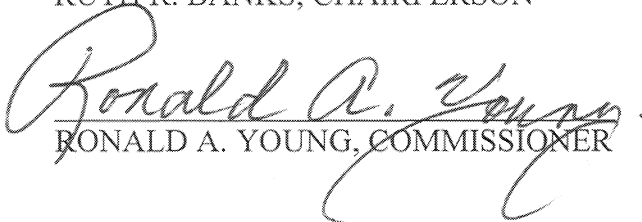
#### **IV. CONCLUSION**

The finding of fact in the decision of the hearing examiner that the housing accommodation including the tenant's unit at 706 Brandywine Street, S.E., is exempt from rent control is reversed. Contrary to the hearing examiner's conclusions of law, the tenant's unit did not qualify as a "newly created rental unit," as contemplated by D.C. OFFICIAL CODE § 42-3502.05(a)(2) (2001). On remand, the hearing examiner is ordered to calculate the rent ceiling for the tenant's unit in accordance with the provisions of the Act, D.C. OFFICIAL CODE § 42-3502.09(c) (2001). Further, the hearing examiner is

ordered to make findings of fact and conclusions of law regarding whether the rent increase from \$420.00 per month to \$1400.00 per month was larger than that allowed under the Act, and whether the \$1400.00 per month rent charged the tenant exceeded the legally calculated rent ceiling for her rental unit.

SO ORDERED.

  
RUTH R. BANKS, CHAIRPERSON

  
RONALD A. YOUNG, COMMISSIONER

#### MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), 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's Rule, D.C. App. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk." 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 27,188 was mailed postage prepaid by priority mail, with delivery confirmation on this 31<sup>st</sup> day of **October, 2003** to:

Ann Marie Hay, Esquire  
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