DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,201

In re: 706 Brandywine Street, S.E., Unit 102

Ward Eight (8)

MARY A. VICENTE
Housing Provider/Appellant

v.

NICQUITA ANDERSON
Tenant/Appellee

DECISION AND ORDER

August 20, 2004

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 10, 2001, Nicquita Anderson, a tenant at the housing accommodation located at 706 Brandywine Street, S.E., Unit 102 filed Tenant Petition (TP) 27,201 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; and 4) failed to properly register the building in which her unit is located with RACD.

An Office of Adjudication (OAD) hearing on the petition was held on December 10, 2001. Hearing Examiner Gerald J. Roper conducted the OAD hearing. The hearing examiner issued the decision and order on August 13, 2002. The hearing examiner made the following findings of fact:

1. In 1953, 706 Brandywine St., S.E., was a housing accommodation consisting of 3 floors and a basement, totaling 13 rental units.

2. In 1965, 706 Brandywine St., S.E., was a housing accommodation consisting of 3 floors and a basement, totaling 13 rental units.

3. In 1975, 706 Brandywine St., S.E., was a housing accommodation consisting of 3 floors and a basement, totaling 13 rental units.

4. In 1992, 706 Brandywine St., S.E., was a housing accommodation consisting of 3 floors and a basement, totaling 10 rental units.

5. In 2001, 706 Brandywine St., S.E., was a housing accommodation consisting of 3 floors and a basement, totaling 10 rental units.

6. In 1992, renovations were made to 706 Brandywine St., S.E., pursuant to Plan No. S-91-561, resulting in a reduction in the number of rental units from thirteen to ten.

7. Plan No. S-91-561 does not indicate any additional structures added to the exterior of 706 Brandywine St., S.E.

8. Respondent, Mary A. Vicente, bid for 706 Brandywine St., S.E., at a HUD auction, on January 31, 2001.

9. Respondent settled on the property on March 5, 2001.

10. Ms. Vincent filed for and received an exemption pursuant to § 205 (a) on March 26, 2001.

11. In her Registration/Claim of Exemption Form dated March 26, 2001, Ms. Vicente claimed that her exemption was based on "[n]ew units in existing

building for which the initial Certificate of Occupancy was issued after January 1, 1980."

12. In her Registration/Claim of Exemption Form dated March 26, 2001, Ms. Vicente certified that 706 Brandywine St., S.E., was "in compliance with the D.C. Housing Regulations."

13. In her Registration/Claim of Exemption form dated March 26, 2001, Ms. Vicente certified that "to the best of [her] knowledge" 706 Brandywine St., S.E., "ha[d] no outstanding violations."

14. In her Registration/Claim of Exemption Form dated March 26, 2001, Ms. Vicente stated she owned 8 other rental properties, totaling 16 units.

15. Ms. Vicente did not inspect Ms. Anderson's unit prior to March 26, 2001.

16. Ms. Vicente did not check RACD records for housing violations pertaining to 706 Brandywine St., S.E.

17. On March 26, 2001, there were substantial housing code violations in the common areas of 706 Brandywine St., S.E., and in Ms. Anderson's rental unit.

18. Petitioner Iniquity [sic] Anderson, rents apt. #102 [sic], in 706 Brandywine St., S.E.

19. Ms. Anderson has rented that unit since February 5, 1998.

20. Ms. Anderson's rent was $350 dollars a month from February 5, 1998 until May 1, 2001, the effective date of Ms. Vicente's rent increase.

21. On March 31, 2001, Ms. Vicente raised Ms. Anderson's rent from $350 a month to $850 a month effective May 1, 2001.

Anderson v. Vicente, TP 27,201 (OAD Aug. 13, 2002) at 9-10. The hearing examiner concluded as a matter of law:

1. Respondent's claim of exemption from rent control is invalid, improper and unsupported by the evidence contained in the record.

2. 706 Brandywine St., S.E., is improperly registered because it is not exempt from rent control; and Respondent's Registration/Claim of Exemption Form is defective for failure to adhere to registration requirements, and contains inaccurate information.

3. The rent being charged for Petitioner's unit is larger than any amount allowed by any applicable provision of the Rental Housing

Act of 1985; exceeds the legally calculated rent ceiling for the unit; and is improperly filed with RACD.

Id. at 10.

II. ISSUES ON APPEAL

The housing provider filed a timely notice of appeal in the Commission on September 27, 2002. The Commission hearing on the appeal issues was held on March 20, 2003. On appeal, the housing provider raised the following issues:

1. Whether the examiner erred in determining that the appellant improperly registered the subject premises when he ignored the Rent Administrator's Advisory Opinion determining that the premises were exempt from Rent Control?

2. Whether the examiner was in error in rolling back the rent level when there was testimony by the petitioner and the respondent that the rent of $850.00 was never paid?

3. Whether the examiner erred in not determining a period for the rent rollback?

4. Whether the examiner erred in determining that a rental unit that was reconstructed to a larger size was not [a] newly created unit within the meaning of the statute?

5. Whether the examiner erred in not reviewing the official files of the subject premises as to the certificate of occupancy?

6. Whether the examiner erred in deciding that the unopposed motion to dismiss should not have been granted?

7. Whether the examiner erred in calculating a rent ceiling where there was no evidence offered by petitioner of a rent ceiling?

Notice of Appeal at 1-2.

III. DISCUSSION OF THE ISSUES

A. Whether the hearing examiner erred in determining that the housing provider improperly registered the housing accommodation in that he ignored an Advisory Opinion issued by the Rent Administrator which determined that the housing accommodation was exempt from the Act.

The housing provider argues in her Notice of Appeal that the exempt status of the housing accommodation at 706 Brandywine Street, S.E., was determined in a letter dated August 13, 2001 from the Rent Administrator, RACD. The letter states:

> This letter is in response to your request for an Advisory Opinion with respect to [706 Brandywine Street, S.E.].
>
> 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 42-3502.05(a)(2). These units clearly went into use after January 1, 1980. Based on this information I found this property exempt.

The Rent Administrator issued the Advisory Opinion[1] pursuant to the provisions of the regulations at 14 DCMR § 3915 (1991).[2]

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[1] BLACK'S LAW DICTIONARY 1119 (7th ed. 1999), defines an advisory opinion as:

> A nonbinding statement by a court of its interpretation of the law on a matter submitted for that purpose. ... Only the parties named in the request for the opinion can rely on it, and its reliability depends on the accuracy and completeness of all material facts.

[2] The regulation, 14 DCMR § 3915 (1991), provides:

> 3915.1 The Rent Administrator may issue at the request of any person an advisory opinion on issues of first impression relating to specific proposed actions.
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> 3915.2 Advisory opinions shall not address an issue currently pending before the Rent Administrator or the Commission in a hearing or other adjudicative proceeding.
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> 3915.3 Each inquiry shall meet the following requirements:
>
> (a) Be submitted in writing;
>
> (b) Specifically request an advisory opinion;

In her brief on appeal the housing provider argues, citing City Wide Learning Ctr. Inc. v. William C. Smith & Co., Inc., 488 A.2d 1310 (D.C. 1985), that decisions of the Rent Administrator are final orders and that, if not appealed, are binding. She concludes that at the time of the OAD hearing, the Advisory Opinion of the Rent Administrator had not been appealed.

The housing provider's reliance on the District of Columbia Court of Appeals (DCCA) decision in City Wide Learning Ctr. Inc., is misplaced in the instant case. In its decision, the court clearly delineated the elements necessary to a "binding" final order. The court stated:

> Here, as in [William J. Davis, Inc. v. Young, 412 A.2d 1187 (D.C. 1980)], the applicable statute confers adjudicative functions on the agency. The parties appeared before a hearing examiner and presented testimonial and documentary evidence. During the hearing City Wide and Borger, the former property manager, litigated the question of whether the property had been converted from commercial to residential use. That issue was resolved in favor of the lessor, the Rent Administrator concluded that the property was commercial and that City Wide was the current commercial tenant. City Wide did not appeal that ruling to the RHC; the Rent Administrator's decision, therefore, became a final.

Id. at 1313 (footnotes omitted). In this case, prior to the issuance of the Advisory Opinion, the tenants of the housing accommodation did not receive notice, the tenants did not appear before a hearing examiner, the tenants were not afforded an opportunity to present testimonial and documentary evidence, nor did they have an opportunity to litigate the contested issues. Therefore, no "decision" cognizable by the DCAPA[3] was

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(c) Contain a signed statement of proposed action, of all relevant facts and of the author's interpretation of the law or regulations; and

(d) Be accompanied by any relevant documents.

[3] The DCAPA, D.C. OFFICIAL CODE §§ 2-509(a) & (e) (2001), provide:

> In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice

rendered by the Rent Administrator when she issued the Advisory Opinion and transmitted the opinion to the housing provider, Mary Vicente. Accordingly, the decision of the hearing examiner on this issue is affirmed and the appeal issue is denied.

B. Whether the hearing examiner erred when he rolled back the rent level to $350.00 when there was testimony by the petitioner and the respondent that the rent of $850.00 was [n]ever paid.

C. Whether the hearing examiner erred in not determining a period for the rent rollback.

In his decision and order the hearing examiner found that the housing accommodation was not exempt from the rent stabilization provisions of the Act, as asserted by the housing provider, and that the legal rent ceiling was $350.00. Pursuant to the provisions of the Act, the hearing examiner was authorized to roll back the tenant's rent to the last lawful rent demanded, $350.00. In his findings of fact the hearing examiner found that the tenant's rent was $350.00 a month from February 5, 1998 until May 1, 2001, the effective date of the housing provider's notice of rent increase. He found that the housing provider increased the tenant's rent from $350.00 a month to $850.00 a month, an amount larger than any amount allowed by any applicable provision

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> shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Mayor or the agency determines that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto.
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> ...
>
> Every decision and order adverse to a party in 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 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. A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record.

of the Act; and which exceeded the maximum allowable rent applicable to the tenant's rental unit.

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, … 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).

Pursuant to the provisions of the Act, the hearing examiner was authorized to roll back the tenant's rent to the rent demanded prior to the housing provider's illegal demand of $850.00. See 424 Q St. Ltd. P'ship/Chamberlain v. Evans, TP 24,597 (July 31, 2000). Additionally, the DCCA has held that the fact that the tenant did not pay the full amount of the rent does not limit the refund. The mere demand violates the Act. See Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997), cited in Schauer v. Assalaam, TP 27,084 (RHC Dec. 31, 2002).

The housing provider also argues that the hearing examiner erred in not determining a period for the rent roll back. The evidence of record reflects that the housing provider notified the tenant on March 31, 2001, that her rent would be increased to $850.00 effective May 1, 2001. The record further reflects that on July 10, 2001, the tenant filed her petition, asserting that the May 1, 2001, increase was illegal. The Act, D.C. OFFICIAL CODE § 42-3502.06(e) (2001), prescribes a three-year statute of limitations, the Act provides:

> A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator

> under § 42-3502.16. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment, except that a tenant must challenge the new base rent as provided in § 42-3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

The "statute of limitations embodied in D.C. OFFICIAL CODE § 42-3502.06(e) (2001), bars any investigation of the validity of rent levels, or of adjustments in either rent levels or rent ceilings, implemented more than three (3) years prior to the date of the filing of the tenant petition." 424 Q St. Ltd. P'ship/Chamberlain v. Evans, supra, citing South Dakota Ave. Tenants' Ass'n v. Cowan, TP 23,085 (RHC Sept. 14, 1998), see also Kennedy v. District of Columbia Rental Hous. Comm'n, 709 A.2d 94 (D.C. 1998). Neither the tenant's petition nor the hearing examiner's ordered rent roll back exceeded the three (3) year limitation prohibited by the Act. Accordingly, the decision of the hearing examiner on this issue is affirmed

D. Whether the hearing examiner erred in determining that the tenant's rental unit was not a newly created unit within the meaning of the Act.

The record reflects that a Certificate of Occupancy (B 92503) was issued for 706 Brandywine Street, S.E., on August 12, 1975, and described the structure as an apartment building containing thirteen (13) units. Record (R.) at 33. A building permit was issued for the alteration of the housing accommodation on December 13, 1991. Further, a construction permit was issued for the accommodation that reflects that the structure contained three (3) stories and a basement with thirteen (13) rental units and was renovated to contain only ten (10) units. R. at 25. The renovation was completed on November 13, 1992. R. at 32. A new Certificate of Occupancy (B 164216) for the housing accommodation was issued to the Hope Community Cooperative Association on November 25, 1992. R. at 34. The certificate reflects that the alteration of the housing

accommodation maintained the basement, first, second and third floor configuration of the structure but reduced the number of units from thirteen (13) rental units to ten (10) rental units. On March 21, 2001, the housing provider filed a Certificate of Occupancy (190275) stating the accommodation contained a basement, three (3) floors and ten (10) rental units. R. at 64, Respondent's Exhibit (R. Exh.) 12. 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 81, R. Exh. 1.

The DCCA has determined that the 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 relied on the non-binding Advisory Opinion issued by the Rent Administrator on August 13, 2001. However, at the contested hearing she 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 evidence of record in this case reflects that the housing accommodation at 706 Brandywine Street, S.E., contained thirteen (13) rental units prior to 1992, and reduced to only ten (10) rental units thereafter.

The Act, D.C. OFFICIAL CODE § 42-3502.05(a)(2) (2001), 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 record evidence reflects, and the hearing examiner found that the housing accommodation at 706 Brandywine Street, S.E., contained a basement and three (3) floors and thirteen (13) rental units in 1953, 1965, and 1975 and was reduced to ten (10) rental units in 1992. Therefore, the number of newly constructed rental units in 1992 did not exceed the number of demolished rental units in the housing accommodation built in 1953. Cf. Barnes v. Taylor, TP 23,476 (RHC Aug. 22, 1995), cited in Charles E. Smith Residential Realty, L.P. v. Filippello, supra. See also Hinton v. Vicente, TP 27,188 (RHC Oct. 31, 2003). Accordingly, the decision of the hearing examiner on this issue is affirmed.

E. Whether the hearing examiner erred in not reviewing the official files of the housing accommodation as to the certificate of occupancy.

The Commission's regulation concerning the initiation of appeals, 14 DCMR 3802.5(b) (1991), provides that the notice of appeal shall contain the following: "The Rental Accommodations and Conversion Division (RACD) case number, the date of the Rent Administrator's decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator." (emphasis added).

On appeal to the Commission, the housing provider argues that the hearing examiner failed to review "the certificate of occupancy." In addition to the fact that the record contains more than one certificate of occupancy, the housing provider has first, failed to direct the Commission to the evidence that the hearing examiner failed to review "the certificate of occupancy," and secondly, assuming arguendo that the "the certificate of occupancy" was not reviewed, how that failure constituted factual or legal error.

The Commission has previously held that an appeal issue, which fails to provide the Commission with a clear and concise statement of the alleged errors in the decision as required by 14 DCMR 3802.5(b) (1991), will be dismissed. Pinnacle Mgmt. Co. v. Marsh, TP 24,827 (RHC Sept. 7, 2000); Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000). Accordingly, this appeal issue is dismissed.

F. Whether the hearing examiner erred in deciding that the unopposed motion to dismiss should not have been granted.

Counsel for the housing provider, by motion, requested that the hearing examiner dismiss TP 27,201. The motion stated in part:

1. That the Petition filed in this case challenges the rent level of premises that have been determined to be exempt from rent control by the Rent Administrator.

2. That the subject premises were determined to be exempt pursuant to section 205 of the Rental Housing Act of 1985 because the premises are

> new units in an existing building for which the initial Certificate of Occupancy was issued after January 1, 1985 [sic].

At the OAD hearing, counsel for the tenant stated that a copy of the housing provider's motion had not been provided to the tenant prior to the hearing. After an opportunity to review the motion to dismiss, counsel for the tenant opposed the motion to dismiss. The hearing examiner ruled that he would take the housing provider's motion under advisement.

The procedure for disposition of motions at OAD hearing is set out in the regulations at 14 DCMR § 4008 (1991). The regulation states in relevant part:

> 4008.1 Application for an order or other relief shall be made by filing a written motion; Provided that motions may be made orally at a hearing.
>
> ...
>
> 4008.5 The hearing examiner shall render a decision in writing on each motion made which shall include the reasons for the ruling.

In this case, the hearing examiner, in conformity with the regulations, rendered, in writing, a decision on the housing provider's motion to dismiss the tenant petition and his reasons for that decision. See Dias v. Perry, TP 24,379 (RHC Apr. 20, 2001); Pierre-Smith v. Askin, supra. In his decision the hearing examiner stated:

> Based on the evidence contained in the record, the Examiner determines that the Respondent's claim of exemption is invalid and outside the provisions of the Rental Housing Act. Respondent has offered no evidence that Petitioner's rental unit is in a newly constructed housing accommodation with a building permit issued after December 31, 1975; or that it was newly created or added to the existing structure of 706 Brandywine St., S.E., by the 1992 renovations. The evidence supports the conclusion that Petitioner's unit was in existence since 1953, the year 706 Brandywine St., S.E., was constructed. The evidence also supports the conclusion that Petitioner's unit was not constructed, nor added, during the 1992 renovations to the property. Therefore, the Respondent's Motion to Dismiss is denied and the case shall be decided on the merits.

Anderson v. Vicente, TP 27,201 (OAD Aug. 13, 2002) at 6.

The hearing examiner was also correct when he determined that the issue of the housing provider's entitlement to an exemption should be decided on the merits. The DCCA has held that in each instance of a claimed exemption, the housing provider has the burden of proof. Goodman, supra at 1297, citing Revithes, supra at 1017; Remin v. District of Columbia Rental Hous. Comm'n, 471 A.2d 275, 278 (D.C. 1984). See also The Vista Edgewood Terrace v. Rascoe, TP 24,858 (RHC Oct. 13, 2000). "The filing of a claim of exemption form does not ipso facto meet the burden of proof on the exemption, because the facts stated therein must be proven not to be a misrepresentation. Revithes at 1011-1012." The Vista Edgewood Terrace at 12. The Commission in The Vista Edgewood Terrace also stated:

> [S]ome evidence of the exemption must be presented at the OAD hearing, not merely an assertion, or oral statement, or the Registration/Claim of Exemption Form, for the Commission to review to determine the record contains substantial evidence to support the claim of exemption.

Id. at 13. In the instant case, the bases of the housing provider's claim of exemption, that the housing accommodation contained new units in an existing building was determined at the hearing to be a misrepresentation of the facts upon which the exemption was erroneously granted. Accordingly, the decision of the hearing examiner on this issue is affirmed.

G. Whether the hearing examiner erred in calculating a rent ceiling where there was no evidence offered by petitioner of a rent ceiling.

In his decision and order the hearing examiner, in response to the question whether the rent increase by the housing provider exceeded the legally calculated rent ceiling, stated:

> Respondent raised Petitioner's rent from $350 to $850 a month. This increase exceeds the legally calculated rent ceiling for the unit, which was

> exempt from rent control because $350 a month was charged by Petitioner's previous housing provider. See [sic] D.C. [sic] § 42-3501.03 [sic] (4) (2001); § 42-3502.06 (a) & (b). According to D.C. statute, 'base rent' is the legally chargeable rent on April 30, 1985. D.C. [sic] Code § 42-3501.03 [sic] (4) (2001). The 'rent ceiling,' is equal to the base rent plus 'all rent increases authorized after April 30, 1985.' D.C. [sic] Code § 42-3502.06 (2001). Absent evidence to the contrary in the record, it may be deduced that Kriegsfeld Corp., Petitioner's previous housing provider, fixed the rent ceiling for her unit at $350 a month when the exemption terminated and Respondent became the owner. See Pet. Ex. No. 1 & 2. It may also be inferred that this level included all authorized rent increases, added to the legal rental amount charged on April 30, 1985. Thus, absent evidence to the contrary, the $350 figure amounts to the legal rent ceiling for apartment 102. (emphasis added).

Anderson v. Vicente, TP 27,201 (OAD Aug. 13, 2002) at 8. The unrebutted evidence of record shows that from February 1998 until the housing provider notified the tenant that her rent would be increased on May 1, 2001 to $850.00, the rent charged the tenant was $350.00. In his decision, the hearing examiner stated that the rent charged, $350.00, by the previous housing provider, Hope Community Cooperative Association, became the "new" rent ceiling.

The record reflects the housing accommodation at 706 Brandywine Street, S.E., was exempt prior to its acquisition by the current housing provider. The exemption was granted pursuant to D.C. OFFICIAL CODE § 42-3502.05(a)(5) (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:
> ...
>
> (5) Any rental unit in any structure owned by a cooperative housing association.

The exempt status of the housing accommodation, granted pursuant to § 42-3502.05(a)(5) (2001), terminated when it was acquired by the current housing provider. The Act, D.C.

OFFICIAL CODE § 42-3502.09 (2001),[4] which governs rent ceilings upon the termination of a § 42-3502.05(a)(5) (2001) 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).[5]

Accordingly, the rent ceiling for the tenant's unit upon the termination of the § 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) (2001). The evidence of record does not reflect that an authorized adjustment of general applicability was perfected to increase the rent ceiling for the tenant's unit, therefore, the rent ceiling remained at $350.00. Accordingly, this appeal issue is denied and the decision of the hearing examiner is affirmed.

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[4] 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.

[5] 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.

IV. CONCLUSION

Issues A through D, F and G are denied and the decision of the hearing examiner on those issues is affirmed. Issue E is dismissed because it violates the Commission's regulations at 14 DCMR § 3802.5(b) (1991).

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, 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 27,201 was mailed postage prepaid by priority mail, with delivery confirmation on this **20th day of August, 2004** to:

Ann Marie Hay, Esquire
D.C. Law Students in Court
806 7th Street, N.W.
Suite 300
Washington, D.C. 20001

Barbara Lee Smith, Esquire
2600 Virginia Avenue, N.W.
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La Tonya Miles

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