

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,442

In re: 3206 Wisconsin Avenue, N.W., Unit 62

Ward Three (3)

RIDVAN HAKA & ANILA KUKA
Tenants/Appellants

v.

GELMAN MANAGEMENT COMPANY
Housing Provider/Appellee

DECISION AND ORDER

February 9, 2006

YOUNG, COMMISSIONER. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), 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 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On February 15, 2002, Ridvan Haka and Anila Kuka, the tenants of unit 62 at the housing accommodation located at 3206 Wisconsin Avenue, N.W., filed Tenant Petition (TP) 27,442 with the Rental Accommodations and Conversion Division (RACD). Hearing Examiner Desmond P. Brown of the Office of Adjudication (OAD) held the hearing on the petition on June 28, 2002. The OAD decision and order was issued on

September 26, 2002. On October 10, 2002, the housing provider, Gelman Management Company, filed a Notice of Appeal in the Commission. The Commission held the appellate hearing on December 11, 2002. In Gelman Mgmt. Co. v. Haka, TP 27,442 (RHC Sept. 26, 2003), the Commission affirmed in part, reversed in part, and remanded the OAD decision to the hearing examiner to determine whether the housing provider owed the tenants a rent refund based on the reduction of the unit's rent ceiling because an Amended Registration Form submitted at the hearing did not have an agency date stamp affixed to it.

On April 6, 2004, Hearing Examiner Sandra M. McNair issued the remand decision and order. The decision contained the following finding of fact:

After a careful evaluation and analysis of the evidence, the Examiner finds as a matter of fact that the Petitioner [sic] is entitled to a rent refund based on the invalid rent ceiling increase in Exhibit #1, and the rent charge reduction in the original Decision and Order issued September 26, 2002.

Haka v. Gelman Mgmt. Co., TP 27,442 (RACD Apr. 6, 2004) at 2. The hearing examiner concluded as a matter of law:

After a careful evaluation of the evidence, findings of fact, and legal analysis, the Examiner concludes, as a matter of law, that the Petitioner [sic] is entitled to a rent refund because the rent charged exceeded the rolled back rent ceiling for Petitioner's [sic] rental unit, because the Respondent demanded or implemented a rent increase based on an invalid Amended Registration Form in violation of 14 DCMR 4205.7.

Id. at 10.

On April 14, 2004, the housing provider, through counsel, filed a Motion for Reconsideration¹ of the hearing examiner's April 6, 2004 decision and order. By order dated April 28, 2004, Hearing Examiner McNair granted the housing provider's motion.

¹ The regulation, 14 DCMR § 4013.1 (2004) provides:

The order stated:

Upon consideration of Respondent's reconsideration request, the Examiner determines that:

1. The Examiner, after another review of the record, vacates the Decision and Order issued on April 6, 2004.
2. The Examiner grants the Respondent's Motion for Reconsideration.

Haka v. Gelman Mgmt. Co., TP 27,442 (RACD Apr. 28, 2004) at 3. The Order further stated:

1. Respondent's Motion for Reconsideration is hereby GRANTED.
2. The April 6, 2004 Decision and Order issued in TP 27,442 is hereby VACATED.
3. The Examiner will re-issue the Decision and Order within 15 business days.

Id. The Commission notes that in her April 28, 2004 Order the hearing examiner provided the parties with appeal rights concerning the Order, which stated: "Any party who believes the Decision and Order dated April 6, 2004 is not supported by the evidence before the Hearing Examiner ... may request a review by the Rental Housing Commission." The Order further stated: "Appeals from the Rent Administrator's Decision must be file-stamped with ... the Commission ... on or before May 17, 2004."

Id. at 3.

Any party served with a final decision and order may file a motion for reconsideration with the hearing examiner within ten (10) days of receipt of that decision, only in the following circumstances:

- (a) If there has been a default judgment because of the non-appearance of the party;
- (b) If the decision or order contains typographical, numerical, or technical errors;
- (c) If the decision or order contains clear error that is evident on its face; or
- (d) If the existence of newly discovered evidence which could not have been discussed prior to the hearing date has been discovered.

On May 14, 2004 the tenants filed a Notice of Appeal in the Commission. The notice stated: "Tenants/Appellants Anila Kuka and Ridvan Haka, hereby note our appeal from the April 28, 2004 Order of the Hearing Examiner, Housing Regulation Administration." The hearing examiner issued a "final" RACD decision and order stating the reasons for her Order on Motion for Reconsideration on the tenant's petition on May 21, 2004. The tenant's did not file a notice of appeal in the Commission of the May 21, 2004 RACD decision and order. However, the Commission notes that the record certified to the Commission did not contain proof of service of the May 21, 2004 decision on the tenants. The failure of the certified record to contain proof of delivery of the decision to the tenants prevents the Commission's determination that the tenants received notice of the decision by certified mail or other method that assures delivery, as required by the Act. See Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999); Doyle v. Pinnacle Mgmt. Co., TP 27,067 (RHC Dec. 18, 2001); Barnes v. MacDonald, TP 25,070 (RHC Oct. 10, 2001); Dias v. Perry, TP 24,379 (RHC Dec. 27, 1999).

II. ISSUES ON APPEAL

Pursuant to the instructions of the hearing examiner regarding their right to file an appeal of the April 28, 2004 Order, on May 14, 2004 the tenants filed a Notice of Appeal in the Commission and raised the following issues:

1. The Examiner failed to provide in detail the reason for granting the Respondent's Motion for Reconsideration and for vacating the April 6, 2004 Decision and Order issues in TP 27,442. Moreover, the Motion is granted by the same Hearing Examiner who had issued the April 6, 2004 Order and who is reversing her own decision.
2. The February 26, 1999 Amended Registration Form did not have a RACD date-stamp on it, therefore can not be considered valid. We

request further investigation.

3. Exhibits 1 and 2 attached referred to two different CPI-W's for 1999: 2.1% in Exhibit 1 and 1% in Exhibit 2. Furthermore, Exhibit 1 is not date stamped by the RACD.
4. The Hearing Examiner failed to provide us with sufficient time to file the appeal due to the late receipt of the Order, which was mailed to the former address, independently of our notice of change of address, dated April 20, 2004, as per Exhibit 3.

Notice of Appeal at 1-2.

III. PRELIMINARY ISSUE ON APPEAL

The preliminary issue before the Commission is whether the hearing examiner erred when she issued the Order on Motion for Reconsideration as an appealable order without findings of fact and conclusions of law as required by D.C. OFFICIAL CODE § 2-509(e) (2001).

IV. DISCUSSION OF THE PRELIMINARY ISSUE

The tenants filed a Notice of Appeal of the Rent Administrator's Order on Motion for Reconsideration dated April 28, 2004. The Order contained neither findings of fact nor conclusions of law. The DCAPA, D.C. OFFICIAL CODE § 2-509(e) (2001), provides, in part:

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. (emphasis added).

In order to satisfy the requirements of § 2-509(e), "(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 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); See Spevak v. District of Columbia Alcoholic Beverage and Control Bd., 407 A.2d 549, 553 (D.C. 1979). See also Baker v. Bernstein Mgmt. Corp., TP 24,919 (RHC Sept. 29, 2000) at 7; Thorpe v. Independence Fed. Savings Bank, TP 24,271 (RHC Aug. 19, 1999) at 9.

On May 21, 2004, the hearing examiner issued what was purported to be the “final” RACD decision and order. The decision, however, was issued after the hearing examiner issued her Order on Motion for Reconsideration on April 28, 2004, and subsequent to the tenant’s Notice of Appeal filed in the Commission on May 14, 2004.

The applicable regulation provides:

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided, that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by § 4014 [sic].

14 DCMR § 3802.3 (2004). Therefore, when the hearing examiner issued the May 21, 2004 decision, which contained a finding of fact, conclusion of law, and rationale for her conclusions based on her findings in the Order on Motion for Reconsideration, she did so without the requisite jurisdiction over the matter.

The Act, D.C. OFFICIAL CODE § 42-3502.16(h) (2001) governs the Commission’s review of the decisions and orders issued by the Rent Administrator. This provision of the Act empowers the Commission to reverse in whole or in part, any decision of the Rent Administrator that the Commission finds to be arbitrary, capricious, an abuse of

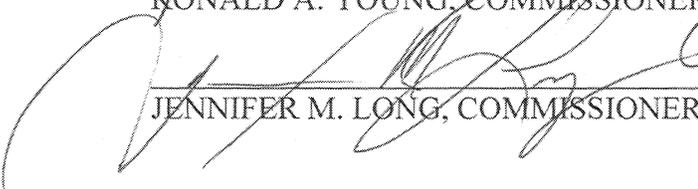
discretion, not in accordance with the provisions of the Act, or unsupported by the substantial evidence on the record of the proceedings before the Rent Administrator. In the instant case, the April 28, 2004 Order on Motion for Reconsideration did not contain findings of facts and conclusions of law justifying the reversal of the April 6, 2004 decision and order granting TP 27,442.

Accordingly, the Order on Motion for Reconsideration is remanded to the Rent Administrator. On remand, the Rent Administrator is ordered to issue a decision and order which contains findings of fact and conclusions of law as required by the DCAPA. The Rent Administrator is further ordered to mail all decisions by certified mail or another form of service that assures delivery of the decision to the parties, and to include in the record, evidence of the proof of delivery of the decision on the parties. See D.C. OFFICIAL CODE § 42-3502.16(j) (2001).

SO ORDERED.



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 27,442 was mailed postage prepaid by priority mail, with delivery confirmation on this 9th day of **February, 2006** to:

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