DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,616

In re: 75 Seaton Place, N.W.

Ward Five (5)

DIANE A. LYONS
Tenant/Appellant

v.

VITA PICKRUM
Housing Provider/Appellee

DECISION AND ORDER

February 1, 2005

LONG, COMMISSIONER. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), 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) and its amendments, govern the proceedings.

I. PROCEDURAL HISTORY

Diane Lyons has resided in the single family home located at 75 Seaton Place, N.W., since February 1998. On September 9, 2002, she filed Tenant Petition (TP) 27,616 with the Housing Regulation Administration (HRA). In the petition she alleged that the housing providers, Vita Pickrum and William Pickrum, failed to properly register the

housing accommodation with the RACD and substantially reduced the services and facilities provided in connection with the rental unit.

The HRA scheduled the matter for a hearing on November 21, 2002. The housing provider, William Pickrum, requested a continuance because his attorney was unavailable. The Rent Administrator granted the request and continued the hearing to January 7, 2003. On that date, Hearing Examiner Keith Anderson convened the hearing. The tenant, Diane Lyons, appeared with Attorney Omolade Akinbolaji. The housing provider, Vita Pickrum, appeared with Attorney Tillman Gerald.

The hearing examiner took official notice of the case docket file and allowed the parties to review the file before the hearing. In addition, the hearing examiner took official notice of the Registration/Claim of Exemption Form and the RACD registration file for the housing accommodation. The hearing examiner informed the parties that he would give them an opportunity to show the contrary of any facts he officially noticed from the RACD registration file.

Thereafter, the hearing examiner received evidence concerning the registration issue. After receiving the evidence and posing a series of questions to the parties, the hearing examiner issued an oral ruling, dismissing the tenant petition. The hearing examiner ruled that the housing accommodation was exempt based on the small landlord exemption.[1] The hearing examiner advised the parties that he would memorialize his oral ruling in a written decision and order. On May 7, 2003, the hearing examiner issued the decision and order, which contained the following findings of fact and conclusions of law:

[1] D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001), which provides an exemption for "any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not," is commonly referred to as the small landlord exemption.

Findings of Fact

After a careful evaluation and analysis of the evidence, the Examiner finds as a matter of fact:

1. The subject property is a four-bedroom single-family townhouse located at 75 Seaton Pl., N.W.

2. Petitioner Diane A. Lyons has resided at the subject property since February 1, 1998 and is the Petitioner in this matter.

3. Vita Pickrum owns the subject property and is the Respondent in this matter.

4. Respondent filed a RACD Registration/Claim of Exemption Form for the subject property on October 23, 2002 and received a small landlord claim of exemption.

5. Respondent resides at 4834 ½ - 16th St., N.W. The property is not used as multi-rental property.

6. Respondent failed to file a claim of exemption with RACD prior to October 23, 2002, including February 1, 1998, the date she rented the premises to Petitioner.

7. Respondent is not a real estate specialist and is not otherwise engaged in the business of real estate. Respondent is not engaged in the rental housing business.

8. Respondent only owns the subject townhouse rental property and no other residential rental property in the District. She does not employ real estate professionals to manage the subject property. Respondent is not a landlord regularly.

9. Respondent is not versed or otherwise experienced as a real estate professional. Respondent filed the claim of exemption after being advised to do so upon receiving notice of TP 27,616. Respondent did not know and had no reason to know of the rent control laws and the registration requirement for her rental unit. Respondent was reasonably unaware of the requirement to file a claim of exemption with RACD at the time she commenced Petitioner's tenancy on February 1, 1998.

10. A four-bedroom, two kitchen, two and ½ bathroom townhouse located in the neighborhood of 75 Seaton Pl., N.E. has a rental market rate of $1500. Petitioner's rent charged has been $1000 since February 1, 1999. The $1000 monthly rent for Petitioner's rental unit does not exceed the market rate for that unit. Petitioner did not complain to Respondent about the $1000 total rental amount, instead, Petitioner stated that it was reasonable under the circumstances.

Conclusions of Law

After careful evaluation and analysis of the evidence and findings of fact, the Examiner concludes as a matter of law:

1. Respondent owns four or fewer rental units in the District of Columbia and thereby qualifies for the small landlord exemption, pursuant to D.C. Official Code Sect. 42-3502.05(a)(3) (2001), for the property located at 75 Seaton Pl., N.W.

2. Respondent's filing of the claim of exemption on October 23, 2002, after Petitioner's tenancy began on February 1, 2002 [sic], is excused based upon proof that "special circumstances" existed, namely, the Respondent 1) was not a real estate professional; 2) was not a landlord regularly; 3) was reasonably unaware of the requirement of filing a claim of exemption; and 4) that the rent charged was reasonable, as set forth in *Hanson v. District of Columbia Rental Housing Comm'n*, 584 A.2d 592 (D.C. 1991) and later developed case law.

3. The Rent Administrator lacks jurisdiction to adjudicate Petitioner's Title II claim of reduced services and facilities because the subject property is exempt from Title II of the Act, pursuant to D.C. Official Code Sec. 42-3502.05(a) (2001) and *Madison v. Clifton Terrace Ass'n Ltd.*, TP 11,318 (RHC Apr. 22, 1985).

Lyons v. Pickrum, TP 27,616 (RACD May 7, 2003) at 5-7.

The tenant, without the assistance of counsel, filed a notice of appeal from the hearing examiner's decision on May 19, 2003. On August 12, 2003, the Commission issued the Notice of Hearing and Notice of Certification of Record and advised the parties that they may file briefs in accordance with 14 DCMR § 3802 (1991). In response, the tenant filed a series of documents, which she attached to the Commission's notices. By order dated September 5, 2003, the Commission rejected the tenant's documents, because they constituted new evidence. The Commission held the appellate hearing on October 30, 2003.

II. ISSUES ON APPEAL

The tenant raised the following issues in the notice of appeal:

1. The address Ms. Pickrum gives as a residence, is the address of a corporation, therefore it is not exempt according to SEC 452515 [sic]

   Resource Network International
   4834 ½ 16th Street, NW
   Washington, DC

2. Ignorance is no exception to the law. The Respondent became a landlord the day (1984) the Respondent accepted rent. The law requires landlords to register 30 days before charging rent.

3. Administration does have jurisdiction over reduced [sic] of services and facilities. What they do not have is jurisdiction of rent change and increases. The case Madison vs. Clifton Terrace: [sic] the examiner uses as case law, concerns Section 8 Rentals, petitioner is not a Section 8 Renter.

4. Petitioner's responsibility is to order inspection. Housing Regulation Administration saw that the housing violations were issued. Respondent, Vita Ellis Pickrum was served a Housing Deficiency Notice on 12/18/02 for services violations. The examiner totally ignored this issue. As of 5/17/03, the house is still in violation to the sum of $ 8,595.45 in replacement damages by Petitioner.

5. Petitioner file [sic] a tenant petition on September 9, 2002 and I got the decision on May 7, 2003, which violates the law of a [sic] 120 days from the petitioner filing.

Notice of Appeal at 2.

III. DISCUSSION

A. The address Ms. Pickrum gives as a residence, is the address of a corporation, therefore it is not exempt according to § 45-2515.

Resource Network International
4834½ 16th Street, N.W.
Washington, D.C.

The hearing examiner dismissed TP 27,616, because he determined that the housing accommodation where the tenant resides, 75 Seaton Place, N.W., was exempt from the rent stabilization provisions of the Act. When the tenant filed the notice of appeal, she indicated that the housing accommodation located at 4834½ 16th Street, N.W.

is not exempt according to D.C. OFFICIAL CODE § 45-2515 [currently § 42-3502.05], because the address that the housing provider gave as a residence is the address of a corporation. The tenant only provided the following in support of her claim:

Resource Network International
4834½ 16th Street, NW
Washington, DC

The tenant did not indicate why she concluded that 4834½ 16th Street, N.W. is an address of a corporation, and she did not offer any record evidence to support her contention. Moreover, the tenant did not explain how the claim that the housing provider's residence was a corporation impacted the housing accommodation where the tenant resides. The tenant has not shown a legal nexus between the unsubstantiated assertion that the housing provider's residence was a corporation and the exempt status of the housing accommodation where the tenant resides.

When the hearing examiner issued the decision and order, he found that the housing provider resided at 4834½ 16th Street, N.W., and the property was not used as a multi-unit rental property. Finding of Fact 5. The hearing examiner determined that the housing accommodation where the tenant resides, 75 Seaton Place, N.W., was a four-bedroom single family townhouse. As a result, the hearing examiner ruled that the housing provider qualified for the small landlord exemption, because the housing provider owned four or fewer rental units. Findings of Fact 1 and 4; Conclusion of Law 1.

The Commission may reverse in whole or in part any decision that is arbitrary, capricious, an abuse of discretion, or contains conclusions of law that are not in accordance with the Act, or findings of fact that are unsupported by the substantial record

evidence. D.C. OFFICIAL CODE § 42-3502.16(h) (2001); 14 DCMR § 3807.1 (1991). In the absence of error, the Commission may affirm the decision and order.

When the Commission conducted its review, it found no evidence to support the tenant's claim that the address the housing provider gave as a residence is the address of a corporation. The Commission did not find a reference to Resource Network International in the certified record. The tenant's notice of appeal contains the only reference to Resource Network International, 4834 ½ 16th Street, N.W., Washington, D.C.

The hearing examiner determined that the housing provider qualified for the small landlord exemption codified at D.C. OFFICIAL CODE § 42-3502.02 (2001). The hearing examiner's findings of fact were supported by the substantial record evidence and the conclusions of law were in accordance with the provisions of the Act. Accordingly, the Commission denies Issue A.

B. Ignorance is no exception to the law. The Respondent became a landlord the day (1984) the Respondent accepted rent. The law requires landlords to register 30 days before charging rent.

When the tenant filed the petition, she alleged that the housing accommodation was not properly registered with RACD. During the hearing, the housing provider testified that she purchased 75 Seaton Place, N.W. in 1975. She rented the basement unit of the house in 1984, while she resided in the home. The housing provider testified that she moved after she purchased a home at 4834½ 16th Street, N.W. She began renting 75 Seaton Place, N.W. to the tenant, Diane Lyons, in February 1998.

The housing provider acknowledged that 75 Seaton Place, N.W. was not registered until October 23, 2002. The housing provider testified that she was not aware of the registration requirement when she rented the basement unit of 75 Seaton Place,

N.W. in 1984, or when she rented the housing accommodation to the tenant in February 1998. She testified that her husband filed a Registration/Claim of Exemption Form on October 23, 2002.

The hearing examiner found, as a matter of fact, that the housing provider filed a RACD Registration/Claim of Exemption Form for 75 Seaton Place, N.W., on October 23, 2002, and received a small landlord exemption. Finding of Fact 4. However, the hearing examiner found that the housing provider failed to register the property or file a claim of exemption prior to October 23, 2002, which included the February 1, 1998 date that she rented the property to the tenant. See Finding of Fact 6. The hearing examiner concluded as a matter of law, that the housing provider's failure to register the property was excused in accordance with the special circumstances test. The hearing examiner wrote:

> Respondent's filing of the claim of exemption on October 23, 2002, after Petitioner's tenancy began on February 1, [1998], is excused based upon proof that "special circumstances" existed, namely, the Respondent 1) was not a real estate professional; 2) was not a landlord regularly; 3) was reasonably unaware of the requirement of filing a claim of exemption; and 4) that the rent charged was reasonable, as set forth in *Hanson v. District of Columbia Rental Housing Comm'n*, 584 A.2d 592 (DC 1991) and later developed case law.

Conclusion of Law 2.

In Hanson v. District of Columbia Rental Hous. Comm'n, 584 A.2d 592 (D.C. 1991), the court affirmed the Commission's application of the special circumstances test, which excused the housing provider's failure to file a claim of exemption form. In Issue B, the tenant appears to be challenging[2] the third element of the special circumstances

[2] In Dixon v. Majeed, TP 20,658 (RHC Oct. 4, 1989), the Commission noted the importance of reviewing pro se appeals with "considerable scrutiny" in order to determine if the hearing examiner committed reversible error. The Commission applied the principle enunciated in Dixon, when it reviewed the tenant's notice of appeal.

test. In the notice of appeal, the tenant stated, "Ignorance is no exception to the law." While the tenant cites a general legal axiom, that ignorance of the law is no excuse, the special circumstances test affirmed in Hanson excuses the failure to file a Registration/Claim of Exemption Form if the housing provider was reasonably unaware of the requirement to file and meets the other prongs of the Hanson test. The court noted that it is impractical to expect a housing provider, who is not in the business of renting property, to know and meet the technical requirement of filing a claim of exemption, when the government did not provide notice of the requirement.

In the instant case, the housing provider testified that she was not aware of the registration requirements of the Act. When asked why she did not know, she testified that she had no way of knowing, and she asked if there was a commercial that provided notice of the requirement. She testified that she was not a real estate professional, and she was not a landlord regularly. As a result, she had no way of knowing about the registration requirements.

The hearing examiner did not err when he excused the housing provider's failure to file a claim of exemption form, because the housing provider was reasonably unaware of the filing requirement and she met the exceptional circumstances test that the court affirmed in Hanson. Accordingly, the Commission affirms the hearing examiner's decision.

C. Administration does have jurisdiction over reduced services and facilities. What they do not have is jurisdiction of rent change and increases. The case Madison vs. Clifton Terrace that the examiner uses as case law, concerns Section 8 rentals, petitioner is not a Section 8 renter.

The hearing examiner determined that the Rent Administrator lacked jurisdiction to adjudicate the tenant's reduction in services and facilities claim, because the housing accommodation was exempt from the rent stabilization provisions of the Act, pursuant to § 42-3502.05(a)(3), which is commonly referred to as the small landlord exemption. See RACD Decision at 5.

D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001) 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:
> ...
>
> (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:
> ...

Since the housing provider owned four or fewer rental units, she was exempt from the rent stabilization provisions of the Act, which are §§ 42-3502.05(f) through 42-3502.19, except § 42-3502.17. The reduction in services and facilities provision of the Act, § 42-3502.11, is a rent stabilization provision. Since the housing provider was exempt from the rent stabilization provisions, including § 42-3502.11, the Rent Administrator did not have jurisdiction over the tenant's reduction in services and facilities claim.

The hearing examiner cited Madison v. Clifton Terrace Assoc., Ltd., TP 11,318 (RHC Apr. 22, 1985) in support of his decision to dismiss the tenant's reduction in services and facilities claim. The tenant correctly notes that Madison concerned a housing accommodation that was exempt from the rent stabilization provisions of the Act, because the United States Department of Housing and Urban Development (HUD)

owned the building and the rental units were eligible for Section 8 subsidies.[3] Although the factual scenario in Madison was different from the factual scenario in the instant case, they share a common legal outcome.

The hearing examiner found that the housing accommodation in the instant case was exempt pursuant to the registration and coverage provision of the Act, § 42-3502.05. Specifically, the hearing examiner determined that the housing accommodation was exempt under § 42-3502.05(a)(3). The housing provider in Madison was exempt pursuant to § 42-3502.05(a)(1), 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:
>
> (1) Any rental unit in any federally or District-owned housing accommodation or in any housing accommodation with respect to which the mortgage or rent is federally or District-subsidized except units subsidized under subchapter III;

In Madison and the instant case, the Rent Administrator did not have jurisdiction to resolve the tenants' services and facilities claims. In each case, the housing accommodation was exempt from the rent stabilization provisions of the Act pursuant to the registration and coverage provisions found in § 42-3502.05. Although the housing accommodations were exempt under different subsections of § 42-3502.05, the cases were sufficiently analogous for the hearing examiner to rely upon Madison as support for his decision to dismiss the instant petition.

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[3] In Madison v. Clifton Terrace Assoc., Ltd., TP 11,318 (RHC Apr. 22, 1985), the Commission noted that the housing provider presented evidence to support its position that the housing accommodation was exempt, because HUD owned the building. However, the Commission remanded the case, because the hearing examiner failed to consider the arguments that the tenant raised. Following its remand, the Commission held that the Rent Administrator did not have jurisdiction to resolve the tenant's claims, because the housing accommodation was exempt. Madison v. Clifton Terrace Assoc., Ltd., TP 11,318 (RHC July 17, 1987), motion for reconsideration denied, TP 11,318 (RHC Aug 19, 1987).

For the foregoing reasons, the Commission affirms the hearing examiner's decision, because he did not err when he ruled that the Rent Administrator did not have jurisdiction to resolve the tenant's reduction in services and facilities claim.

D. Petitioner's responsibility is to order inspection. Housing Regulation Administration saw that the housing violations were issued. Respondent, Vita Ellis Pickrum was served a Housing Deficiency Notice on December 18, 2002 for service violations. The examiner totally ignored this issue. As of May 17, 2003, the house is still in violation to the sum of $8595.45 in replacement damages by Petitioner.

The hearing examiner did not ignore the reduction in services and facilities issue. The reduction in services and facilities provision of the Act is one of the rent stabilization provisions of the Act. The hearing examiner did not receive evidence or resolve the reduction in services and facilities claim, because the housing accommodation was exempt from the rent stabilization provisions of the Act. Since the housing accommodation was exempt from the rent stabilization provisions of the Act, the Rent Administrator did not have jurisdiction to resolve the tenant's services and facilities claim. See discussion supra Part III.C. For the reasons discussed in Issue C, the Commission denies Issue D.

E. Petitioner filed a tenant petition on September 9, 2002 and she got the decision on May 7, 2003, which violates the law of issuing a decision 120 days from the petitioner's filing.

The tenant argues that the Rent Administrator violated a provision of the Act, because the hearing examiner issued the decision and order more than 120 days after the tenant filed the petition. The relevant provision of the Act provides:

> The Rent Administrator shall issue a decision and order approving or denying, in whole or in part, each petition within 120 days after the petition is filed with the Rent Administrator.

D.C. OFFICIAL CODE § 42-3502.16(a) (2001). According to § 42-3502.16(a), the Rent Administrator shall issue a decision and order within 120 days after the petition is filed.

The District of Columbia Court of Appeals and the Commission have reviewed the issue of whether specific statutory time limits for agency action are directory or mandatory. A directory statutory time period is a "provision in a statute, rule of procedure or the like, which is a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed." BLACK'S LAW DICTIONARY 414 (5th ed. 1979).

In Washington Hosp. Ctr. v. District of Columbia Dep't of Employment Servs., 712 A.2d 1018 (D.C. 1998), the court held that specific statutory time limits for agency action are directory rather than mandatory. The court cited the following opinions where the court regarded statutory time frames for agency action as directory rather than mandatory:

> In re Morrell, 684 A.2d 361, 370 (D.C. 1996) (D.C. Bar rule specifying that the hearing committee "shall submit" its report within sixty days presumed to be "directory, rather than mandatory"); M.B.E., Inc. v. Minority Bus. Opportunity Comm'n, 485 A.2d 152, 155 n.1. (D.C. 1984) (regulation stating Commission's final decision "must be issued in writing within ninety (90) days" interpreted as "directory, rather than mandatory or jurisdictional").

Id. at 1020.

In Greene v. Urquilla, TP 27, 604 (RHC Jan. 14, 2005), the Commission rejected a challenge to the validity of a decision and order issued more than 120 days after the tenant filed the petition. Citing Washington Hosp. Ctr., the Commission held that the 120 day time period in § 42-3502.16(a) was directory and not mandatory. As a result, the

hearing examiner's decision, which was issued beyond the statutory time period, was valid.

Similarly, the Commission rejects the tenant's challenge in the instant case, because the hearing examiner's failure to issue the decision and order within the 120 day time period, which was directory, was not reversible error.

IV. CONCLUSION

For the foregoing reasons, the Commission affirms the Rent Administrator's decision and order.

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 D.C. 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 hereby certify that a copy of the foregoing Decision and Order in TP 27,616 was mailed by priority mail with delivery confirmation, postage prepaid, this 1st day of February 2005 to:

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