

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,789

In re: 455 M Street, N.W.

Ward Two (2)

COREY THOMPSON  
Tenant/Appellant

v.

DEBORAH ZISKA  
Housing Provider/Appellee

**DECISION AND ORDER**

May 14, 2004

**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), govern the proceedings.

**I. PROCEDURAL HISTORY**

Corey Thompson, who resides in the basement unit of the housing accommodation located at 455 M Street, N.W., initiated this matter when he filed Tenant Petition (TP) 27,789 on March 26, 2003. Mr. Thompson began his tenancy on October 28, 1997, with the prior owner of the housing accommodation. The current housing provider, Deborah Ziska, subsequently purchased the property and executed a lease

agreement with Corey Thompson. The tenant alleges that Deborah Ziska violated D.C. OFFICIAL CODE § 42-3502.05(d) (2001),<sup>1</sup> because she did not notify him that the housing accommodation was exempt and that the rent increases were not subject to the rent stabilization provisions of the Act, before they executed his lease.

The Rent Administrator scheduled the matter for a hearing on May 1, 2003. The tenant appeared pro se, and the housing provider appeared with counsel, Robert C. Cooper. At the outset of the hearing, the housing provider's attorney presented an overview of the case and offered to settle the dispute. The tenant rejected the proffered settlement. The tenant stated that he desired a hearing, because the housing provider violated § 42-3502.05(d). The tenant asserted that the housing provider did not provide written notice that the rent increases for his unit were not regulated by the rent stabilization program, prior to the execution of the lease. Tape Recording (RACD May 1, 2003).

Since the tenant did not wish to accept the proposed settlement, Hearing Examiner Bradford administered the oath to the parties and prepared to receive testimony. Before the parties offered any evidence, the housing provider's attorney made an oral motion to dismiss the petition. Attorney Cooper argued that the housing provider was exempt from the rent stabilization provisions of the Act, because she owned fewer than four rental units and filed a claim of exemption with the RACD. Attorney Cooper acknowledged that the tenant's claim concerned the housing provider's failure to notify the tenant that the property was exempt. The housing provider, through counsel, offered to withdraw and refund the rent increases that the housing provider implemented from the

---

<sup>1</sup> The tenant mistakenly cites D.C. OFFICIAL CODE § 42-3502.05(d) (2001) as D.C. OFFICIAL CODE § 42-3502.05(b)(2)(d).

date she purchased the housing accommodation. In response, the tenant asserted that he requested a hearing so that the housing provider's claim of exemption could be invalidated or vacated because she violated D.C. OFFICIAL CODE § 42-3502.05 (2001).

Id. After receiving counsel's argument and the tenant's response, the hearing examiner asked Mr. Cooper for a copy of the claim of exemption form. After reviewing the claim of exemption and considering the parties' arguments, the hearing examiner orally granted the motion to dismiss.

On May 7, 2003, Hearing Examiner Bradford issued a written decision and order, which contained the following findings of fact and conclusions of law.

**Findings of Fact**

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

1. That Petitioner has been a tenant at 455 M Street, N.W., Washington, D.C. 20036 since October 28, 1997.
2. Luther and Deborah Ziska own the housing accommodation located at 455 M Street, N.W., Washington, D.C. 20036.
3. Respondent has properly registered the property.
4. The housing accommodation is exempt from rent control.

**Conclusions of Law**

1. Respondents have properly registered the subject housing accommodation pursuant to D.C. Official Code § 42-3502.02 (2001).
2. The petition is dismissed.

Thompson v. Ziska, TP 27,789 (RACD May 7, 2003) at 4-5.

The tenant filed a motion for reconsideration of the hearing examiner's decision and order. The hearing examiner denied the motion for reconsideration on June 5, 2003.

On June 18, 2003, the tenant appealed the hearing examiner's decision, and the Commission held the appellate hearing on September 23, 2003. Several months thereafter, the housing provider, pro se, filed a motion for expedited review. On March 12, 2004, the Commission granted the housing provider's motion for expedited review.

## II. ISSUES ON APPEAL

The tenant filed his notice of appeal in a narrative format. The following quote contains the tenant's alleged errors in the hearing examiner's decision.

This Notice of Appeal is based upon hearing examiner, Carl Bradford, dismissing tenant petition, T/P #27,789 with prejudice without conducting a hearing, and his failure to apply the law as it relates to D.C. Code 42-3502.05(b)(2)(d) [sic]. In T/P #27,789, I alleged that Deborah Ziska failed to notify me in writing-or in any manner-that rent increases were not regulated by the rent stabilization program. Hearing Examiner Bradford erred in many ways: 1. Hearing Examiner Bradford misidentified the issue in my petition. (The issue Hearing Bradford considered was whether the building in which Petitioner's unit is located is not properly registered with the Rental Accommodations and Conversion Division). I stipulate to the fact that Ms. Ziska does meet the standard for exemption pursuant to D.C Code 42-3502 (a)(3) [sic]. 2. Hearing Examiner Bradford failed to conduct a hearing or provide me an opportunity to cross-examine Ms. Deborah Ziska. 3. Hearing Examiner Bradford disregarded D.C. Code 42-3502.05(b)(2)(d) [sic].

Notice of Appeal at 1.

## III. DISCUSSION

### A. Whether the hearing examiner misidentified the issue that the tenant raised in the tenant petition.

When Hearing Examiner Bradford issued the decision, he stated that the issue considered was: "Whether the building in which Petitioner's unit is located is not properly registered with the Rental Accommodations and Conversion Division?"

Thompson v. Ziska, TP 27,789 (RACD May 7, 2003) at 1. In the petition, the tenant did not allege that the housing accommodation was not properly registered. His complaint

concerned the housing provider's failure to notify him that the property was exempt and that the rent increases were not regulated by the rent stabilization provisions of the Act.

In accordance with 14 DCMR § 3901.3 (1991), the tenant filed his claim against the housing provider on the petition/complaint form provided by the Rent Administrator. The form contained a list of the myriad complaints that a tenant may bring against a housing provider. Next to each possible complaint is a box for the tenant to check and manifest his intent to raise a specific allegation. In addition, the petition contains a section for the tenant to insert a provision of the Act that the housing provider violated.

When the tenant filed TP 27,789, he did not select any of the specific allegations that the Rent Administrator listed in the petition. Instead, the tenant utilized the section of the petition that enabled him to insert the provision of the Act that he alleged the housing provider violated. The tenant's sole allegation was that the housing provider violated D.C. OFFICIAL CODE § 42-3502.05(d) (2001). In addition, the tenant attached an additional sheet to the petition and chronicled his complaint. At the conclusion of his statement, the tenant wrote: "Prior to February 27, 2003, I was not notified implicitly or explicitly, verbally or in writing that rent increases for the unit I have occupied since October 28, 1997, did not fall under the rent stabilization program as required by Section 42-3502.05((b)(2)(d) [sic]." Record at 8.

In the face of the tenant's clear articulation of his allegation, the hearing examiner misidentified the claim that the tenant raised in the petition. In the decision and order, the hearing examiner stated the issue was whether the housing accommodation was properly

registered, and he devoted the decision to an analysis of the improper issue.<sup>2</sup>

Accordingly, the Commission remands this matter to the hearing examiner with instructions to conduct a hearing de novo and issue a decision and order concerning the tenant's sole allegation, which is whether the housing provider violated D.C. OFFICIAL CODE § 42-3502.05(d) (2001).

**B. Whether the hearing examiner erred when he failed to apply the law as it relates to D.C. OFFICIAL CODE § 42-3502.05(d) (2001).**

The hearing examiner erred when he failed to consider or apply D.C. OFFICIAL CODE § 42-3502.05(d) (2001), which provides: "Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program."

When the tenant filed the petition, he claimed that the housing provider violated D.C. OFFICIAL CODE § 42-3502.05(d) (2001). The hearing examiner, who mistakenly identified the tenant's claim as one concerning the registration of the housing accommodation, dismissed the petition without holding a hearing or considering the tenant's claim. See discussion supra Part III.A.

In order to determine whether the housing provider violated § 42-3502.05(d), the hearing examiner must hold a hearing in accordance with the DCAPA and permit the

---

<sup>2</sup> In a section of the decision entitled Summary of the Case, the hearing examiner summarized the case as one involving the tenant's allegation that the housing provider was not exempt because she did not register the property when she first purchased the building, and she implemented a rent increase before she filed a claim of exemption. In addition, the hearing examiner inexplicably devoted a large portion of the decision to the special circumstances exception, which is available to small landlords who fail to file a claim of exemption. See Hanson v. District of Columbia Rental Hous. Comm'n, 584 A.2d 592 (D.C. 1991); Gibbons v. Hanes, TP 11,076 (RHC July 11, 1984).

parties to present evidence and conduct cross-examination “as may be required for a full and true disclosure of the facts.” D.C. OFFICIAL CODE § 2-509(b) (2001). See discussion infra Part III.C.

In Hasian v. Barnes, TP 21,052 (RHC Aug. 31, 1989), the Commission held that the housing provider violated § 45-2515(d) [currently § 42-3502.05(d)], because she failed to notify the prospective tenants that the single family housing accommodation was exempt from the rent stabilization provisions of the Act. The Rent Administrator and the Commission were able to evaluate the claim, because the hearing examiner permitted the parties to present evidence for and against the claim that the housing provider violated § 42-3502.05(d).

On remand, the hearing examiner shall hold a hearing de novo, and permit the parties to present evidence on the claim that the tenant raised in the petition.

**C. Whether the hearing examiner erred when he dismissed TP 27,789 with prejudice without conducting a hearing or giving the tenant an opportunity to cross-examine the housing provider.**

The hearing examiner erred when he dismissed TP 27,789 without conducting a hearing in accordance with the District of Columbia Administrative Procedure Act, as mandated by 14 DCMR § 4000.2 (1991).

The DCAPA provides: “Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.” D.C. OFFICIAL CODE § 2-509(b) (2001); see also Croton Mgmt. Servs., Inc. v. Fair, TP 26,185 (RHC Dec. 5, 2003).

When the hearing examiner convened the hearing, the housing provider's attorney made an oral motion to dismiss the petition. The housing provider's attorney argued that the tenant's unit was exempt from the rent stabilization provisions of the Act, pursuant to the small landlord exemption. See D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001). On the record below, the tenant opposed the housing provider's motion to dismiss, and requested a hearing to prove that the housing provider did not adhere to the notice requirement of § 42-3502.05(d).

In the notice of appeal, the tenant "stipulate[d] to the fact that Ms. Ziska does meet the standard for exemption pursuant to D.C. [Official] Code 42-3502(a)(3) [2001]." Notice of Appeal at 1. However, he maintains on appeal, as he did during the proceeding below, that he has the right to a hearing on the claim that the housing provider violated D.C. OFFICIAL CODE § 42-3502.05(d) (2001). The Commission agrees.

In Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293 (D.C. 1990), the court established that the challenge to a small landlord exemption, D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001),<sup>3</sup> and a claim that the housing provider violated D.C. OFFICIAL CODE § 42-3502.05(d) (2001),<sup>4</sup> are two separate claims.

When Mr. Goodman filed the tenant petition with the agency, he claimed that the housing provider was not entitled to the small landlord exemption, (currently § 42-3505.02(a)(3)),<sup>5</sup> because he owned more than four rental units. In addition, the tenant

---

<sup>3</sup> Formerly D.C. CODE § 45-1516(a)(3) (1981).

<sup>4</sup> Formerly D.C. CODE § 45-1686(b) (1980 Supp.); D.C. CODE § 45-1516(b) (1981); D.C. CODE § 45-2515(d) (1986 Repl.).

<sup>5</sup> In order to provide uniformity throughout its decision, the Commission cited the statutory provisions of the current Act, as opposed to the citations to the earlier Acts that appear in Goodman. The text of the statutory provisions is substantially the same.



alleged that the housing provider violated § 42-3502.05(d), because he failed to notify the tenant that the rental unit was exempt from the rent stabilization provisions of the Act. The Rent Administrator held that the housing provider was not entitled to the small housing provider exemption. On appeal, the Commission affirmed the Rent Administrator's decision and remanded the matter on issues related to the remedy. On remand, the Rent Administrator ruled upon the remanded issues. Both parties appealed the Rent Administrator's decision to the Commission. The Commission reversed its previous ruling and held that the housing provider was entitled to the small landlord exemption. The tenant, who initially prevailed on the small landlord exemption claim, did not create a record on the claim that the housing provider violated § 42-3502.05(d).

Mr. Goodman appealed the Commission's final decision to the District of Columbia Court of Appeals. In the pleadings filed with the court, the tenant argued that the housing provider was not exempt, and he asserted that the housing provider violated the notice requirement of § 42-3502.05(d). The court reviewed the tenant's claim concerning the small housing provider exemption. However, the court was not able to review the tenant's assertion that the housing provider violated § 42-3502.05(d).

The Court held that the tenant had a "right to assert his claim that he did not receive notice of [the housing provider's] exemption." Goodman, 573 A.2d at 1300. However, the Court was "compelled to conclude that the record before [it] with respect to the landlord's alleged failure to comply with the statutory notice requirement [was] simply inadequate to enable [the court] to review it in any meaningful way." Id. at 1295. "As a result of Goodman's failure to present to the Commission his contentions as to the

alleged lack of notice, however, [the court was] simply left without a record adequate to enable [it] to address the question responsibly.” Id. at 1303.

Unlike the tenant in Goodman, the tenant in the instant case earnestly attempted to create a record concerning the housing provider’s alleged failure to satisfy the notice requirement of § 42-3502.05(d). However, the hearing examiner thwarted his efforts, when he dismissed the petition without holding a hearing on the tenant’s claim.


Accordingly, the Commission reverses the hearing examiner’s decision and remands this matter for a hearing de novo.

#### IV. CONCLUSION

For the foregoing reasons, the Commission reverses the decision and order and remands this matter to the Rent Administrator for a hearing de novo.

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 phone 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 27,789 was mailed by priority mail with delivery confirmation, postage prepaid, this 14th day of May 2004 to:

Corey Thompson  
455 M Street, N.W.  
Basement Unit  
Washington, D.C. 20001

Robert C. Cooper, Esquire  
Jackson & Campbell, P.C.  
1120 20th Street, N.W.  
Washington, D.C. 20036

Deborah Ziska  
455 M Street, N.W.  
Washington, D.C. 20001

  
\_\_\_\_\_  
Tonya Miles  
Contact Representative  
(202) 442-8949