

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,921

In re: 201 I Street, S.W. V525

Ward Six (6)

RONALD JOHNSON¹
Tenant/Appellant

v.

AMERICAN RENTAL MANAGEMENT COMPANY
Housing Provider/Appellee

DECISION AND ORDER

September 30, 2005

YOUNG, COMMISSIONER. This case is on appeal from the District of Columbia 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 (DCMR), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

Ronald Johnson, the tenant of unit V525 at the housing accommodation located at 201 I Street, S.W., filed Tenant Petition (TP) 27,921, on August 8, 2003. In his petition,

¹ The Rent Administrator, pursuant to 14 DCMR § 3909 (2004), consolidated for review the tenant's petition, TP 27,921, with TPs 27,813 through 27,815, TPs 27,833, and 834, TPs 27,861 and 862, TPs 27,879 and 880, TP 27,903, TP 27,909, TP 27,921, TPs 27,925 and 926, TP 27,945 and TP 27,947. Ronald Johnson appealed the Rent Administrator's decision. Accordingly, pursuant to 14 DCMR § 3809.3 (2004), the Commission adds the name Ronald Johnson to the caption as the tenant/appellant.

the tenant alleged that the housing provider, the American Rental Management Company: 1) took a rent increase larger than the amount of increase permitted by the Act; 2) failed to file the proper rent increase forms with RACD; 3) charged rent which exceeded the legally calculated rent ceiling for his unit; 4) filed a rent ceiling with RACD that was improper; 5) took a rent increase while his unit was not in substantial compliance with the D.C. Housing Regulations; 6) increased his rent while a written lease was in effect which prohibited an increase; 7) failed to properly register the building in which his rental unit is located with RACD; 8) substantially reduced services and/or facilities provided in connection with his unit; 9) used coercion directly or by means of a manager or other tenants to obtain his signature on a Voluntary Agreement, which was filed with the Rent Administrator; and 10) directed retaliatory action against him for exercising his rights in violation of § 502 of the Act.

On October 28, 2003, Senior Hearing Examiner Gerald J. Roper presided at a pre-hearing conference on this and other petitions. The purpose of the pre-hearing conference was to consolidate the issues in the petitions, review the evidence, plan for the conduct of the hearing on the petitions, and to accept motions from the parties. On October 31, 2003 counsel for the housing provider, Richard W. Luchs, filed a Motion of Housing Provider/Respondent to Dismiss Tenant Petitions. The motion proposed that the consolidated tenant petitions, including the tenant's petition, be dismissed, because the motion argued, the Rent Administrator lacked the jurisdiction to adjudicate the petitions.

The housing provider argued that the Rent Administrator lacked jurisdiction in this case, because the housing accommodation was exempt from rent control pursuant to the District of Columbia Housing Finance Agency (DCHFA) Act, D.C. OFFICIAL CODE §

42-2701.01 (2001). The housing provider argued that § 42-2701.01 exempts housing accommodations which receive financial assistance through the DCHFA, after a claim of exemption is filed with the RACD, pursuant to D.C. OFFICIAL CODE § 42-3502.05 (a)(1) (2001),² and DCHFA. The housing provider further argued that on October 31, 2002 the housing provider filed a Registration/Claim of Exemption Form with RACD and filed a copy of that form with DCHFA on November 4, 2002. Therefore, the housing provider asserted, the Rent Administrator lacked jurisdiction to adjudicate the tenant petitions.

In his Order, dismissing the petitions, the hearing examiner stated:

Here, the problem is the status of pending claims by tenants of a housing accommodation prior to the Housing Provider obtaining Agency financing and exemption from rent control. The language set forth in D.C. Official Code § 42-2703.08 (2001) ... that exempts a housing accommodation once it has received Agency financing is unambiguous. The Housing Provider argues that once the exemption was granted by the Rent Administrator, the Housing Accommodation became exempt for all purposes from the Act. The Examiner finds there is insufficient evidence to reject the argument of Respondent in this regard. Therefore, since the issue of the rent increases came after the filing of the claim of exemption, this issue is no longer within the Rent Administrator's jurisdiction.

Since the drafters had the benefit of considering all aspects of the District of Columbia's rent control law when drafting the Housing Finance Agency regulations, the Examiner reasonably concludes that it was the intention of the drafters of the legislation that any claims relating to a housing accommodation assisted by the DCHFA rest within the jurisdiction of DCHFA and not the Rent Administrator. With respect to the issues of reduction in service and retaliatory action pending before the claim of exemption was obtained, they shall properly rest with the jurisdiction of DCHFA to resolve. (emphasis added).

² D.C. OFFICIAL CODE § 42-3502.05 (a)(1) (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:

(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.

(RACD Dec. 30, 2003) (Order) at 4-5. On this basis the hearing examiner granted the housing provider's motion and dismissed, with prejudice, the tenant's petition without conducting a hearing, taking testimony or considering any evidence. The hearing examiner relied on the fact that the housing provider had filed a Registration/Claim of Exemption Form with the Rent Administrator, RACD and DCFHA to dismiss the tenant's petition.

The tenant filed a timely notice of appeal in the Commission on January 16, 2004. The tenant argued that the hearing examiner erred in his Order when he dismissed the tenant's petition. The notice of appeal stated:

Tenant Ronald Johnson appeal is based on Hearing Examiner Roper error in his decision to dismiss Tenant Johnson's petition. Hearing Examiner Roper failed to adequately take into account the evidence on the record, including the arguments presented in Tenant Johnson's Opposition to the Housing Provider's Motion to Dismiss which aptly provided the basis for the Rental Accommodations and Conversion Division to assert its authority and fully adjudicate this matter. Rather, the Hearing Examiner simply supplanted verbatim the same arguments and reasoning he used to dismiss parties in another case where Appellee was also the Defendant/Housing Provider, *The New Capitol Park Twin Towers Tenants v. American Rental Management Company*, TP 27, 847, et al.

Evidence that Hearing Examiner [Roper] failed to make an independent review of the facts and law of this case is apparent in the fact that the caption in the Order dismissing Tenant Johnson's petition and other similar tenant incorrectly labels the parties as "The New Capitol Twin Towers Tenants" when none of the tenant petitioners in the consolidated case reside in Twin Towers, but instead in the sister building, Capitol Park. Furthermore, while the Order does summarize Tenant Johnson's arguments from his Opposition to the Motion to dismiss, it stops short of providing an independent and adequate explanation for the decision to reject Tenant Johnson's pleas.

Notice of Appeal at 1. The Commission held its appellate hearing on April 15, 2004.

II. ISSUES ON APPEAL

- A. Whether the hearing examiner erred when he failed to assert the authority of the Rental Accommodations and Conversion Division to fully adjudicate the issues raised in his petition.
- B. Whether the hearing examiner erred when he failed to conduct an independent review of the facts and law of this case rather than supplanting verbatim the same arguments and reasoning he used to dismiss parties in another case where Appellee was also the Defendant/Housing Provider.

III. DISCUSSION OF THE ISSUES

- A. Whether the hearing examiner erred when he failed to assert the authority of the Rental Accommodations and Conversion Division to fully adjudicate the issues raised in his petition.

The DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001) provides:

In contested cases, except as may otherwise be provided by law, other than this subchapter, ... every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, and conduct such cross-examination as may be required for a full and true disclosure of the facts. (emphasis added).

The DCAPA also provides:

The testimony^[3] and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for decision. No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record, or such lesser portion thereof as may be agreed upon by all the parties to such case.

Id. at § 2-509(c). The applicable regulation, 14 DCMR § 3903.1 (2004), provides: “The parties to petitions before the Rent Administrator have a right to a hearing in accordance

³ BLACK’S LAW DICTIONARY 1324 (5th ed.. 1979), defines testimony as, “evidence given by a competent witness under oath or affirmation. Presented through live witnesses speaking under oath or affirmation in the presence of tribunal, judicial or quasi-judicial.”

with the provisions of the Act and Chapter 40 of this title.” The regulations at 14 DCMR 3903.2 (2004) also provide: “The Rent Administrator on his or her motion may dismiss any petition that does not state a claim for which relief can be granted under the Act.”

The issue therefore is whether the tenant had a right to present his case at an RACD hearing, and whether he stated a claim in his petition for which relief could be granted under the Act. In his tenant petition the tenant alleged, in addition to rent overcharges and reductions in services and facilities, that the housing provider was not properly registered with RACD. Registration in the instant case includes the housing provider’s claim of exemption from the Act. The District of Columbia Court of Appeals (DCCA) decided that a housing provider bears the burden of proving qualification for an exemption. The DCCA determined that the standard of proof for a housing provider is by a preponderance of the evidence. In order to satisfy that burden of proof the housing provider must provide “credible, reliable evidence.” See Revithes v. Dist. 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). Regarding exemptions from the Act, the Commission has stated:

Appeals to the Commission of cases involving claims of exemption under the Act are not novel to the Commission. In each instance of a claimed exemption, the housing provider has the burden of proof. Goodman v. Dist. of Columbia Rental Hous. Comm’n, 573 A.2d 1293, 1297 (D.C. 1990); citing Revithes v. Dist. of Columbia Rental Hous. Comm’n, 536 A.2d 1007, 1017 (D.C. 1987); Remin v. Dist. of Columbia Rental Hous. Comm’n, 471 A.2d 275, 279 (D.C. 1984). See also Baxter v. Jackson, TP 24,370 (RHC Sept. 15, 2000) at 5. 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 1011-12.

The Vista Edgewood Terrace v. Rascoe, TP 24,858 (RHC Oct. 13, 2000). The

Commission has further stated that some evidence of the entitlement to an exemption

must be presented at the RACD hearing, not merely an assertion, or a 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. See D.C. OFFICIAL CODE § 42-3502.16(h) (2001). In this case, the Registration/Claim of Exemption Form and a DCHFA Tax Regulatory Agreement attached to the housing provider's motion to dismiss were proffered to the hearing examiner as evidence of the exemption. These forms, in and of themselves, do not establish the exemption.

The housing provider, after the tenant challenged its entitlement to an exemption had the burden of producing evidence that the housing accommodation was either District-owned or that the mortgage was District-subsidized, in order to benefit from the exemption provided in D.C. OFFICIAL CODE § 42-3502.05(a)(1) (2001). Because there was no RACD hearing, nothing was offered into evidence to establish the District-owned or District-subsidized exemption. The hearing examiner therefore relied solely on the documents attached to the motion to dismiss to establish the housing provider's entitlement to the § 42-3502.05(a)(1) exemption, without providing the tenant his due process right to a hearing. See Capitol Hill Restoration Soc. v. Zoning Comm'n, 287 A.2d 101 (D.C. 1972); see also Davis v. Barac Co., TP 24,835 (RHC Oct. 27, 2000) (where the Commission held that the decision of a hearing examiner finding that a housing provider was exempt from rent stabilization regulations which was not based upon testimony at a hearing constitutes reversible error, because an absence of witness testimony deprives the tenant of the right of cross examination).

The housing provider argued in its motion to the hearing examiner and at the Commission's appellate hearing that the Rent Administrator did not have jurisdiction

over the housing accommodation, because it was exempt from the rent control provisions of the Act. The claimed exemption was based on the housing accommodation's alleged District-owned or District-subsidized mortgage. The housing provider relied upon D.C. OFFICIAL CODE § 42-3502.05(a)(1) (2001), and the Registration/Claim of Exemption Form on file with RACD to assert that the property was exempt.

The Commission's jurisdiction under the Act is to decide appeals from decisions of the Rent Administrator. D.C. OFFICIAL CODE § 42-3502.02 (a)(2) (2001). The Act confers jurisdiction on the Rent Administrator over petitions arising under subchapters II, IV, V, VI, and IX. D.C. OFFICIAL CODE § 42-3502.04(c) (2001). The exemptions from the Act are found in subchapter II, specifically the exemption based on a District-subsidized mortgages. D.C. OFFICIAL CODE § 42-3502.05(a)(1) (2001). Because the Act grants jurisdiction to the Rent Administrator over the validity of § 42-3502.05(a)(1) exemptions, the Rent Administrator was required to conduct a hearing pursuant to the provisions of the DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001). Accordingly, the decision of the hearing examiner is reversed and remanded for a hearing on the issues raised in the tenant's petition.

B. Whether the hearing examiner erred when he failed to conduct an independent review of the facts and law of this case rather than supplanting verbatim the same arguments and reasoning he used to dismiss parties in another case where Appellee was also the Defendant/Housing Provider.

Because the Commission's resolution of Issue A resulted in a reversal and remand

for a hearing on the issues raised in the tenant's petition, the Commission dismisses Issue B as moot.

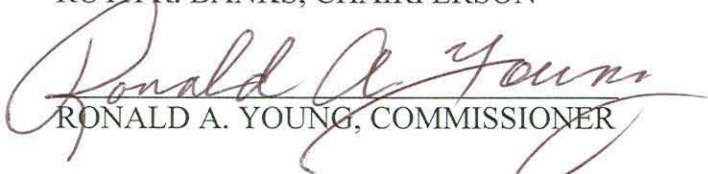
IV. CONCLUSION

For the foregoing reasons, the Commission reverses the Order of the hearing examiner, which dismissed the tenant's petition with prejudice, and remands this case for a full hearing on the issues raised in the tenant petition.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



RONALD A. YOUNG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court 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 27,921 was mailed postage prepaid by priority mail, with delivery confirmation on this 30th day of September, 2005 to:

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