

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TPs 27,995, 7 & 8 and TPs 28,002 & 4

In re: 1401 N Street, N.W., Units 204, 502, 703, 809, 815

Ward Two (2)

CHRISTINE GRANT  
JEANNINE WRAY  
BLAINE CARVALHO  
DONALD DELAUTER  
TAYO OLANIYAN  
Tenants/Appellants

v.

GELMAN MANAGEMENT CO.  
Housing Provider/Appellee

**ORDER ON MOTION FOR SUMMARY REVERSAL**

**October 13, 2004**

**BANKS, CHAIRPERSON.** This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, 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 (1991), govern the proceedings.

**I. THE PROCEDURES**

On July 12, 2004, Hearing Examiner Carl Bradford issued the decision and order, and all the Tenants filed notices of appeal on July 29, 2004. On August 20, 2004,

September 24, 2004, counsel for the Tenants filed supplemental authorities in support of his motion and in response to the Housing Provider's opposition. In the Commission's order issued on August 31, 2004, the Commission ordered oral argument at its hearing on September 28, 2004 on the Tenant's motion for summary reversal and on the merits of the Tenants' issues raised in their notices of appeal.

**II. THE LAW**

In Hamilton House Ltd. P'ship v. Tenants of 1255 New Hampshire Avenue, N.W.

CI 20,377 (RHC Nov. 16, 1988) the Commission stated:

2) whether there is substantial evidence on the record that supports each finding; 3) whether the conclusions flow rationally from the findings. George Washington University v. D.C. Bd. of Zoning Adjustment, 429 A.2d 1342 (D.C. 1981) (emphasis added).

A hearing examiner is required to make findings of fact and conclusions of law on each contested issue. See Perkins v. District of Columbia Dep't of Employment Servs., 482 A.2d 401, 402 (D.C. 1984); and when a decision does not contain findings of fact and conclusions of law on each contested issue, the Commission must remand for them to be made by the hearing examiner. See Hedgeman v. District of Columbia Hacker's License Appeals Bd., 549 A.2d 720, 723 (D.C. 1988).

### III. THE ANALYSIS

A review of the Tenants' pro se notices of appeal show they raised the following issues:

First, Christine Grant, TP 27,995, raised issues from the decision and order related to: 1) three increases of general applicability based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W); ) 2) two rent increases: the first on April 1, 2001 and the second on April 1, 2002, based on a vacancy adjustment effective December 1, 1986, and 3) the decision and order issued by the hearing examiner reads like the proposed decision and order filed by the Housing Provider's counsel. See Bright v. Westmoreland County, 380 F.3<sup>rd</sup> 729 (3<sup>rd</sup> Cir. 2004) (where a similar allegation about a "ghostwritten" decision was made). Id. at 729. Therefore, this Tenant raised more than one issue on appeal and those issues require a review of the evidence in the record on each issue.

Second, Jeannine Wray, TP 27,997, raised issues from the decision and order related to: 1) an overcharge of the increase in rent charged based on a CPI-W rent ceiling increase effective May 1, 2000; 2) an overcharge of the increase in rent charged based on a CPI-W rent ceiling increase effective May 1, 2001; 3) an overcharge of the increase in rent charged based on a CPI-W rent ceiling increase effective May 1, 2002; 4) an overcharge of the increase in rent charged effective May 1, 2003 based on a CPI-W rent ceiling increase effective March 1991, and a copy of the notice of rent increase was not filed with RACD; and 5) an overcharge of the increase in rent charged effective November 2003 based on a 12% vacancy rent ceiling increase effective August 1994, and a copy of the notice of rent increase was not filed with RACD. Therefore, this Tenant raised more than one issue on appeal and those issues require a review of the evidence in the record on each issue.

Third, Blaine Carvalho, TP 27,998, raised issues from the decision and order related to: 1) the rent ceiling increased 3.3% based on the increase of general applicability in 2001, but the rent charged increased 6.4%, and whether the issue was moot based on the three year statute of limitations in the Act; 2) the rent charged increase effective in November 2003 based on a 12% vacancy increase filed in RACD in July 1988, and previously implemented in August 1988 was not addressed in the decision and order; and 3) the similarities between the proposed decision and order from the Housing Provider's counsel and the decision and order issued by the hearing examiner. Therefore, this Tenant raised more than one issue on appeal and those issues require a review of the evidence in the record on each issue.



Fourth, Donald Delauter, TP 28,002, raised issues from the decision and order related to: 1) the October 1, 2000, increase of general applicability of 2.1% in the rent ceiling and the rent charged increase; 2) a second “unspecified” rent increase added within 180 days after the increase in item one (1) above; 3) the October 1, 2001 CPI-W increase in the rent ceiling and the rent charged, and a second “unspecified” rent increase within 180 days; 4) on December 1, 2002, a 7.6% rent charged increase based on an unimplemented April 1991 vacancy comparable unit rent ceiling increase, however, the Tenant asserted the rental unit used for the increase is not comparable to his rental unit; 5) in August 2003, a 7.6% rent charged increase based on the same April 1991 vacancy comparable unit rent ceiling increase, that the Tenant asserted was not comparable to his unit and a copy of this increase notice was not filed with RACD within 30 days, and 6) the Tenant asserts no notice was given for the 1991 rent ceiling increase until December 2002. Therefore, this Tenant raised more than one issue on appeal and those issues require a review of the evidence in the record on each issue.

Lastly, Tayo Olaniyan, TP 28,004, raised on appeal issues from the decision and order related to: 1) on April 1, 2001, the Housing Provider implemented an increase of general applicability that was higher than the CPI-W and less than 180 days later a second unidentified increase was implemented; 2) in April 2003, the Tenant received an unimplemented rent charged increase from a comparable vacancy rent ceiling increase in August 1991; the notice was not timely filed in RACD and the Tenant was not told about the rent increase when he moved into the unit; and 3) in November 2003, the Tenant received a second notice of rent charged increase from 1991. Therefore, this Tenant

raised more than one issue on appeal and those issues require a review of the evidence in the record on each issue.<sup>1</sup>

#### IV. THE CONCLUSION

All of the Tenants raised fact based issues, which require review of the hearing record to resolve them. Accordingly, this motion does not present appropriate legal issues for summary disposition, as stated in Hamilton. Counsel for the Tenants argued to the Commission at its hearing that the Tenants' issues could be summarily resolved by choosing to review for lack of perfection, or lack of notice, or prior implementation of rent ceiling increases. The Commission notes that each of those reviews is fact based and dependent on the hearing record. Accordingly, based on Hamilton, this motion for summary reversal is DENIED. The Commission will issue a decision and order, which addresses the issues raised in each notice of appeal filed by the Tenants.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

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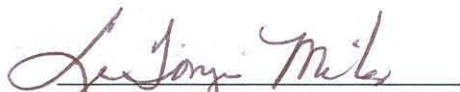
<sup>1</sup> Brenda Gibbons, the sixth Tenant, filed TP 27,996, and a notice of appeal, which contained the following issues related to: 1) a rent ceiling and a rent increase on December 1, 2001; 2) a rent increase in January 2003, based on a comparable vacancy increase that was previously implemented in 1992; and 3), a rent increase in September 2003 was implemented based on a previously implemented vacancy rent ceiling increase in 1995. This Tenant raised more than one issue and those issues require a review of the evidence in the record on each issue.

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON MOTION FOR SUMMARY REVERSAL in TPs 27,995, 7 & 8, and TPs 28,002 & 4 was mailed by priority mail, with confirmation of delivery, postage prepaid this 13<sup>th</sup> day of October, 2004, to:

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