DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,122

In re: 201 I Street, S.W., Unit 531

Ward Six (6)

ERIC AND MONICA UTSEY
Tenants

v.

AMERICAN RENTAL MANAGEMENT COMPANY
Housing Provider

DECSION AND ORDER

June 28, 2005

PER CURIAM. This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). The Act, 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. In accordance with § 42-3502.16(h), the Commission initiated review of the Rent Administrator's decision that Hearing Examiner Gerald Roper issued on August 16, 2004.

I. PROCEDURAL HISTORY

On May 17, 2004, the tenants, Eric and Monica Utsey, filed Tenant Petition (TP) 28,122 in the Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA). In the petition Mr. and Mrs. Utsey alleged three claims. The first claim was that the housing provider took a rent increase that was larger

than the amount of increase permitted by any applicable provision of the Act. Second, that services and or facilities provided in connection with the renting of the unit were substantially reduced. Third, that a notice to vacate was served on the tenants, which violated the requirements of § 501 of the Act.

On August 16, 2004 the hearing examiner issued an order dismissing TP 28,122. The certified record does not contain a motion to dismiss the tenants' petition, oral or written, nor does it contain any proof that the housing provider served the tenants with a copy of the motion, which is required by 14 DCMR § 3801.8 (1991).

Hearing Examiner Gerald Roper ruled on the housing provider's motion to dismiss based upon the previously rendered Order in New Capitol Park Twin Towers Tenants v. Am. Rental Mgmt. Co., TP 27,813 (RACD Dec. 30, 2003). New Capitol Park Twin Towers Tenants involved the same property as the instant case (201 I Street, S.W.). In New Capitol Park Twin Towers Tenants, the hearing examiner denied all the claims asserted by the tenants. He also declared that the Rent Administrator lacked jurisdiction over the case, because the property was exempt from rent control, pursuant to the District of Columbia Housing Finance Agency Act, D.C. OFFICIAL CODE § 42-2703.08(a) (2001). This section of the District of Columbia Housing Finance Agency Act exempts from rent control housing accommodations that have financial assistance through the District of Columbia Housing Finance Agency (DCHFA). The Act requires a claim of exemption be filed with the Department of Consumer and Regulatory Affairs, RACD. The hearing examiner adopted the findings of fact and conclusions of law made in New Capitol Park Twin Towers Tenants and applied them to the instant case.

There is no record proof that the tenants received notice or an opportunity to be heard before the hearing examiner dismissed the petition. Therefore, pursuant to § 42-3502.16(h) the Commission initiated review. After the Commission initiated review of the Rent Administrator's decision, the housing provider filed a motion for remand. Attached to the motion for remand was a motion to dismiss. The motion to dismiss did not carry a RACD blue ink date-stamp. In Tenants of 1460 Irving St. N.W. v. 1460 Irving St. L.P., CI 20,760-63 (RHC May 10, 2005) the Commission held "[t]he hearing examiner can only accept a blue ink date stamped copy…." In instant appeal the Commission issued an order holding the motion to remand in abeyance, because the Commission was not able to confirm that the United States Postal Service had delivered the notice of initiated review to the tenants. The Commission reissued the notice of initiated review by priority mail with delivery confirmation on October 20, 2004. The Commission was able to confirm that the Commission's notice of initiated review was delivered to the tenants on October 21, 2004. The Commission held the hearing on December 9, 2004. The housing provider appeared through counsel, and the tenants appeared pro se. Because the Commission has confirmed delivery of the notice of initiated review, the Commission can address the following issues.

II. ISSUES

In its notice of initiated review, the Commission raised the following six (6) issues:

A. Whether the hearing examiner erred when he determined that the property was exempt and dismissed TP 28,122, when the motion to dismiss was not in the record and there was no record proof that the housing provider served the tenants with a copy of the motion.

B. Whether the hearing examiner erred when he determined that the property was exempt and dismissed TP 28,122 without affording the tenants a hearing in accordance with the DCAPA, D.C. OFFICIAL CODE § 45-2509(a) (2001) and 14 DCMR § 3903.1 (1991).

C. Whether the hearing examiner erred when he determined that the property was exempt and dismissed TP 28,122 when there was no record proof that the housing accommodation is exempt from the Rental Housing Act of 1985 pursuant to the District of Columbia Housing Finance Agency Act.

D. Whether the hearing examiner erred when he held that once financing is approved by the Housing Finance Agency, a housing accommodation is exempt for all purposes, including previously filed complaints with RACD.

E. Whether the hearing examiner erred when he failed to mail the order dismissing the petition by certified mail or another form of service that assures delivery.

F. Whether the hearing examiner erred when he failed to include findings of fact and conclusions of law in the August 16, 2004 order.

III. DISCUSSION

A. Whether the hearing examiner erred when he determined that the property was exempt and dismissed TP 28,122, when the motion to dismiss was not in the record and there was no record proof that the housing provider served the tenants with a copy of the motion.

Pursuant to 14 DCMR § 3814.1 (1991), "[a]n application for an order or other relief shall be made by filing a written motion; [p]rovided that motions may be made orally at a hearing." The certified record does not contain a motion to dismiss the tenants' petition, oral or written, nor does it contain any proof that the housing provider served the tenants with a copy of the motion, which is required by 14 DCMR § 3801.8 (1991). According to § 3801.8 "[a]ll pleadings and other documents shall be served on the opposing party or parties prior to or at the same time as filed with the Commission and shall contain proof of service as required by § 3803.7." According to 14 DCMR §

3803.7 (1991), "[p]roof of service upon parties shall be provided for all pleadings and other documents, shall be in writing, and shall show the date, person served, address at which service was made, and the manner of service." The Act provides several options that constitute service under D.C. OFFICIAL CODE § 42-3509.04 (2001), which provides as follows:

> Service upon a person may be completed by any of the following ways: (1) By handing the document to the person, by leaving it at the person's place of business with some responsible person in charge, or by leaving it at the person's usual place of residence with a person of suitable age and discretion; (2) By telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid; (3) By mail or deposit with the United States Postal Service properly stamped and addressed; or (4) By an other means that is in conformity with an order of the Rental Housing Commission or the Rent Administrator in any proceeding.

The record does not indicate that the housing provider used any of the aforementioned methods of service to notify the tenants of the motion to dismiss. The Commission concludes that the hearing examiner erred when he dismissed TP 28,122 on the determination that the property was exempt, when the record did not include the motion to dismiss, or proof that the motion had been served on the tenants. The hearing examiner is reversed on this issue.

B. Whether the hearing examiner erred when he determined that the property was exempt and dismissed TP 28,122 without affording the tenants a hearing in accordance with the DCAPA, D.C. OFFICIAL CODE § 2-509(a) (2001) and 14 DCMR § 3903.1 (1991).

A party is entitled to a hearing according to D.C. OFFICIAL CODE § 2-509(a) (2001) which provides:

> In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Mayor or the agency determines that

> the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto …

A party's right to a hearing is reaffirmed in § 3903.1 which states: "[t]he parties to petitions before the Rent Administrator have a right to a hearing in accordance with the provisions of the Act and chapter 40." The record indicates that the hearing examiner granted the housing provider's motion to dismiss TP 28,122, without a hearing, thereby negating the tenants right to a hearing. The Commission concludes that the hearing examiner erred when he dismissed TP 28,122 on the determination that the property was exempt without affording the tenants a hearing. The hearing examiner is reversed on this issue, and the matter is remanded for a hearing de novo.

C. Whether the hearing examiner erred when he determined that the property was exempt and dismissed TP 28,122 when there was no record proof that the housing accommodation is exempt from the Rental Housing Act of 1985 pursuant the District of Columbia Housing Finance Agency Act.

D. Whether the hearing examiner erred when he held that once financing is approved by the Housing Finance Agency, a housing accommodation is exempt for all purposes, including previously filed complaints with RACD.

In Vista Edgewood Terrace v. Rascoe, TP 24,858 (RHC Oct. 13, 2000), the Commission held that "in each instance of a claimed exemption, the housing provider has the burden of proof." Vista Edgewood Terrace at 12. This includes cases of exemption claimed under the DCHFA Act. Id. at 8. See Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293, 1297 (D.C. 1990); Revithes v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1007, 1017 (D.C. 1987); Remin v. District of Columbia

Rental Hous. Comm'n, 471 A.2d 275, 279 (D.C. 1984) and Baxter v. Jackson, TP 24,370 (RHC 15, 2000). In Vista Edgewood Terrace the Commission held:

> [t]he 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. We conclude, some evidence of exemption must be presented at the OAD hearing, not merely an assertion, or oral statement, or the Registration/Claim Exemption Form, for the Commission to review to determine the record contains substantial evidence to support the claim of exemption. D.C. CODE § 45-2526 (h).

Vista Edgewood Terrace at 12-13. There are no findings of fact or conclusions of law to indicate whether or not the housing provider met its burden of proof in establishing that the property was exempt, because the hearing examiner adopted the findings of fact and conclusions of law established in New Capitol Park Twin Towers Tenants.

In Albemarle Tenants Assoc. v. Albemarle Towers Co., CI 20,429, 20,523 (RHC June 25, 1992), the Commission stated that a hearing examiner's decision and order must be based on substantial evidence from the record, and D.C. OFFICIAL CODE § 42-3502.16(h) (2001) reads:

> [T]he Rental Housing Commission may reverse, in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this chapter, or unsupported by substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision.

Albemarle Tenants Assoc. at 13-14. The record does not contain any proof that the property at 201 I Street, S.W. was approved for financing by the Housing Finance Agency, a violation of the law established in Albemarle Tenants Assoc.

The Commission concludes that the hearing examiner erred when he dismissed TP 28,122 on the determination that the property was exempt, when the record does not

contain proof that the property is exempt from the rent stabilization provisions of the Act. The Commission also concludes that the hearing examiner erred when he held that once financing is approved by the Housing Finance Agency, a housing accommodation is exempt for all purposes, including previously filed complaints with RACD, when the record contains no evidence of the exemption. Accordingly, the Commission reverses the hearing examiner.

E. Whether the hearing examiner erred when he failed to mail the order dismissing the petition by certified mail or another form of service that assures delivery.

According to D.C. OFFICIAL CODE § 42-3502.16(j) (2001), "[a] copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by certified mail or other form of service which assures delivery of the decision to the parties." (emphasis added). See Joyce v. District of Columbia Rental Hous. Comm'n, 741A.2d 24 (D.C. 1999). The certificate of service on the order to dismiss TP 28,122 contained the following: the addresses of both the tenants and the housing provider, the date the order was rendered, and the signature of the certifying party. The language used states: "I [hereby certify], that I caused to be mailed on this Aug 16 2004, the Decision and Order in Tenant Petition 27,067 to the above listed parties." Utsey v. Am. Rental Mgmt. Co., TP 28,122 (RACD Aug. 16, 2004). The language used does not state that the motion to dismiss was sent by certified mail or other form of service, which assures delivery. The record does not indicate that the Rent Administrator mailed the notices of dismissal by certified mail or other form of service which assure delivery. The Commission concludes that the hearing examiner erred when

he failed to mail the order dismissing the petition by certified mail or another form of service that assures delivery. The hearing examiner is reversed on this issue.

F. Whether the hearing examiner erred when he failed to include findings of fact and conclusions of law in the August 16, 2004 order.

Pursuant to D.C. OFFICIAL CODE § 2-509 (2001):

> 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...

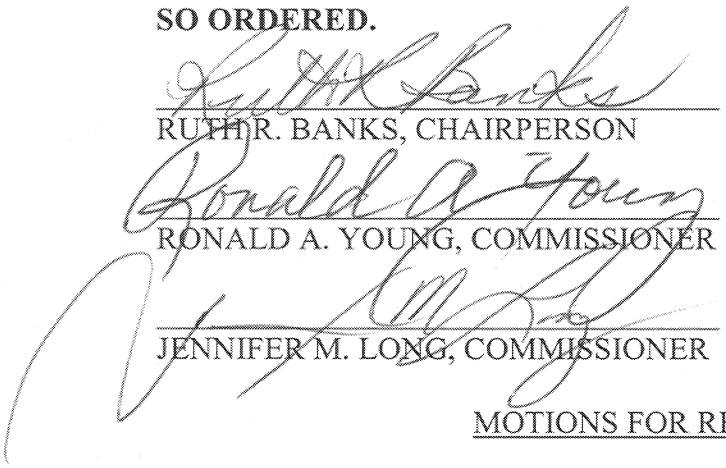
The hearing examiner in the instant case "amend[ed] and adopt[ed] the findings and conclusion made in the December 30, 2003 Order in TP 27,813." Utsey v. Am. Rental Mgmt. Co., TP 28,122 (RACD Aug. 16, 2004) at 2.[1] The hearing examiner's adoption of the findings of fact and conclusions of law from New Capitol Park Twin Towers Tenants was error. The hearing examiner should have made findings of fact and conclusions of law concerning the facts in the record of the instant case. The Commission concludes that the hearing examiner erred when he failed to include findings of fact and conclusions of law from TP 28,122 in the August 16, 2004 order.

[1] The Order in 27,813 was not sent by priority mail or other form of service which assures delivery. The certificate of service did not reflect delivery in accordance with D.C. OFFICIAL CODE § 42-3502.16(j) (2001).

IV. CONCLUSION

The hearing examiner's decision is reversed and remanded to the Rent Administrator for a hearing de novo. The Commission instructs the Rent Administrator to: 1) issue the hearing notices by priority mail with delivery confirmation; 2) confirm delivery of the hearing notices before holding the hearing; and 3) issue a decision and order containing findings of fact and conclusions of law.

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 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 hereby certify that a copy of the foregoing Decision and Order in TP 28,122 was mailed by priority mail with delivery confirmation, postage prepaid, this 28th day of June 2005 to:

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