

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,396

In re: 4801 Connecticut Avenue, N.W., Unit 316

Ward Three (3)

ALVIN L. AUBINOE INC.
Housing Provider/Appellant/Cross-Appellee

v.

KATHRYN HARRIS
Tenant/Appellee/Cross-Appellant

REMAND ORDER

June 13, 2007

YOUNG, CHAIRMAN. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission), pursuant to 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 (2004), govern the proceedings.

This case is before the Commission pursuant to a notice of appeal filed by the housing provider in HRA on June 21, 2006 and received in the Commission on June 29, 2006, and a cross appeal filed by the tenant on June 29, 2006. In accordance with

the regulations,¹ the Commission requested from RACD that the certified file be transmitted to the Commission. 14 DCMR § 3804 (2004). The Office of the Rent Administrator transmitted the certified record to the Commission on April 10, 2007. The certified record contained 118 pages of documents, however, the certified record does not contain tapes from an evidentiary hearing held by the Office of the Rent Administrator. Also absent from the certified record is a copy of the final decision and order issued by the Rent Administrator in this case.

Ther DCAPA provides that the agency shall maintain a record, including testimony, of its hearings. The relevant part of the DCAPA states:

The Mayor or the agency shall maintain an official record in each contested case, to include testimony and exhibits, but it shall not be necessary to make any transcription unless a copy of such record is timely requested by any party to such case, or transcription is required by law.

D.C. OFFICIAL CODE § 2-509(c) (2001). The Act, D.C. OFFICIAL CODE § 42-3502.16(h) (2001) requires that the Commission consider the “substantial evidence on the record” from RACD for review of the decision on appeal. A part of the substantial evidence on the record to be considered by the Commission is the testimony on the hearing tapes required by 14 DCMR § 4006.1 (2004).² In Mellon Prop. Mgmt. Co. v. Jimoh, TP 23,467 (RHC Apr. 24, 1997), the Commission held, “without the complete hearing record, we cannot properly determine whether the examiner’s findings were based upon substantial evidence in the record.” See also Wheeler v. District of Columbia Bd. of Zoning

¹ The applicable regulation, 14 DCMR § 3804 (2004), states:

Upon receipt of a notice of appeal, the Commission shall request in writing that the Rent Administrator forward the complete record of the case, including all tape recordings made at any hearing held before the hearing examiner.

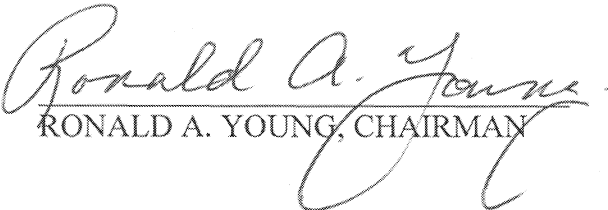
² 14 DCMR § 4006.1 (2004), provides, “The entire proceedings of hearings and other matters shall be recorded on tape, which shall remain in the custody of the Rent Administrator at all times.”

Adjustment, 395 A.2d 85 (D.C. 1978); Williams v. Poretsky Mgmt. Co., Inc., TP 23,625 (RHC July 11, 1966); Allen v. Yoon, TP 21,804 (RHC Aug. 7, 1992); Hashim v. Peerless Prop., TP 21,877 (RHC Aug. 5, 1992). The Commission has held, when reviewing a record with missing tapes, “[w]here issues on appeal depend for their resolution on the record of the hearing ... we cannot proceed to decision. Instead, it is necessary for us to remand to the Rent Administrator for a new hearing.” Sibert v. Barros and Co., TP 12,019 (RHC July 24, 1989) at 2-3.

The Commission contacted the Office of the Rent Administrator and requested that a thorough search for the tape(s) be made. The Office of the Rent Administrator has been unable to locate the tape(s) of the hearing in this case. In other similar circumstances of lost hearing tape(s), the Commission has remanded the case to the Rent Administrator for a hearing de novo. See Shapiro v. Comer, TP 21,742 (RHC Apr. 24, 1997), Holberg v. Davis, TP 23,529 (RHC Apr. 11, 1996), Monroe v. Hanes, TP 10,653 (RHC June 2, 1983).

Accordingly, the Commission remands this case to the Office of Administrative Hearings³ for an expedited hearing de novo due to the loss of the hearing tapes by RACD.

SO ORDERED.


RONALD A. YOUNG, CHAIRMAN

³ The Office of Administrative Hearings Establishment Act of 2001, D.C. OFFICIAL CODE § 2-1831.01 provides:

(a) Section 6(b-1) (D.C. Official Code § 2-1831.03(b-1)) is amended as follows:

(1) In addition to those agencies listed in subsections (a) and (b) of this section, as of January 1, 2006, this chapter shall apply to adjudicated cases under the jurisdiction of the Rent Administrator in the Department of Consumer and Regulatory Affairs.

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), 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:

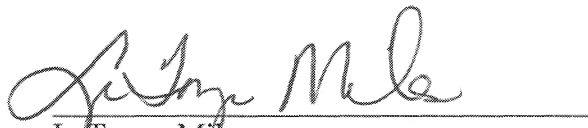
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Remand in TP 28,396 was sent by priority mail, with delivery confirmation, postage prepaid, this 13th day of **June 2007**, to:

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