

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

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OFFICE OF ADMINISTRATIVE HEARINGS
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2620 13TH STREET NW TENANTS
ASSOCIATION, INC.
Tenants/Petitioners,

v.

2620 LIMITED PARTNERSHIP
Housing Provider/Respondent

Case No.: RH-TP-06-28770
In re: 2620 13th Street, NW

FINAL ORDER

I. Introduction

On August 23, 2006, Fathy Adam filed Tenant Petition 28,770 on behalf of Tenant/Petitioner 2620 13th Street Tenants Association against Housing Provider/Respondent 2620 Limited Partnership alleging that Housing Provider violated the Rental Housing Act of 1985¹ by increasing the rent for rental units in the housing accommodation while the units were not in substantial compliance with the housing regulations; failing to register the housing accommodation with the Rental Accommodation and Conversion Division (RACD), Department

¹ Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*) (“Rental Housing Act” or “Act”).

of Consumer and Regulatory Affairs (DCRA);² and substantially reducing services and facilities provided in connection with rental units in the housing accommodation.

Housing Provider has moved to dismiss this case with prejudice on grounds that the Association's complaints are grounded in the rent stabilization provisions of the Rental Housing Act and the housing accommodation is exempt from those provisions. A hearing was held on Housing Provider's motion on July 8, 2009. Tenants Patricia Carbajal (formerly Patricia Manrique) and Maria Hsu appeared on behalf of the Association.³ At the Association's request, the hearing was held with the assistance of a spanish language interpreter. Joseph G. Kisha, appeared for Housing Provider with counsel, Lisa Dessell, Esquire.

Based on the record in this matter, I find that the housing accommodation is exempt from the rent stabilization provisions of the Rental Housing Act and grant Housing Provider's motion to dismiss this case with prejudice.

II. Findings of Fact

1. The housing accommodation at issue is a 44 unit apartment building located at 2620 13th Street, NW.

² Effective October 1, 2007, the functions of RACD, DCRA, were transferred to the Rental Accommodations Division, Department of Housing and Community Development. The transfer has no effect on the disposition of this case.

³ The evidentiary hearing was continued for nearly two years to afford the Association the opportunity to obtain legal counsel. Beatriz Molina signed in as a tenant, but did not participate in the evidentiary hearing.

2. In February 1987, Housing Provider⁴ and the District of Columbia Department of Housing and Community Development (DHCD) made a Rental Rehabilitation Loan Program Leasehold Deed of Trust, wherein the parties acknowledged Housing Provider's indebtedness to the District of Columbia government for a \$220,000 interest free loan to finance the purchase and rehabilitation of the housing accommodation as rental units for persons with low to moderate income. In exchange for the loan, Housing Provider conveyed a leasehold interest in the property to the District government. Respondent's Exhibit (RX) 201.⁵
3. On April 27, 1987, and July 29, 1987, DCRA issued building permits authorizing Housing Provider to refurbish and substantially rehabilitate existing apartments in the housing accommodation. RX 207.
4. By October 1987, Housing Provider had secured \$176,220 of the \$220,000 loan from the Rental Rehabilitation Loan Program (RRLP) and \$159,000 from the Land Acquisition for Development Opportunities (LAHDO) program to purchase the housing accommodation. Like the RRLP, LAHDO was intended to facilitate the rehabilitation and development of rental housing for persons with low to moderate income and was funded by the District of

⁴Since 1984, Housing Provider has conducted business pertaining to the housing accommodation as First Housing and Construction Corporation; Warner Apartments Limited Partnership; and 2620 Limited Partnership. Joe Kisha, who appeared for Housing Provider in this matter, has been a partner and/or president of each of the entities at all times relevant to this tenant petition.

⁵ RX 201 at paragraph 9 provides that: "if the property has twenty-five (25) or more dwelling units, and if the instance of default is the conversion of any or all of said units to condominium use or to cooperative use not affordable for lower income households as defined above, then the unpaid balance of the principal of the full initial amount of the loan shall be due and payable without benefit to Grantor [Housing Provider] of the annual five (5) percentum reductions otherwise made by the Lender [DHCD]. "

Columbia government and administered by DHCD. RXs 200, 201. On October 28, 1987, Housing Provider sought confirmation from DHCD that it would commit a total of \$413,872 in permanent financing towards Housing Provider's purchase of the housing accommodation, including an additional \$78,652 that would be transferred to Housing Provider from RRLP and LAHDO before closing on the property on October 29, 1987. RX 200.

5. On October 23, 1987, Housing Provider filed a Registration/Claim of Exemption Form, with RACD claiming that the housing accommodation was exempt from the rent control provisions of the Rental Housing Act because the rental units were owned or subsidized by the District government. The RACD Claim of Exemption Number is 509254. RX 202.
6. On October 29, 1987, Housing Provider wrote a letter to the Rent Administrator, RACD, requesting a certificate of assurance of exemption from rent control because the housing accommodation was vacant in 1984 when his company first became interested in it; the property was continuously vacant since then; and Housing Provider had obtained a building permit to substantially rehabilitate the property for rental use. On the same day, Housing Provider filed a Registration/Claim of Exemption Form with RACD claiming that the housing accommodation was exempt from rent control because the building had been continuously vacant and not subject to a rental agreement since January 1, 1985. The RACD Claim of Exemption Number is 509254, the same number used on the form claiming an exemption because the mortgage was subsidized by the District government. RXs 203, 204.
7. On October 1, 1987, DCRA issued a Certificate of Occupancy for the housing accommodation for use as a 44 unit apartment building. RX 206.

III. Discussion and Conclusions of Law

This matter is governed by the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*) (DCAPA); the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*); substantive rules implementing the Rental Housing Act at 14 District of Columbia Municipal Regulations (DCMR) 4100 - 4399; the Office of Administrative Hearings Establishment Act at D.C. Official Code § 2-1831.03(b-1)(1), which authorizes OAH to adjudicate rental housing cases; and OAH procedural rules at 1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.*

Housing Provider has moved this administrative court to dismiss this matter with prejudice on grounds that the housing accommodation is exempt from the rent stabilization provisions of the Rental Housing Act, which establishes the Association's complaints in this matter.⁶ Housing Provider has the burden of proving that the housing accommodation is exempt by credible, reliable evidence⁷ and has met its burden.

Housing Provider has claimed that the property is exempt because the mortgage for the housing accommodation was subsidized by the District government.⁸ Neither the terms

⁶ The rent stabilization provisions of the Rental Housing Act are codified in Subchapter II of the Act. Authorization for the Association's services and facilities complaint is codified in Subchapter II at D.C. Official Code § 42-3502.11; authorization for the complaint that Housing Provider increased rents while the housing accommodation was not in substantial compliance with the housing regulations is codified in Subchapter II at D.C. Official Code § 42-3502.08 (a)(1)(A); registrations requirements are codified in Subchapter II at D.C. Official Code § 42-3502.05(f).

⁷ *Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293, 1297 (D.C. 1990); *See Revithes v. D.C. Rental Hous. Comm'n*, 536 A.2d 1007, 1017 (D.C. 1987).

⁸ D.C. Official Code § 42-3502.05(a)(1).

“mortgage” nor “subsidized” are defined for purposes of the Act. The term “mortgage” generally is defined to mean “a legal agreement that creates an interest in real estate between a borrower and a lender;”⁹ “subsidy” generally is defined to mean “monetary assistance granted by a government to a person or group in support of an enterprise regarded as being in the public interest” and “financial assistance given by one person or government to another.”¹⁰ I find that the mortgage for the housing accommodation was subsidized by the District government based on the following uncontested evidence proffered by Housing Provider.

- Credible testimony that Housing Provider secured funding from the District government to purchase the property from two programs intended to facilitate the development of rental housing for persons with low to moderate incomes – the RRLP and LAHDO program then administered by DHCD.
- A copy of a DHCD, Neighborhood Administration Program, Leasehold Deed of Trust, made on February 5, 1987, evincing a \$220,000 interest free loan to Housing Provider from DHCD to purchase the housing accommodation and the conveyance of a leasehold deed of trust from Housing Provider to DHCD in exchange for the loan. RX 201.
- A letter from Housing Provider to DHCD, dated October 28, 1987, acknowledging permanent financing and seeking confirmation of funding for the housing accommodation as follows: \$176,220 paid from RRLP; \$159,000 paid by LAHDO; and the expectation of an additional \$78,652 from DHCD before closing on the property on October 29, 1987, for a total of \$413,872. RX 200.

⁹ THE AMERICAN HERITAGE NEW DICTIONARY OF CULTURAL LITERACY (3d. ed. 2005).

¹⁰ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2009).

- A Registration/Claim of Exemption Form, dated stamped by RACD on October 29, 1987, claiming an exemption for the housing accommodation on grounds that the property was subsidized by the District government. RX 202. Rules issued to implement the Rental Housing Act require owners of exempt properties to file a claim of exemption with RACD.¹¹ The evidence shows that Housing provider has satisfied the requirement.

Housing Provider also has claimed that the property is exempt because the housing accommodation had been continuously vacant and not subject to a rental agreement from January 1, 1985, until Housing Provider first offered the housing accommodation for rent.¹² I find that the housing accommodation qualifies for this exemption based on the following uncontested evidence proffered by Housing Provider.

- Credible testimony that the housing accommodation was vacant when Housing Provider began to consider purchase of the property in 1984; and a letter to RACD dated October 29, 1987, explaining that the housing accommodation was vacant in 1984 and requesting an exemption from rent control on grounds that the property was continuously vacant since January 1, 1985. RX 204.
- A copy of a building permit, issued by DCRA in April 1987 and amended in July 1987, authorizing Housing Provider to substantially renovate the housing accommodation. RX 207. There is no evidence to indicate that tenants were displaced to accommodate the substantial renovation.

¹¹ 14 District of Columbia Code of Municipal Regulations (DCMR) 4101.1.

¹² D.C. Official Code § 42-3502.05(a)(4).

- A Registration/Claim of Exemption Form, bearing an October 29, 1987, RACD date stamp, wherein Housing Provider claimed that the property was exempt because it had been continuously vacant since January 1, 1985, which shows that Housing Provider satisfied the requirement to file a claim of exemption.¹³

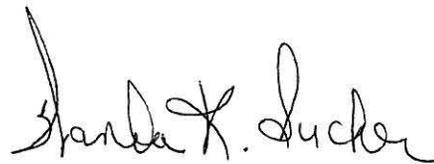
IV. Order

Therefore, it is, this 28th day of July, 2009:

ORDERED, that Housing Provider's motion to dismiss this case is **GRANTED**; and it is further

ORDERED, that Case No. RH-TP-06-28770 is **DISMISSED WITH PREJUDICE**; and its is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this order are attached.



Wanda R. Tucker
Administrative Law Judge

¹³ 14 DCMR 4101.1.

MOTIONS FOR RECONSIDERATION

Any party served with a final order may file a motion for reconsideration within ten (10) days of service of the final order in accordance with 1 DCMR 2937. When the final order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2811.5.

A motion for reconsideration shall be granted only if there has been an intervening change in the law; if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; if there is a clear error of law in the final order; if the final order contains typographical, numerical, or technical errors; or if a party shows that there was a good reason for not attending the hearing.

The Administrative Law Judge has thirty (30) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 30 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the Final Order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, D.C. 20002
(202) 442-8949

**Certificate of Service:
By Priority Mail/ Delivery Confirmation
(Postage Paid)**

Maria Hsu
2620 13th Street, NW
Unit C302
Washington, DC 20009

Patricia Manrique
2620 13th Street, NW
Unit 201B
Washington, DC 20009

Lorena Ramirez
2620 13th Street, NW
Unit A304
Washington, DC 20009

Lisa J. Dessel, Esquire
Musolino & Dessel
1615 L Street, NW
Suite 440
Washington, DC 20036

By Interagency Mail

District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, DC 20002

Keith Anderson
Acting Rent Administrator
Rental Accommodations Division
Department of Housing and Community Development
1800 Martin Luther King Avenue, SE
Washington, DC 20020

I hereby certify that on 7-29, 2009 this document was caused to be served upon the above-named parties at the address(es) and by the means stated.


Clerk / Deputy Clerk