

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 3788

In re: 2480 – 16th Street, N.W.

Ward Three (3)

HAGNER MANAGEMENT CORPORATION

Housing Provider/Appellant/Cross-Appellee

v.

BENOIT BROOKENS, et al.
Tenants/Appellees/Cross-Appellants

December 21, 2001

ORDER ON MOTION FOR RECONSIDERATION

YOUNG, COMMISSIONER: This motion for reconsideration is before the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985, D.C. Law 6-10, D.C. OFFICIAL CODE § 42-3501.01 et seq., and the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE § 2-501, et seq. The regulations, 14 DCMR § 3800 et seq., also apply.

I. PROCEDURAL HISTORY

The instant motion for reconsideration is before the Commission pursuant to an order issued by the Commission in Hagner Management Corp. v. Brookens, TP 3788 (RHC Oct. 12, 2001). In that order the Commission denied the “Motion of Housing Provider/Appellant to Establish Escrow Account and to Dismiss Appeal.” In that motion filed on February 28, 2001, Hagner Management Corp., (Hagner) the housing provider, moved the Commission to enter an order authorizing and directing the housing provider (as a condition for dismissal of the appeal), to establish an escrow account for the purpose

of the payment of awards made to the tenants of the Dorchester House Apartments as ordered by the Rent Administrator in Brookens v. Hagner Management Corp., TP 3788 (OAD Feb. 14, 2001).

In the decision and order establishing damages Hearing Examiner Gerald Roper stated, in his findings of fact under the heading "Computation of Refund/Damages," the following:

Based on the evidence, 33 tenants were overcharged rent during the period June 1, 1977 to June 18, 1981 and are entitled to a rent refund for the rent overcharge, interest on the overcharge for the violation period, and treble damages on the overcharge (excluding interest).

Id. at 14. The hearing examiner ordered rent refunds and interest totaling \$142,535.04.

In its Motion of Housing Provider/Appellant to Establish Escrow Account and to Dismiss Appeal, filed with the Commission on March 12, 2001, the housing provider argued that an escrow account in the amount of \$88,849.56 was sufficient to insure payment to twenty tenants who, according to the housing provider, remained parties to the OAD litigation.¹

II. MOTION FOR RECONSIDERATION

In its motion for reconsideration the housing provider states:

On February 28, 2001, Hagner Management Corporation, Housing Provider/Appellant/Cross-Appellee ("Housing Provider"), filed a Motion to Establish Escrow Account and to Dismiss Appeal (the "Motion"). In that Motion, Housing Provider argued that the Commission has the authority to grant relief to the Housing Provider by recognizing the Housing Provider's right to determine offsets against the awards made by the Rent Administrator in the underlying decision in this case, based on a settlement agreement reached between several of the tenant petitioners and the Housing Provider in a case captioned Hagner Management Corporation v. Maureen Abbott, Civil Action No. L&T 97220-81. In its Order dated October 12, 2001, the Commission declined to rule on the issue presented to it, apparently primarily because the issue was not raised before the Rent Administrator.

¹ See Hagner Management Corp. v. Brookens, TP 3788 (RHC Oct. 12, 2001) at 4.

The Commission's Order misses the entire point of the Housing Provider's request for relief in this case. The Commission has previously ruled on at least two occasions that the Rent Administrator does not have authority to adjudicate offsets against rent. *See Newton Towers Limited Partnership v. Newton House Tenants Association*, TP 20005 (RHC February 1, 1988); *Edward Russell v. Smithy Braedon Property Company*, TP 22361 (RHC July 20, 1995). Therefore, whether or not the Housing Provider raised the issue before the Rent Administrator is totally irrelevant because the Rent Administrator could not have granted the relief requested in any event. The only question presented to the Commission is whether it can and will, in the exercise of its jurisdiction, grant the relief requested. ... The Commission Order does not state that it does not have jurisdiction to grant the relief requested by the Housing Provider, which infers that the Commission thereby acknowledges that it does have such jurisdiction. Only if the Commission does not have such jurisdiction should it decline to grant the relief requested. In the event, however, that the Commission should decline to grant such relief, it should articulate the basis of its ruling so that, should similar situations arise in the future, litigants will be on notice as to the limits of the Commission's jurisdiction in such instances.

Memorandum of Points and Authorities in Support of Motion for Reconsideration at 1-2.

III. DISCUSSION OF THE ISSUES

The issues presented the Commission on reconsideration are whether the Commission, in the exercise of its jurisdiction, "can and will" grant the housing provider's request to order the establishment of an escrow account.

A. The Commission's Regulations

The Commission's authority to require a party to establish an escrow account is embodied in the Commission's rules at 14 DCMR § 3806. Those regulations state, in part:

- 3806.1 Whenever the Commission orders, or these rules require an escrow account be established by a party, the conditions set forth in this section shall apply.

- 3806.2 The amount of money specified in the order shall be placed in a bank or other financial institution within the District of Columbia.

- 3806.3 The deposit shall be placed in an account that pays the prevailing rate of interest.
- 3806.4 The sum deposited shall be placed in escrow and outside of the control of the party depositor.
- 3806.5 The escrow agent shall be unable to release the sum deposited in any way other than as ordered by the Commission.
- 3806.6 The party establishing the escrow account shall file a copy of the escrow agreement with the Commission and the opposing party.
- 3806.7 The escrow account shall be established within the time period specified by the Commission.

Accordingly, pursuant to its regulations the Commission has the authority to establish escrow accounts.

B. The Escrow Motion

In its October 12, 2001 order denying the housing provider's request for an order establishing an escrow account, the Commission stated:

The nature of the housing provider's amended escrow account request would require that the Commission settle an issue which was not the subject of an appeal to the Rent Administrator, that is, whether the 15 tenants named in the Amended Motion of Housing Provider/Appellant to Establish Escrow Account and to Dismiss Appeal should be excluded from receiving rent refunds ordered by the Rent Administrator's decision and order. This issue was not raised on appeal to the Commission by the housing provider, nor does the housing provider reference a Rent Administrator decision which adopted its assertion that the refunds to the tenants enumerated in its motion could properly be offset. The Commission will not consider issues not raised at the RACD, nor will it consider issues not raised on appeal. See Bernstein v. Estrill, TP 21,792 (RHC Aug. 12, 1991), Terrell v. Estrada, TP 20,007 (RHC May 30, 1991), citing Bealer v. District of Columbia Rental Hous. Comm'n., 472 A.2d 901 (D.C. 1984). Further the Commission's rule at 14 DCMR § 3807.5, provides that, "[t]he Commission shall not receive new evidence on appeal." Therefore, the Commission declines to rule on this issue.

Hagner Management Corp. v. Brookens, TP 3788 (RHC Oct. 12, 2001) at 5-6. The

housing provider's escrow account request was as a result of a Commission remand in Hagner Management Corp. v. Brookens, TP 3788 (RHC Feb. 4, 1999). In that decision the Commission stated:

The Commission also concludes that the hearing examiner failed to provide findings of fact and conclusions of law on each of the rent overcharges and explain how they were supported by the reliable, probative, and substantial evidence in the record on the amount of damages for each tenant. D.C. Code § 1-1509(e). The hearing examiner is instructed to make detailed findings of fact on the contested fact of rent overcharges from the record. He must state what document or testimony was used for the factual basis for each rent overcharge figure. Citizens Association of Georgetown v. District of Columbia Zoning Commission, 402 A.2d 36, 41 (D.C. 1979).

Id. at 36.


The OAD decision and order was issued in response to the Commission remand. In his decision in Brookens v. Hagner Management Corp., TP 3788 (OAD Feb. 14, 2001), the hearing examiner concluded that 33 tenants were entitled to rent refunds and interest totaling \$142,535.04.


The housing provider asserted, in its motion for establishment of an escrow account that the hearing examiner's award should be offset, for purposes of escrow, to 20 tenants and \$88,849.56, as a result of a Stipulation of Settlement in Hagner Management Corporation v. Abbott, Civil Action No. L&T 97220-81 (Apr. 11, 1983).

The housing provider correctly states that the Commission has previously held in Newton Towers Ltd. Partnership v. Newton House Tenants Ass'n, TP 20,005 (RHC Feb. 1, 1988) and Russell v. Smithy Braedon Property Co., TP 22,361 (RHC July 20, 1995), that the Rent Administrator lacks the authority to adjudicate offsets against rent. The Commission further recognizes that the Rent Administrator and Commission are bound by the rulings of the Court. See Berns v. Dean, TP 20,059 (May 12, 1989). However, as

is the case with the Rent Administrator, the Act grants the Commission no authority to grant offsets of damage awards, rent refunds or interest against rents. However, pursuant to the provisions of the Act, D.C. OFFICIAL CODE § 3502.18,² orders of the Rent Administrator and the Commission are enforceable in the Superior Court of the District of Columbia, where offsets may be considered. Accordingly, the housing provider's motion on reconsideration is denied.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

² D.C. OFFICIAL CODE § 3502.18, provides:

The Rental Housing Commission, Rent Administrator, or any affected housing provider or tenant may commence a civil action in the Superior Court of the District of Columbia to enforce any rule or decision issued under this chapter.

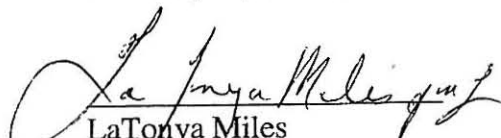
CERTIFICATE OF SERVICE

I certify that a copy of housing provider's **MOTION** for **RECONSIDERATION** of **ORDER** denying the **HOUSING PROVIDER'S MOTIONS TO ESTABLISH ESCROW ACCOUNT AND TO DISMISS APPEAL** in TP 3788 was mailed certified mail postage prepaid this, **21st** day of **December, 2001**, to the following persons:

Richard Luchs, Esquire
c/o Greenstein Delorme and Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036

Benoit Brookens
P.O. Box 2551
Washington, D.C. 20013-2551

Ronald G. Isaac, Esquire
Counsel for Dorchester Tenants
P.O. Box 2551
Washington, D.C. 20013-2551


LaTonya Miles
Contact Representative