

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CI 20,753 and CI 20,754

In re: 2300 Good Hope Road, S.E. and 2330 Good Hope Road, S.E.

Ward Seven (7)

TENANTS OF 2300 AND 2330 GOOD HOPE ROAD, S.E.
Tenants/Appellants

v.

MARBURY PLAZA, L.L.C. and A&A MARBURY, LLC
Housing Providers/Appellees

DECISION AND ORDER

March 10, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD).¹ 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- 2-510 (Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over the conduct of hearings on tenant petitions from RACD and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Supp. 2005). The functions and duties of the RACD were transferred to the Department of Housing and Community Development (DHCD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008)).

I. PROCEDURAL HISTORY²

On November 9, 2000, Marbury Plaza, LLC filed capital improvement petitions CI 20,753 and CI 20,754 (collectively, “Capital Improvement Petitions”) for 2300 and 2330 Good Hope Road, S.E. (collectively, “Housing Accommodations”), pursuant to D.C. CODE § 45-2520 (Supp. 1999).³ On December 18, 2008, the Commission granted the motion of A&A Marbury, LLC, who had purchased the Housing Accommodations on March 31, 2004, to intervene as a housing provider in this case. Tenants of 2300 and 2330 Good Hope Rd., S.E. v. Marbury Plaza,

² The Commission notes that the complete procedural history prior to April 18, 2005 is set forth in the Commission’s Decision and Order of the same date: Marbury Plaza, LLC v. Tenants of 2300 & 2330 Good Hope Rd., S.E., CI 20,753 and CI 20,754 (RHC Apr. 18, 2005). The Commission, in its discretion, sets forth herein only those facts relevant to the instant Decision and Order.

³ The provisions of the Act that govern the Commission’s consideration of this appeal are set out in the 1999 supplement to the 1985 edition of the D.C. OFFICIAL CODE, and unless otherwise indicated, all references in this opinion to the D.C. OFFICIAL CODE are to the 1999 supplement to the 1985 edition. D.C. OFFICIAL CODE § 45-2520 provides, in relevant part:

- (a) On petition by the housing provider, the Rent Administrator may approve a rent adjustment to cover the cost of capital improvements to a rental unit or housing accommodation if:
 - (1) The improvement would protect, or enhance the health, safety, and security of the tenants or the habitability of the housing accommodation; . . .
- (b) The housing provider shall establish to the satisfaction of the Rent Administrator:
 - (1) That the improvements would be considered depreciable under the Internal Revenue Code (26 U.S.C.);
 - (2) The amount and cost of the improvement including interest and service charges; and
 - (3) That required governmental permits and approvals have been secured
- (g) The housing provider may make capital improvements to the property before the approval of the rent adjustment by the Rent Administrator for the capital improvements where the capital improvements are immediately necessary to maintain the health or safety of the tenants
- (i) The housing provider may petition the Rent Administrator for approval of the rent adjustment for any capital improvements made under section (g) of this section, if the petition is filed with the Rent Administrator within 10 calendar days from the installation of the capital improvements.

This section of the Act is currently codified at D.C. OFFICIAL CODE § 42-3502.10 (2001).

LLC, CI 20,753 and CI 20,754 (RHC Dec. 18, 2008).⁴ Hereinafter the Commission shall refer to Marbury Plaza, LLC and A&A Marbury, LLC, collectively, as “Housing Provider.”

On December 10, 2001, RACD hearing examiner Gerald Roper (Hearing Examiner Roper) issued a decision and order: Marbury Plaza, LLC v. Tenants of 2300 & 2330 Good Hope Rd., S.E., CI 20,753 (RACD Dec. 12, 2001) (Final Order), approving the Capital Improvement Petitions. R. at 153-75.

A number of tenants⁵ filed a Notice of Appeal on December 28, 2001, and the Commission issued an order on March 14, 2002. Tenants of 2300 and 2330 Good Hope Rd., S.E., v. Marbury Plaza, LLC, CI 20,753 (RHC Mar. 14, 2002). The Commission remanded the case to RACD for a hearing to make specific findings of fact and conclusions of law on the identity of the tenants who were parties to the action, and to identify the tenants who were eligible for the elderly and disabled exemption. *Id.* at 16-17. The Commission directed the Housing Provider to serve each tenant in the Housing Accommodations with the exemption form for elderly or disabled status. *Id.* at 15

On March 3, 2003, Hearing Examiner Roper issued an order after remand that listed the tenants who were parties to the case and the tenants who were qualified for the elderly and disabled exemption from the capital improvement surcharge. Marbury Plaza, LLC, CI 20,753 (RACD Dec. 12, 2001). The Housing Provider filed Housing Provider’s Notice of Appeal with the Commission on March 21, 2003, and the tenants filed a Notice of Appeal on April 16, 2003.

In a decision issued April 18, 2005, the Commission reversed the findings of Hearing

⁴ The Commission notes that this appeal involves two consolidated capital improvement petitions: CI 20,753 and CI 20,754. For ease of discussion, hereinafter the Commission will cite to these consolidated petitions as follows: “CI 20,753.”

⁵ The Commission notes that the complete list of the tenants of the Housing Accommodations that are parties to these capital improvement petitions is contained in the RACD order dated March 7, 2008. Marbury Plaza, LLC, CI 20,753 (RAD Mar. 7, 2009) at 1-11; R. at 309-19. Neither party has appealed the identity of the parties contained in the March 7, 2008 order.

Examiner Roper regarding the identity of the tenants who were parties to the proceedings.

Tenants of 2300 & 2330 Good Hope Rd., S.E., CI 20,753 (RHC Apr. 18, 2005). The

Commission remanded the case again to RACD with directions to issue final findings of fact that identified all of the tenants who were parties to the proceedings, all the tenants who were denied party status (with the reasons for the denial), and all of the tenants who were eligible for the elderly or disabled exemption from the capital improvement surcharge. *Id.* at 20-21. The Commission directed RACD to modify and reissue the Final Order by incorporating all revised findings of fact regarding the appropriate tenant-parties. *Id.* at 21.

On March 7, 2008, hearing examiner Keith Anderson (Hearing Examiner Anderson), with the Rental Accommodations Division (RAD) of DHCD,⁶ issued a proposed decision and order in which he listed the names of the tenants that would be considered parties to the case (hereinafter referred to collectively as “Tenants”).⁷ Marbury Plaza, LLC, CI 20,753 (RAD Mar. 7, 2009) at 1-11; R. at 309-19. Hearing Examiner Anderson incorporated into the decision the list of elderly or disabled tenants, with minor corrections, identified in the prior RACD order of March 3, 2003.⁸ *Id.* at 10; R. at 310. Additionally, the Hearing Examiner indicated that the Final Order was being reissued, pursuant to the Commission’s instructions. *Id.* at 11; R. at 309. The Final Order contains the following findings of fact:⁹

⁶ See *supra* at p. 1, n.1.

⁷ The proposed order became final on April 10, 2008, after neither party filed exceptions and objections. Marbury Plaza, LLC, CI 20,753 (RAD Mar. 7, 2008) at 12; R. at 308; see D.C. OFFICIAL CODE § 2-509(d); 14 DCMR § 4012.4.

⁸ The Commission notes that some, but not all, of the tenants designated as elderly or disabled were also identified as tenant-parties to this case. See Marbury Plaza, LLC, CI 20,753 (RAD Mar. 7, 2008) at 3-10; R. at 310-317; Marbury Plaza, LLC, CI 20,753 (RAD Mar. 3, 2003) at 4-5; R. at 278-79. Neither party has contested the identity of the elderly and disabled tenants.

⁹ The findings of fact are recited herein using the same language and paragraph numbers as appears in the Final Order.

