DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,524

In re: 3133 Connecticut Ave., N.W.

Ward Three (3)

LLOYD SIEGEL, *et al.*
Tenants/Appellants

v.

B.F. SAUL COMPANY, *et al.*
Housing Provider/Appellee

REISSUED DECISION AND ORDER[1]

September 9, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the District of Columbia (D.C.) Department of Consumer & Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversions Division (RACD).[2] 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 D.C. Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (Supp.

[1] The Commission's original Decision and Order in this case, issued on September 1, 2015 (September 1, 2015 Order), mistakenly indicated in the case caption that it was a "Draft Decision and Order", when it was intended by the Commission to reflect a final decision. The mistaken inclusion of the word "Draft" in the September 1, 2015 Order, albeit inadvertent and unintended, is regrettable for any confusion that it may have caused. Accordingly, the Commission hereby reissues the September 1, 2015 Order with a sole amendment to the case caption deleting the word "Draft." With the deletion of the word "Draft", this Reissued Decision and Order is otherwise identical in all respects to the September 1, 2015 Order.

[2] OAH assumed jurisdiction over tenant petitions from RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -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 (Sept. 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008)).

2008), and the D.C. Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On January 31, 2006, Tenant/Appellant Peter Schwartz, on behalf of the Kennedy Warren Residents Association (KWRA), residing at 3133 Connecticut Ave., N.W. (Housing Accommodation), filed Tenant Petition RH-TP-06-28,524 (Tenant Petition) with the RACD, claiming that the Housing Provider/Appellant, B.F. Saul Company (Housing Provider), violated the Act as follows: the Housing Provider filed an improper rent ceiling adjustment with RACD which was larger than the amount of rent permitted by the Act. Tenant Petition at 1-8; Record for RH-TP-06-28,524 (R.) at 10-17.

An evidentiary hearing was held in this matter on March 28 and 29, 2011, at which tenants Christine Burkhardt and Wendy Tiefenbacher,[3] and the Housing Provider appeared. OAH Rental Housing Attendance Sheet (Mar. 28, 2011); OAH Rental Housing Attendance Sheet (Mar. 29, 2011); R. at 1993-95, 2003-06. On February 3, 2012, Administrative Law Judge Wanda R. Tucker (ALJ) issued a final order: Reamer v. B.F. Saul Co., RH-TP-06-28,524 (OAH Feb. 3, 2012) (Final Order). The ALJ made the following findings of fact in the Final Order:[4]

A. Tenant Petitioners

1. On January 31, 2006, Peter Schwartz, then President of KWRA filed TP 28,524, on behalf of KWRA members. The petition charged Housing Provider with filing an improper rent ceiling with RACD.

[3] Christine Burkhardt attended both the March 28 and 29 hearing sessions; Wendy Tiefenbacher attended the March 29 hearing session. OAH Mar. 28, 2011, Rental Housing Attendance Sheet; OAH Mar. 29, 2011, Rental Housing Attendance Sheet; R. at 1993-95, 2003-06.

[4] The ALJ's findings of fact and conclusions of law appear in this decision using the language contained in the Final Order, except that the Commission has numbered the conclusions of law for purposes of administrative convenience, efficiency, and clarity.

2. KWRA filed and attached a Certificate of Election of Adjustment of General Applicability (Certificate of Election or Certificate) to TP 28,524. Tenants who leased seven of the units listed on the Certificate are Tenant Petitioners in this case.

3. KWRA did not represent a majority of the tenants in the housing accommodation on January 31, 2006.

B. Rent Ceiling

4. The District of Columbia Rental Housing Commission (Rental Housing Commission or Commission) authorized a 2.6% adjustment of general applicability in rent ceilings for rental units subject to rent control, effective May 1, 2002 (2002 rent ceiling increase).

5. David Newcome, Housing Provider's representative, and Lee Cohen, then KWRA President, entered into an oral agreement to delay implementation [of] the 2002 rent ceiling increase for the housing accommodation's units. The delay was intended to compensate residents of the housing accommodation for inconveniences attendant to the on-going construction of the housing accommodation's South Wing.

6. On January 6, 2003, Housing Provider filed a Certificate of Election with RACD to implement the 2002 rent ceiling increase for Tenants' units, effective February 1, 2003. PX 100.

7. Certificates of Election and documents pertaining to rent ceiling increases implemented prior to February 1, 2003, were maintained in the management office at the housing accommodation and were available for tenants to review during business hours or by appointment after business hours. Housing Provider did not proffer the documents as evidence during the evidentiary hearing in this case.

Final Order at 2-3 (footnotes omitted).

The ALJ made the following conclusions of law in the Final Order:

A. Jurisdiction

1. This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*) and substantive rules implementing the Act at 14 District of Columbia Municipal Regulations (DCMR) [§§] 4100 - 4399; the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*) (DCAPA); 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.*

2. Tenants' sole complaint in this case is that Housing Provider filed an improper rent ceiling adjustment with RACD. Rent ceilings were abolished, effective August 6, 2006 [sic]. Tenants filed TP 28,524 on January 31, 2006, more than six months before rent ceilings were abolished. Therefore, this complaint is properly before this administrative court.

3. Challenges to rent adjustments must be filed within three years after the adjustment. Since Tenants filed their petition on January 31, 2006, they may challenge any rent ceiling adjustment implemented between January 31, 2003, and January 31, 2006. Tenants have the burden of establishing each essential fact to support their claim by a preponderance of the evidence.

B. Tenant Petitioners in this case

4. When TP 28,524 was filed, OAH Rule [1 DCMR §] 2924 required tenant petitioners in rental housing cases to be identified individually; the presiding Administrative Law Judge to determine the identity and number of tenants represented by a tenant association if the association sought to be listed in the case caption; and the presiding Administrative Law Judge to list the association in the case caption, if a majority of tenants in the housing accommodation were represented by the association. By Order dated May 10, 2007, I ordered Tenants to provide evidence of KWRA's membership on January 31, 2006, the date the tenant petition was filed, and evidence that members authorized KWRA to represent them in this case. And, at a status conference on July 14, 2010, Tenants were directed to address Housing Provider's challenge to the participation of certain residents of the housing accommodation as tenant petitioners in this case.

5. On May 27, 2010, Tenants provided a KWRA 2006 Membership List, which identified residents who were KWRA members on January 31, 2006 (Membership List). And, on September 2, 2010, Tenants submitted written declarations by which KWRA members reasserted their past, current, and future desire to be represented by KWRA in legal proceedings related to past, pending, or future tenant petitions challenging lawful rent levels, including TP 28,524. Based on this evidence and evidence pertaining to Housing Provider's challenges to certain tenants' participation and Tenants' responses to the challenges, I ruled that KWRA did not represent a majority of the residents of the housing accommodation when the tenant petition was filed; and that the tenant petitioners in this case are the tenants of the units [sic] rental units listed

on the Certificate of Election that was attached to TP 28,524 when filed, who also were on the Membership List, signed declarations, and withstood Housing Provider's Challenges. Seven residents met the criteria:

- Andrew Reamer, Unit 317;
- Lloyd Siegel, Unit 502;
- Natalie Marrotti, Unit 523;
- Marian Gordan, Unit 723;
- Suzanne Crawford, Unit 805;
- Lynne Anne Bulan, Unit 911; and
- Mark McQuillan, Unit 1020.

6. Housing Provider argued that Andrew Reamer is not a proper tenant petitioner in this case because, on June 25, 2007, he challenged the rent ceiling at issue here in Reamer v. B.F. Saul (OAH Case No. RH-TP-07-29018), which was dismissed, with prejudice, for his failure to appear for a hearing convened on February 16, 2011. Housing Provider's argument did not prevail. A review of the file for RH-TP-07-29018 showed that Mr. Reamer challenged rent increases beginning in December 2003. And, since TP 29,018, which initiated the case, was filed on June 25, 2007, the February 2003 rent ceiling increase at issue here could not have been challenged in RH-TP-07-29018, as it was outside the three year statute of limitations for that case. Therefore, Mr. Reamer is a proper tenant petitioner in this case.

C. Rent Ceiling Increase

7. Tenants' sole complaint in this case is that Housing Provider filed an improper rent ceiling adjustment with RACD. Tenants alleged that Housing Provider filed a Certificate of Election with RACD on January 6, 2003 to implement the 2.6% 2002 rent ceiling increase, effective February 1, 2003. Tenants maintained that the rent ceiling increase was improperly filed because Housing Provider failed to file the Certificate of Election within 30 days after Housing Provider was first eligible to take the increase. Tenants proffered a copy of the Certificate of Election at issue. PX 100. The DCRA date stamp on the Certificate shows that it was filed with RACD on January 6, 2003. Tenant units are listed on the Certificate. Tenants proved their claim as follows.

8. Housing providers were required to "take and perfect" a rent ceiling adjustment to effectuate a rent ceiling increase. To "take and perfect," a housing provider had to file a Certificate of Election with RACD within 30 days following the date when the housing provider was first eligible to take the adjustment. A housing provider was "first eligible" to take the adjustment on the date the adjustment became effective. The 2002 rent

ceiling adjustment was effective on May 1, 2002. Thus, Housing Provider was first eligible to take the adjustment on May 1, 2002. Yet, Housing Provider sought to "take and perfect" the 2002 rent ceiling adjustment by filing a Certificate of Election with RACD on January 6, 2003, eight months after the adjustment became effective.

9. To rebut Tenants' claim that the rent ceiling adjustment was filed improperly, Housing Provider, [sic] asserted that implementation of the 2002 rent ceiling adjustment was delayed by agreement between KWRA and Housing Provider. Tanya Marhefka testified that in January 2003, she was the General Manager of the Kennedy-Warren Apartments. Ms. Marhefka testified, [sic] that her then supervisor, David Newcome, and Lee Cohen, the then KWRA President, orally agreed to delay implementation of the 2002 rent ceiling increase until February 1, 2003, to compensate the housing accommodation's tenants for inconveniences attendant to on-going construction of the housing accommodation's South Wing. But the agreement to delay had no legal effect.

10. In calendar years 2002 and 2003, the Act allowed rent ceilings to be established by voluntary agreement between tenants and housing providers, but only if certain requirements were met. Most notably, the voluntary agreement must have been in writing, approved by 70% of the tenants who resided in the housing accommodation, and approved by the Rent Administrator. There is no evidence that the agreement between Housing Provider and the KWRA met the requirements. And, at all times relevant, there was nothing in the Rental Housing Act that allowed an oral agreement between tenants and housing providers to supersede its rent ceiling provisions. Therefore, the "agreement" had no effect under the Act; it did not extend the time by which Housing Provider was required to take and perfect the 2002 rent ceiling adjustment.

11. This administrative court notes that, in some instances, a housing provider may not be eligible to take and perfect a rent ceiling adjustment on the date the adjustment became effective. Rules implementing the Rental Housing Act provide that:

> A housing provider may take and perfect a rent ceiling adjustment of general applicability only once in a twelve (12) month period, and a housing provider who elects to perfect a rent ceiling adjustment for a rental unit under § 206(b) of the Act shall not be eligible to take and perfect another such adjustment during the [twelve] (12) month period immediately following the date of perfection of the prior adjustment of general applicability.

12. In response to counsel's questions regarding the effective dates of rent ceiling adjustments in the three years prior to 2003, Ms. Marhefka stated her "belief" that the adjustments were taken in January of those years. If accurate, Housing Provider would not have been eligible to "take and perfect" the 2002 rent ceiling increase in May 2002, as 12 months would not have passed since the last rent ceiling increase. But, Housing Provider proffered no documentary evidence that prior adjustments were takin in January. The District of Columbia Court of Appeals has held that:

> Reporting requirements play an essential role in ensuring compliance with rent laws. The failure to timely file reports . . . can seriously impede, if not prevent appropriate enforcement action by depriving the Administrator of information which is needed to determine if a violation has occurred.
>
> . . .
>
> The annual filing requirement is for the administrative convenience of the Commission and landlords; as such, the Commission can validly require strict compliance with its provisions.

Housing Provider's testimony, unsupported by evidence that critical Certificates of Election were filed, is insufficient to establish that the date it was "first eligible' to take and perfect the 2002 rent ceiling increase was delayed because rent ceiling adjustments for Tenants' units were taken less than 12 months before May 1, 2002

13. The evidence shows that Housing Provider did not take and perfect the 2002 rent ceiling adjustment properly. Governing rules required Housing Provider to file the Certificate of Election at issue within 30 days of May 1, 2002 – the date Housing Provider was first eligible to take the adjustment. Housing Provider filed the Certificate eight months after it was first eligible to take the adjustment. Without any documentary evidence to rebut Tenants' claim, this administrative court finds that Housing Provider filed an improper rent ceiling with RACD, as Tenants claimed.

. . .[5]

14. Under governing law during the three years preceding the date TP 28,524 was filed, there was no specific penalty for improperly increasing a rent

[5] The Commission omits a recitation of the ALJ's table entitled "Tenants' Rent Ceiling Increase Effective Date, February 1, 2003." Final Order at 10.

ceiling. Thus, the general penalty provision for violations of the Act applies, which is payment of a fine to the government of the District of Columbia, but only if the violation is willful. Willfulness goes to the intention to violate the Act, as opposed to simply knowing that you have acted or failed to act in a certain way. The evidence showed that Housing Provider believed that it and KWRA could agree to delay implementation of the 2002 rent ceiling increase. This evidence does not establish an intentional violation of the Act. Therefore, this administrative court declines to impose a fine.

Final Order at 4-11 (footnotes omitted).

On February 22, 2012, Blake Nelson and Wendy Nelson filed an appeal (Nelsons' Notice of Appeal) with the Commission, in which they raise the following issues:[6]

1. It was error for the Administrative Law Judge to limit the Tenant Petition to a document attached for the purpose of proof of residency and to not allow issues raised on the face of the Tenant Petition and of which the housing provider was on notice to litigate or enter evidence of violations of the Rental Housing Act of 1985, as amended (the "Act").

2. The Administrative Law Judge erred in failing to apply the appropriate standards with respect to standing and scope of the proceeding.

3. It was error for the Administrative Law Judge to deny expansion of the proceedings.

4. It was error for the Administrative Law Judge to deny discovery.

5. It was error for the Administrative Law Judge to not order rent rollbacks.

6. It was error for the Administrative Law Judge to not order rent refunds.

7. It was error for the Administrative Law Judge to deny the motion for partial summary judgment filed in the proceeding.

8. It was error for the Administrative Law Judge to fail to impose sanctions on housing provider for its conduct with respect to the above-captioned proceeding.

9. It was error for the Administrative Law Judge to fail to impose fines.

[6] The Commission recites the issues here using the language of the Nelsons' Notice of Appeal.

10. It was error for the Administrative Law Judge to make findings of fact not supported by substantial evidence in the record.

11. It was error for the Administrative Law Judge not to consolidate related pending tenant proceedings.

12. Tenants reserve the right to raise any additional errors in the brief on appeal in this proceeding.

Nelsons' Notice of Appeal at 1-2.

On February 23, 2012, an appeal was filed with the Commission, which was signed by Andrew Reamer, Suzanne B. Crawford, Christine Burkhardt, Lloyd Siegel, Ken Mazzer, and Don Wassem (Tenants' Notice of Appeal). The Tenants' Notice of Appeal, raises the following issues:[7]

It was error for the OAH ALJ(s) to . . . :

1. . . . not permit discovery;

2. . . . not allow Tenants to litigate issues raised in the Tenant Petition (including, but not limited to, the claim that the rent ceiling of each unit in the housing accommodation was not legal, and that rents demanded for each unit in the building exceeded its legal rent ceiling);

3. . . . not recognize the rights of the KWRA (tenant association) under controlling law;

4. . . . not consolidate this case with other tenant petitions regarding the same housing accommodation alleging in great part (if not all) the same violations of the Act and regulations;

5. . . . fail to order relief for all units and tenants affected by the proved-violations of the Act/regulations;

6. . . . not allow/consider evidence of other claims raised in the Tenant Petition;

7. . . . not rule that *every* rent ceiling increase claimed on the Certificate of Election filed in Jan. 2003 (PX-100) was invalid;

[7] The Commission recites the issues here using the language of the Tenants' Notice of Appeal.

8. . . . not rule that the invalid ceiling increases claimed in Jan. 2003 would not ever have any "legal effect" (at any time, not limited to a period ending January 31, 2006);

9. . . . not rule that any and all rent increase demands based on the ceiling increases claimed on the Certificate of Election filed in Jan. 2003 (PX-100) were invalid and therefore are the basis for damages;

10. . . . not levy a civil fine;

11. . . . make findings of fact without citing evidence in the record (e.g., for "Findings of Fact" nos. 1, 2, 3, 5, and 7);

12. . . . rule that OAH 2924 was controlling when TP 28,524 was filed.

Tenants' Notice of Appeal at 1-2.

On September 24, 2012, counsel for Andrew Reamer filed a motion, moving for the voluntary dismissal of Mr. Reamer from this case, with prejudice. Tenant/Petitioner Motion for Voluntary Dismissal at 1-2. On July 2, 2013, a motion was filed by Blake and Wendy Nelson to withdraw the Nelsons' Notice of Appeal. Motion to Withdraw Appeal Without Prejudice at 1-2. In response to these two motions, the Commission issued an order on March 26, 2015, dismissing the Nelsons' Notice of Appeal, without prejudice, and dismissing Andrew Reamer as a party to the Tenants' Notice of Appeal. Siegel v. B.F. Saul Co., RH-TP-06-28,524 (RHC Mar. 26, 2015) (Order on Reamer and Nelson Motions for Voluntary Dismissal) at 1-7. On April 9, 2015, Don Wassem filed a motion requesting to withdraw from the appeal. Motion to Withdraw from Appeal at 1-3. On April 15, 2015 the Commission issued an order allowing for the withdrawal of Don Wassem as a party to the Tenants' Notice of Appeal. Siegel v. B.F. Saul Co., RH-TP-06-28,524 (RHC Apr. 15, 2015) (Order on Wassem Motion to Withdraw from Appeal) at 1-5.

The Commission held a hearing on June 4, 2015. *See* Hearing CD (RHC Jun. 4, 2015). Tenants Christine Burkhardt and Suzanne Crawford attended, and the Housing Provider was represented by counsel. *Id.*

II. PRELIMINARY ISSUE

Based on its review of the record, the withdrawal of several parties to this appeal, and other procedural matters, it becomes necessary for the Commission to *sua sponte* raise a preliminary matter to identify which, if any, tenants have standing on appeal. *See* Riverside Hosp. v. D.C. Dep't of Health, 944 A.2d 1098, 1103-1104 (D.C. 2008) ("[q]uestions of standing may be raised *sua sponte* by this or any court" (citing United States v. Storer Broadcasting Co., 351 U.S. 192, 197 (1956))); Gaetan v. Weber, 729 A.2d 895, 897 n.1 (D.C. 1999) ("standing is a jurisdictional issue which the court may raise at any time" (citing Speyer v. Barry, 588 A.2d 1147, 1159 n.24 (D.C. 1991))); Nwankwo v. D.C. Rental Hous. Comm'n, 542 A.2d 827, 828 n.2 (D.C. 1988) (citing Lee v. D.C. Bd. of Appeals & Review, 423 A.2d 210, 215 (D.C. 1980)) (raising the issue of the tenant's standing *sua sponte*).

The Commission has consistently held that failure to appear at the Commission's scheduled hearing is grounds for dismissal of an appeal. Stancil v D.C. Rental Hous. Comm'n, 806 A.2d 622, 622-25 (D.C. 2002); *see also,* Hardy v. Sigalas, RH-TP-09-29,503 (RHC July 21, 2014) (dismissing tenant's cross-appeal where tenant failed to appear at the Commission's hearing); Carter v. Paget, RH-TP-09-29,517 (RHC Dec. 11, 2013) (dismissing appeal where appellant failed to appear at the Commission's hearing); Wilson v. KMG Mgmt., LLC, RH-TP-11-30,087 (RHC May 24, 2013) (dismissing the tenant's notice of appeal where she failed to appear at the Commission's hearing).

The District of Columbia Court of Appeals (DCCA) held in Stancil, that the Commission has authority to dismiss an appeal when the appellant fails to attend a scheduled Commission hearing. Stancil, 806 A.2d at 622-25. The DCCA recognized that, although the Commission does not have a specific regulation that prescribes dismissal when a party fails to appear, the Commission's regulations at 14 DCMR § 3828.1 (2004)[8] empower the Commission to rely on the DCCA's rules when its rules are silent on a matter before the Commission. Stancil, 806 A.2d at 622-25. The DCCA noted that DCCA Rule 14 (D.C. App. R. 14) permits dismissal of an appeal "for failure to comply with these rules or for any other lawful reason," and that DCCA Rule 13 (D.C. App. R. 13) "authorizes an appellee to file a motion to dismiss whenever an applicant fails to take the necessary steps to comply with the court's procedural rules." Stancil, 806 A.2d at 625. The DCCA concluded that "both [DCCA] Rule 13 and Rule 14 support the proposition that dismissal is an appropriate sanction when an appellant is not diligent about prosecuting his appeal." *Id.*; *see also,* Radwan v. D.C. Rental Hous. Comm'n, 683 A.2d 478, 480 (D.C. 1996) (favoring the Commission's adoption of other court rules absent a regulation specifically governing the Commission's discretion).

The Commission notes that, after the voluntary dismissals of the Nelsons' Notice of Appeal, and Andrew Reamer and Don Wassem as parties to the Tenants' Notice of Appeal, the following four (4) tenants remained parties to the Tenants' Notice of Appeal:

Suzanne Crawford (Unit 805)
Christine Burkhardt (Unit 901)
Lloyd Siegel (Unit 502)
Ken Mazzer (Unit 115)

[8] 14 DCMR § 3828.1 provides the following:

> When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

Order on Motion to Withdraw Appeal 1-5; Order on Motions for Voluntary Dismissal at 1-7; *see* Nelsons' Notice of Appeal; Tenants' Notice of Appeal. However, only two tenants, Christine Burkhardt and Suzanne Crawford, appeared at the Commission hearing. The Commission's review of the record reveals no evidence that either Lloyd Siegel or Ken Mazzer authorized Ms. Burkhardt or Ms. Crawford to act in a representative capacity before the Commission, nor did Ms. Burkhardt or Ms. Crawford allege at the Commission's hearing that they were appearing on behalf of anybody other than themselves. Hearing CD (RHC Jun. 4, 2015); *see* 14 DCMR § 3812.6.[9]

Moreover, the Commission's review of the record reveals no evidence that Lloyd Siegel or Ken Mazzer did not receive notice of the Commission's hearing. The Commission's Order on Motion for Continuance, issued on May 1, 2015 was mailed by first-class mail to Lloyd Siegel and Ken Mazzer at their respective addresses of record. Order on Motion for Continuance 1-6. The Order on Motion for Continuance contains the hearing date for this case on Thursday, June 4, 2015 at 10:00 a.m. and warns the parties that "[f]ailure of an Appellant to appear may result in dismissal of the party's appeal." *Id.* at 5. Accordingly, the Commission dismisses the following tenants from this appeal, for failure to appear at the scheduled hearing: Lloyd Siegel, and Ken Mazzer. Stancil, 806 A.2d at 622-25; Hardy, RH-TP-09-29,503; Carter, RH-TP-09-29,517 Wilson, RH-TP-11-30,087.

The ALJ also determined that Christine Burkhardt did not have standing as an individual tenant below, stating she was eliminated because there was a final order in a separate tenant

[9] 14 DCMR § 3812.6 provides in relevant part the following: "Any individual who wishes to appear in a representative capacity before the Commission shall file a written notice of appearance stating the individual's name, local address, telephone number . . . and for whom the appearance is made."

petition that adjudicated the same rent ceiling that was at issue in this case. Final Order at 5-11, 16. The Commission follows the DCCA rule that "[o]nly the persons who appeared as parties below have standing to appeal." Dorchester House Tenants Ass'n v. Dorchester House Assoc. Ltd. P'ship, CI 20,758 (RHC May 30, 2003); *see* 14 DCMR § 3802.1;[10] Lenkin Co. Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1288 (D.C. 1994) (determining that only the tenant who appealed the hearing examiner's decision to the Commission, had standing to appeal the Commission's subsequent decision to the DCCA); Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009); *see, e.g.,* DeLevay v. D.C. Rental Accommodations Comm'n, 411 A.2d 354, 360 (D.C. 1980) (holding that a tenant who failed to join challenge to a rent increase before the Rental Accommodations Office did not have standing to thereafter appeal the rent increase to the Commission).

In this case, as discussed *supra* at 4-5, on February 3, 2012, the Final Order was issued by the ALJ in which it was determined, among other things, that the KWRA was not a proper party and only seven (7) individual tenants met the criteria to be parties to the Tenant Petition. Final Order at 5-11. Since Ms. Burkhardt was not a party to the proceedings below, and that determination has not been appealed, she therefore has no standing before the Commission and is hereby dismissed from this appeal.[11] *See* 14 DCMR § 3802.1; Lenkin, 642 A.2d at 1288; Borger, RH-TP-06-28,854; Dorchester, CI 20,758. The only tenant to appear at the Commission hearing that had individual party standing below was Suzanne Crawford; as such, she is the only tenant with standing on appeal, and the Commission's discussion of the issues on appeal will

[10] 14 DCMR § 3802.1 provides the following: "Any party aggrieved by a final decision of the Rent Administrator may obtain review of that decision by filing a notice of appeal with the Commission."

[11]The Commission notes that Ms. Burkhardt was allowed to speak at the Commission's hearing on issue number three (3) in the Tenants' Notice of Appeal, regarding the party status of the KWRA, as she claimed to be a representative of the KWRA. *See* Hearing CD (RHC Jun. 4, 2015).

only apply to Suzanne Crawford.[12] *See* 14 DCMR § 3802.1; Lenkin, 642 A.2d at 1288; Borger, RH-TP-06-28,854; Dorchester, CI 20,758.

III. ISSUES ON APPEAL[13]

A. Whether it was error for the ALJ to rule that OAH 2924 was controlling when TP 28,524 was filed.

B. Whether it was error for the ALJ to not recognize the rights of the KWRA (tenant association) under controlling law.

C. Whether it was error for the ALJ to not permit discovery.

D. Whether it was error for the ALJ not allow Tenants to litigate issues raised in the Tenant Petition (including, but not limited to, the claim that the rent ceiling of each unit in the housing accommodation was not legal, and that rents demanded for each unit in the building exceeded its legal ceiling).

E. Whether it was error for the ALJ to not allow/consider evidence of other claims raised in the Tenant Petition.

F. Whether it was error for the ALJ to not consolidate this case with other tenant petitions regarding the same housing accommodation alleging in great part (if not all) the same violations of the Act and regulations.

G. Whether it was error for the ALJ to fail to order relief for all units and tenants affected by the proved-violations of the Act/regulations;

H. Whether it was error for the ALJ to not rule that *every* rent ceiling increase claimed on the Certificate of Election filed in Jan. 2003 was invalid;

I. Whether it was error for the ALJ to not rule that any and all rent increase demands based on the ceiling increases claimed on the Certificate of Election filed in Jan. 2003 were invalid and therefor a basis for damages.

---

[12] The Commission will hereinafter refer to Suzanne Crawford as "Tenant" or "the Tenant." Additionally, the Commission will hereinafter refer to the Tenants' Notice of Appeal as the "Tenant's Notice of Appeal."

[13] The Commission, in its discretion, has reordered the issues on appeal for administrative convenience and efficiency, and to group together issues that involve application and analysis of common facts and legal principles. *See, e.g.*, Bower v. Chastleton Assocs., TP 27,838 (RHC Mar. 27, 2014); Barac Co. v. Tenants of 809 Kennedy St., VA 02-107 (RHC Sept. 27, 2013); Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012) at n.8.

Issues A, B, C, D, E, F, G, H, I, J, K, and L, correspond to issues 12, 3, 1, 2, 6, 4, 5, 7, 9, 8, 10, and 11, respectively, in the Tenant's Notice of Appeal.

J. Whether it was error for the ALJ to not rule that the invalid ceiling increases claimed in Jan. 2003 would not ever have any "legal effect" (at any time, not limited to a period ending January 31, 2006).

K. Whether it was error for the ALJ to not levy a civil fine.

L. Whether it was error for the ALJ to make findings of fact without citing evidence in the record (e.g., for "Findings of Fact" nos. 1, 2, 3, 5, and 7).

IV. DISCUSSION OF ISSUES ON APPEAL

A. Whether it was error for the ALJ to rule that OAH 2924 was controlling when TP 28,524 was filed.

The Commission's standard of review of an ALJ's decision is contained in 14 DCMR § 3807.1, which provides the following:

> The Commission shall reverse final decisions of the Rent Administrator [or an ALJ] which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with provisions of the Act, or findings of fact unsupported by substantial evidence on the record of proceedings before the Rent Administrator [or an ALJ].

The Commission will defer to ALJ's decisions "so long as they flow rationally from the facts and are supported by substantial evidence [on the record]." Borger, RH-TP-06-28,854; Dreyfus Mgmt., LLC v. Beckford, RH-TP-07-28,895 (RHC Sept. 27, 2013) at 44. The Commission has consistently defined substantial evidence "as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Ahmed, Inc. v Torres, RH-TP-07-29,064 (RHC Oct. 28, 2014) at 19 (citing Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079 n.10 (D.C. 1994)); *see also,* Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012) at 12 (*citing* Hago v. Gewirz, RH-TP-08-11,552 & RH-TP-08-12,085 (RHC Aug. 4, 2011)).

Although the Tenant's Notice of Appeal does not indicate why it was error for the ALJ to apply 1 DCMR § 2924 (2006), OAH's rule governing the status of parties, or what regulation(s)

the ALJ should have used instead, the Commission notes that the relevant regulation governing parties at the time of the filing of the Tenant Petition was 14 DCMR § 3904 (2004), which provides for the following:

> § 3904.1 Individual tenants involved in any proceeding shall be individually identified.
>
> § 3904.2 If a tenant association seeks to be a party, the hearing examiner shall determine the identity and number of tenants who are represented by the association.
>
> § 3904.3 If a majority of the tenants are represented by the association, the association shall be listed in the caption.

The provision cited by the ALJ, 1 DCMR § 2924 (2006), provides as follows:

> § 2924.1 Individual tenants involved in any proceeding shall be individually identified.
>
> § 2924.2 If a tenant association seeks to be a party, the Administrative Law Judge shall determine the identity and number of tenants who are represented by the association.
>
> § 2924.3 If a majority of tenants are represented by the association, the association shall be a party, and shall be listed in the caption.

Though 14 DCMR § 3904 (2004) [14] was the regulation in effect at the time the Tenant Petition was filed, the ALJ erroneously cited and applied 1 DCMR § 2924 (2006) in determining

[14] The Commission observes that, while the Tenant Petition was pending, the regulations were amended in 2010 by the Tenants Organization Petition Standing Amendment Act of 2010, D.C. Act 18-470, 57 DCR 6920 (Aug. 6, 2010). The amendments change the substantive wording of 14 DCMR § 3904, and provide the following:

> § 3904.1 Individual tenants involved in any proceeding shall be individually identified.
>
> § 3904.2 Any tenant association may file and shall be granted party status to prosecute or defend a petition on behalf of any one or more of its members who have provided the association with written authorization to represent them in the action, or to seek on behalf of all members and any injunctive relief available under the Rental Housing Act of 1985, effective July 1, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 set seq.) No further inquiry into membership of the association shall be permitted.
>
> § 3904.3 Any tenant association that is a part to the action pursuant to § 3904.2 shall be listed in the caption.

the identity of the "Tenant Petitioners" in this case. Final Order at 5. Although the Commission notes that it was error for the ALJ to apply the incorrect regulation, the Commission is satisfied that, since both the respective texts and purposes an14 DCMR § 3904 (2004) and 1 DCMR § 2924 (2006) are substantially identical, the ALJ's erroneous use of 1 DCMR § 2924 (2006), as opposed to 14 DCMR § 3904 (2004), did not affect the substantive rights of the Tenant or the final outcome of this case, and that the ALJ's determination thus amounted to harmless error.[15]

---

14 DCMR § 3904 (2010); *cf.* 14 DCMR § 3904 (2004).

The Commission, like the DCCA, adheres to the general rule that "statutes operate prospectively." Doyle v. Pinnacle Reality Mgmt., RH-TP-27,067 (RHC Mar. 10, 2015) at 12 (citing Washington v. Guest Servs., 718 A.2d 1071, 1074 (D.C. 1998)); *see also* United Dominion Mgmt. Co. v. Hinman, RH-TP-06-28,728 (RHC June 5, 2013) (citing Columbia Plaza Ltd. P'ship v. Tenants of 500 23rd St. N.W., CI 20,266 (RHC Nov. 9, 1989), *aff'd*, 101 A.3d 426 (D.C. 2014) at 14). This adherence arises where substantive rights are affected by the change or where a change alters an established rule. Doyle, RH-TP-27,067; *see* Bloom v. Beam, 99 A.3d 263 (D.C. 2014); *see also* Hinman, RH-TP-06-28,728 (citing Tenants of 2301 E. St., N.W. v. D.C. Rental Hous. Comm'n, 580 A.2d 622, 627 (D.C. 1990) (finding that a rule could be applied retroactively because it was not an unexpected departure from prior law)).

The Commission has previously determined that "the amendments to 14 DCMR § 3904.2-.3 affect the substantive rights of tenant associations to participate in tenant petition proceedings under the Act." Doyle, RH-TP-27,067 (Order on Reconsideration) at 3. The Commission has also determined that "the amendments to 14 DCMR § 3904 alter an established rule in at least two ways: first, by removing the requirement that a hearing examiner determine the identity and number of tenants represented by a tenant association, and second by removing the requirement that the tenant association represent a majority of tenants in order to be listed in the case caption." *Id.* Consequently, the Commission determined that "the 2010 amendments to 14 DCMR § 3904.2-3 were intended to operate prospectively, not retroactively." Doyle, RH-TP-27,067; *see also*, Bloom, 99 A.3d at 265; Tenants of 2301 E St., N.W., 580 A.2d at 627; Hinman, RH-TP-06-28,728. Therefore, as the Commission has noted, *supra* at 16-17, the regulation in effect the time the Tenant Petition was filed, 14 DCMR § 3904 (2004), is the appropriate one to apply to this case.

[15] The Commission has previously defined "harmless error" as "an error which was not prejudicial to the substantive rights of the party assigning it, and in no way affected the final outcome of the case." Karpinski v. Evolve Prop. Mgmt., RH-TP-09-29,590 (RHC Aug. 19, 2014) (determining that ALJ's failure to determine whether services and facilities were "related" services and facilities, as those terms are defined by the Act, was harmless because the tenant's claim failed on other grounds); *see also* Young v. Vista Mgmt., TP 28,635 (RHC Sept. 18, 2012) at n.5 (determining that hearing examiner's failure to include ex parte communication in the record was harmless error where the Commission was satisfied the hearing examiner did not consider the communication in the final order); Jackson v. Peters, RH-TP-12-28,898 (RHC Feb. 3, 2012) at n.21 (deciding that ALJ's statement that the tenant could not appeal an order was harmless error where the Commission exercised jurisdiction over the appeal by accepting the filing of the tenant's notice of appeal); Smith v. Joshua, RH-TP-07-28,961 (RHC Feb. 3, 2012) at n.2 (determining that ALJ's misstatement of the date on an electrician's report was harmless); Borger, RH-TP-06-28,854 at n. 13 (determining that the ALJ's reference to the housing provider's motion as both a motion to vacate and a motion for reconsideration was harmless error because the Commission's standard of review on appeal is the same for both motions).

Compare 14 DCMR § 2924 (2006), *with* 14 DCMR § 3904 (2004); *see generally,* Final Order at 5. Accordingly, the Commission affirms the ALJ on this issue.

B. Whether it was error for the ALJ to not recognize the rights of the KWRA (tenant association) under controlling law.

As discussed above, *supra* at 16-17, at the time the Tenant Petition was filed, controlling law provided two requirements a tenant association must have met to have been a party to the case. 14 DCMR § 3904 (2004). First, a tenant association must provide evidence so that the ALJ can "determine the identity and number of tenants represented by the association." 14 DCMR § 3904.1; *see* Doyle, RH-TP-27,067; Borger, RH-TP-06-28,854 (determining "there was a lack of substantial evidence on the record to support the ALJ's determination of the identity and number of tenants in the [tenant association,] as required by [the rules]"). Second, for a tenant association to be a party to the case, it must represent a "majority of the tenants." 14 DCMR § 3904.3; *see* Doyle, RH-TP-27,067; Tenants of 4021 9th St., N.W. v. E&J Prop., HP-20,812 (RHC Jun. 11, 2014) (determining a tenant association lacked standing before the Commission because, among other reasons, the Commission's review of the record did not reveal that it represented a majority of the tenants). The Commission has determined that a "majority of tenants" means a "majority of the 'persons' residing in the housing accommodation, not a majority of the 'rental units' in a housing accommodation." Borger, RH-TP-06-28,854 at 12 (reversing the ALJ's finding that a tenant association represented a majority of tenants on the grounds that the tenants resided in a majority of the apartment units of the housing accommodation); *see also,* Tenants of 2480 16th St., NW v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC Feb. 6, 2014) (affirming ALJ's determination that tenant association did not represent a majority of the tenants of the housing accommodation, and thus would not be named as a party); Miller v. Daro Realty, RH-TP-08-29,407 (RHC Sept. 18, 2012) (where the

ALJ determined that the tenant association had failed to prove that it represented a majority of the tenants of the housing accommodation, the Commission determined it was error for the ALJ to include the tenant association in the case caption).

The ALJ determined that, in this case, the KWRA did not represent a majority of tenants in the housing accommodation on January 31, 2006, the date the Tenant Petition was filed. Final Order at 2, 5-6. The ALJ cross-referenced the tenants listed on the Certificate of Election attached to the Tenant Petition, a KWRA membership list, and signed declarations of those wishing to be represented by the KWRA, to determine that the KWRA did not represent a majority of the tenants and could not be a party to the case. *See id.* at 5-6.

Upon review, the Commission is satisfied that the ALJ's findings regarding the status of the KWRA as a party to this case are supported by substantial evidence. 14 DCMR § 3807.1. For example, review of the evidence in the record reveals uncontested evidence in the form of the Housing Provider's statement that on January 31, 2006, when the Tenant Petition was filed, there were 393 tenants in the housing accommodation. Housing Provider's Praecipe Regarding Settlement Agreements and Number of Tenants in the Housing Accommodation at 1 (Housing Provider's Praecipe Regarding Settlement); R. at 1479. The Commission's review of the record also reveals that the KWRA claimed that sixty-seven (67) out of the ninety-eight (98) tenants who were members of the KWRA when the Tenant Petition was filed, had authorized the KWRA to represent them in this case. Tenants' Response to Housing Provider's Challenge to Participation of Individual Tenant's as Petitioners at 2-3 (Tenants' Response to Housing Provider's Challenge); R. at 1524-25.

Therefore, the Commission is satisfied that the ALJ's determination that (1) the KWRA (with, at most, 98 tenant members) did not represent a majority of the tenants of the Housing

Accommodation, and (2) was thus not eligible to be a party to the case, was in accordance with the provisions of the Act and supported by substantial evidence in the record. *See* 14 DCMR § 3807.1; Doyle, RH-TP-27,067; E&J Prop., HP-20,812; Dorchester, RH-SF-09-20,098; Daro Realty, RH-TP-08-29,407; Borger, RH-TP-06-28,854; Final Order at 2, 5-6; Housing Provider's Praecipe Regarding Settlement at 1; Tenants' Response to Housing Provider's Challenge at 2-3; R. at 1479, 1524-25. The Commission affirms the ALJ on this issue.

C. Whether it was error for the ALJ to not permit discovery.

The governing OAH regulation, 1 DCMR § 2823.2 provides: "[n]o discovery shall be permitted unless authorized by order of the presiding Administrative Law Judge. Discovery shall be limited to Complex Track cases, and all requests for discovery shall be made upon motion."[16] *See* Reid v. Sinclair, TP-11,334 (RHC Jan. 12, 1999) (Order on Request for

[16] The Commission observes that the Tenant never filed a motion requesting the ALJ change the status to a "Complex Case." 1 DCMR § 2806.2 states:

> A party in a Standard Case track may, within thirty (30) days of the commencement of a case and prior to trial, file a motion in accordance with Rule 2812 to change to a Complex Case track. The presiding Administrative Law Judge also may change a Standard Case to a Complex Case upon his or her own motion. In deciding whether to designate a case as a Complex Case under this Section, the presiding Administrative Law Judge shall consider the number of parties, the relief requested, the number and difficulty of the legal and factual issues, the anticipated number of witnesses and exhibits, the anticipated length of the trial, and any other factor that, in his or her discretion, indicates that the fair, just and prompt disposition of the case will or will not be enhanced by use of the procedures available in Complex Cases.

Complex Track cases are defined under 1 DCMR § 2806.1, which provides the following:

> At the time any matter before this administrative court is commenced, the Clerk shall assign the case to a Standard or Complex case track for management and disposition. These tracks are defined as follows:
>
> (a) Standard Cases include all matters arising from the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18) and lawfully committed to the jurisdiction of this administrative court. Standard Cases shall also include, but not be limited to, the following cases:
>
> (1) D.C. Department of Employment Services matters;
>
> (2) D.C. Department of Human Services matters;

Subpoena) (acknowledging role of an ALJ in discovery, stating "[d]iscovery is conducted by fact finding entities, not review agencies like the Commission."); *see generally*, Burkhardt v. B.F. Saul RH-TP-06-28,708 (RHC Sept. 25, 2014) (dismissing issue claiming error in ALJ's denial of discovery because discovery was unrelated to the issues of the case).

As discussed above, *supra* at 16, the Commission's standard of review requires it to reverse a decision that is "based upon arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with provisions of the Act, or findings of fact unsupported by substantial evidence in the record." 14 DCMR § 3807.1. The Commission observes that discovery at the trial level is a procedural decision within the discretion of the ALJ, and will be reversed only for an abuse of discretion. Saddler v. Safeway Stores, Inc., 227 A.2d 394, 395 (D.C. 1967); *accord* Johnson v. Fairfax Vill. Condo. IV Unit Owners Ass'n, 641 A.2d 495, 501 (D.C. 1994) ("[a]bsent a clear showing of an abuse of discretion, the trial court's exercise of its discretion either way will not be disturbed on appeal."); Am. Rental Mgmt. Co. v. Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 (RHC Feb. 10, 2015).

The Commission's review of the record reveals that the ALJ did not permit any discovery in this case. Siegel v. B.F. Saul Co., RH-TP-06-28,524 (OAH Oct. 6, 2008) (Order Denying Settlement) at 1-5;[17] R. at 1075-79. The record shows that the Tenant requested discovery in response to, and related to, the Housing Provider's Motion to Approve Settlement. Motion to Approve Settlement Agreement at 1-5; Discovery Motion 1-9; R. at 463-67, 554-59. In an order

---

(3) D.C. Taxicab Commission matters;

(4) Board of Appeal and Review Cases, excluding Certificate of Need and Notice of Program Reimbursement determinations; and

(5) Matters arising under D.C. Official Code Title 8, Chapter 8.

[17] The Commission, for the purposes of administrative convenience and efficiency, will refer to the ALJ's Order Denying Motion to Approve Settlement Agreement, as simply "Order Denying Settlement."

denying the Housing Provider's Motion to Approve Settlement, the ALJ found that the motives that formed the basis of the discovery request were moot, and any necessity for discovery was therefore moot. *See* Order Denying Settlement at 1- 5; R. at 1075-79. In response to the Tenant's concerns regarding discovery, the ALJ explained at a status hearing that the instant case presented only one issue, did thus not amount to a complex case, and did not require any discovery. *See* Hearing CD (OAH Apr. 26, 2010) at 10:28:00, 10:33:00-10:34:00, 10:43:00; *see generally* 1 DCMR § 2823.2. The ALJ summarized its determination as follows: "[i]t's not a complex case[,] we only do discovery in complex cases and we don't have a complex case here." *Id.* at 10:48:00.

After review of the record, the Commission observes that this case was at no time designated as a "complex case" by the ALJ. Accordingly, the Commission is satisfied that the ALJ did not abuse her discretion by denying discovery in this case, and affirms the ALJ on this issue. *See* 1 DCMR § 2823.2; 14 DCMR § 3807; Prime, 955 A.2d 178; Saddler, 227 A.2d at 395; Johnson, 641 A.2d at 501; Chaney, RH-TP-06-28,366 & RH-TP-06-28,577.

D. Whether it was error for the ALJ to not allow Tenants to litigate issues raised in the Tenant Petition (including, but not limited to, the claim that the rent ceiling of each unit in the housing accommodation was not legal, and that rents demanded for each unit in the building exceeded its legal ceiling).

E. Whether it was error for the ALJ not allow/consider evidence of other claims raised in the Tenant Petition.[18]

While the Tenant contends that the ALJ erred in not allowing the Tenant to litigate issues raised in the Tenant Petition and by not allowing or considering evidence of "other claims" raised in the Tenant Petition, the Commission observes that both issues on appeal focus on what

[18] The Commission, in its discretion, will combine its discussion of issues D and E, because it observes that these issues raise substantially similar contentions, and because these issues involve overlapping legal issues and the application of common legal principles. *See, e.g.*, Bower, TP 27,838; Barac Co., VA 02-107; Avila, RH-TP-28,799.

claims were brought in the Tenant Petition. Tenant's Notice of Appeal at 1. In Issue D, the Tenant specified that the ALJ did not allow the litigation of a claim regarding "rents demanded." Tenant's Notice of Appeal at 1-4. In Issue E, the Tenant made reference to "other claims," but did not identify what "other claims" were allegedly raised in the Tenant Petition that were not addressed by the ALJ. Tenant's Notice of Appeal at 1-4.

The Commission's regulations and its long-standing precedent require that issues on appeal shall contain a "clear and concise statement of the alleged error(s)" in the lower court's decision. 14 DCMR § 3802.5(b). "The Commission has repeatedly held that it cannot review issues on appeal that do not contain a clear and concise statement of alleged error in the ALJ's decision." Sellers v. Lawson, TP 29,437 (RHC Dec. 6, 2012); Levy v. Carmel Partners, Inc., TP 28,830; TP 28,835 (RHC Mar. 19, 2012); Hawkins v. Jackson, TP 29,201 (RHC Aug. 31, 2009); *see also* Covington v. Foley Properties, Inc., TP 27,985 (RHC June 21, 2006) at 4 ("when an appeal issue is not a clear and concise statement of an alleged error it is 'violative of the Commission's rules on appeals'") (quoting Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000)); Akers v. Peterson, TP 27,987 (RHC July 1, 2005); Battle v. McElvene, TP 24,752 (RHC May 18, 2000)). The Commission has also held that an appeal "which fails to provide the Commission with a clear and concise statement of the alleged errors in the decision . . . will be dismissed." Santos Paz v. Park Lee Assocs. LLC, RH-TP-O7-28,977 (RHC Jan. 31, 2013) (citing Canales v. Martinez, TP 27,535 (RHC June 29, 2005); Kenilworth Parkside RMC v. Johnson TP 27,782 (RHC June 22, 2005)); Vicente v. Anderson, TP 27,201 (RHC Aug. 20, 2004).

The ALJ determined that there was only one issue in the Tenant Petition, stating "[t]enants' sole complaint in this case is that Housing Provider filed an improper rent ceiling

adjustment with RACD." Final Order at 6. The Commission's review of the record reveals that there was only one (1) box checked on the Tenant Petition, which read, "[t]he rent ceiling filed with the Rental Accommodations and Conversion Division for my/our unit(s) is improper." Tenant Petition at 3; R. at 15. The Commission also notes that the further explanation provided in the narrative portion of the Tenant Petition stated that "[t]he rent ceiling increases on Attachment A are not in compliance with Chapter 42 of the DCMR."[19] *Id.* Thus, based on its review of the record, the Commission is satisfied that the ALJ's determination that there was only one issue in the Tenant Petition is supported by substantial evidence. *See* Final Order at 6; Tenant Petition 1-17; R. at 1-17.

Furthermore, upon review of the record the Commission notes that the only issue raised in the Tenant Petition, the filing of an improper rent ceiling increase, was litigated extensively throughout the course of a two-day hearing. *See* OAH Mar. 28, 2011, Rental Housing Attendance Sheet; OAH Mar. 29, 2011 Rental Housing Attendance Sheet; R. at 1993-95, 2003-06. As such, the Commission is unable to determine the merits of the Tenant's claim in Issue D which asserts that the ALJ erred in not allowing the Tenant to litigate "issues raised in Tenant Petition." Tenant's Notice of Appeal at 1. Consequently, the Commission determines that the Tenant's statement of Issue D does not contain a clear and concise statement of an error in the ALJ's decision. 14 DCMR § 3802.5(b); Sellers TP 29,437; Levy TP 28,830; TP 28,835; Hawkins TP 29,201. Furthermore, since the Tenant did not identify in Issue E what "other claims" the ALJ purportedly failed to address, and as the Commission is satisfied that the ALJ did not abuse her discretion in determining that there was only one claim raised in the Tenant

[19] The Commission notes that Attachment A of the Tenant Petition is the Certificate of Election filed on January 6, 2003 for the 2002 rent ceiling increased based on the annual Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

Petition, *see supra* at 25, the Commission determines that the Tenant's statement of Issue E does not contain a clear and concise statement of an error in the ALJ's decision.[20] 14 DCMR § 3802.5(b); Sellers TP 29,437; Levy TP 28,830; TP 28,835; Hawkins TP 29,201. Accordingly, the Commission dismisses these issues on appeal. Santos Paz, RH-TP-O7-28,977; Canales TP 27,535; Kenilworth Parkside RMC, TP 27,782; Vicente TP 27,201.

F. Whether it was error for the ALJ to not consolidate this case with other tenant petitions regarding the same housing accommodation alleging in great part (if not all) the same violations of the Act and regulations.

The applicable regulations governing consolidation of cases before the OAH provide, in relevant part as follows:

> On motion of a party, or upon his or her own motion, an Administrative Law Judge *may* consolidate two (2) or more petitions where they present identical or similar issues, where they involve the same rental unit or housing accommodation, or in any other circumstance in which consolidation would expedite the processing of the petitions and would not adversely affect the interests of the parties.

1 DCMR § 2927.1 (2006) (emphasis added). As discussed above, *supra* at 16, the Commission's standard of review requires it to reverse decisions that are "based upon arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with provisions of the Act, or findings of fact unsupported by substantial evidence in the record." 14 § DCMR 3807.1 (2004).

---

[20] In assessing the Tenant' Second Notice of Appeal, the Commission is mindful of the important role that lay litigants play in the Act's enforcement. *See, e.g.*, Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1298-99 (D.C. 1990); Cohen v. D.C. Rental Hous. Comm'n, 496 A.2d 603, 605 (D.C. 1985). Courts have long recognized that *pro se* litigants, such as the Tenants in this case, can face considerable challenges in prosecuting their claims without legal assistance. *See* Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C 2010) (citing Hudson v. Hardy, 412 F.2d 1091, 1094 (D.C. Cir. 1968)). Nonetheless, "while it is true that a court must construe pro se pleadings liberally . . . the court may not act as counsel for either litigant." *See* Flax v. Schertler, 935 A.2d 1091, 1107 n.14 (D.C. 2007) (quoting In re Webb, 212 B.R. 320, 321 (Bankr. Fed. App. 1987)). As the DCCA has asserted, a *pro se* litigant "cannot generally be permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forego expert assistance." *See* Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d 977, 979 (D.C. 1999) (quoting Dozier v. Ford Motor Co., 702 F.2d 1189, 1194 (D.C. Cir. 1993)).

The Commission observes that a determination of whether to consolidate cases at the trial level is within the discretion of the ALJ, and will be reversed only for an abuse of discretion. Saddler, 227 A.2d at 395; *accord* Johnson, 641 A.2d at 501 ("[a]bsent a clear showing of an abuse of discretion, the trial court's exercise of its discretion either way will not be disturbed on appeal."); *see* 6000 Ltd. P'ship v. 6000 Thirteenth St., N.W. Tenants Ass'n HP-20,354 (RHC May 26, 1989) (acknowledging the Rent Administrator's discretion concerning whether to consolidate two tenant petitions on remand); Rosenboro v. Askin, TP 3,991 & TP 4,673 (RHC Feb. 26, 1993) (deferring to Rent Administrator's discretion concerning consolidation of tenant petitions despite noting that it "would have been the better course of action for the Rent Administrator to consolidate the tenant petitions . . . .").

On May 10, 2007, Administrative Law Judge Nicholas Cobbs (ALJ Cobbs) issued an Order Denying Motion to Consolidate,[21] denying consolidation of this Tenant Petition along with ten (10) other tenant petitions involving the same Housing Accommodation. Order Denying Motion to Consolidate at 1-10; R. at 304-13. In the order ALJ Cobbs stated, "[t]he tenants here have not persuaded us that consolidation of these eleven cases will simplify the issues or facilitate an expeditious resolution of the individual claims."[22] Order Denying Motion to Consolidate at 6; R. at 308. Some of the concerns identified by ALJ Cobbs regarding consolidation include the following, in relevant part:

[21] The Commission notes that the full citation of this order is as follows: Wassem v. B.F. Saul Co., RH-TP-06-28,220, RH-TP-06-28,524, RH-TP-06-28,547, RH-TP-06-28,608, RH-TP-06-28,649, RH-TP-06-28,668, RH-TP-06-28,676, RH-TP-06-28,708, RH-TP-06-28,723, RH-TP-06-28, 724, RH-TP-06-28,849 (OAH May 10, 2007). The Commission shall refer to this order herein as "Order Denying Motion to Consolidate."

[22] The Commission notes that the Order Denying Motion to Consolidate was authored by ALJ Cobbs, and entered into the official records of eleven (11) separate tenant petitions, including the Tenant Petition at issue in this case. *See* Order Denying Motion to Consolidate at 1-10; R. at 304-313.

1) . . . Tenants have not shown that these eleven cases have a sufficient common nexus of facts to outweigh the burdens that would arise from trying to keep track of the individual claims in a consolidated proceeding . . . .

2) Even the issues that Tenants allege are common to all these petitions will, in practice, involve evidence and testimony that is specific to each of the units . . . .

3) Because the evidence must be considered in the context of the specific claims by the individual residents, the advantage to be gained . . . would be minimal . . . .

4) . . . the Housing Providers . . . oppose consolidation . . . .

5) Tenants have not persuaded [ALJ Cobbs] that the modest advantages of consolidation would not be outweighed by the additional administrative burden and inconvenience[.]

Order Denying Motion to Consolidate at 6-8; R. at 306-308. ALJ Cobbs further elaborated that a single judge would have to administer the cases and address the numerous motions and submissions, and that hearings would have to be scheduled at times convenient for all tenants and prospective witnesses. Order Denying Motion to Consolidate at 6; R. at 308.

The Commission is unable to determine from its review of the record that the above concerns identified by ALJ Cobbs in his discretion were unreasonable in light of the extent of the litigation of this Tenant Petition alone at that time. *See, e.g.*, Final Order at 1-5; Saddler, 227 A.2d 394; Johnson, 641 A.2d at 495; Rosenboro, TP 3,991 & TP 4,673. Based upon the Commission's review of the record, it observes that ALJ Cobbs in his discretion had appropriately weighed the elements of the regulation along with the necessity of judicial fairness and efficiency. 1 DCMR § 2927.1; Order Denying Motion to Consolidate at 3-9; R. at 305-11; Saddler, 227 A.2d 394; Johnson, 641 A.2d at 495; Rosenboro, TP 3,991 & TP 4,673. In sum, and in light of the permissive, not mandatory, regulation concerning consolidation, the Commission is satisfied that it was not an abuse of ALJ Cobbs' discretion to not consolidate this

case with other tenant petitions regarding the same housing accommodation, and thus affirms ALJ Cobbs on this issue. 1 DCMR § 2927.1 (2006); 14 DCMR § 3807.1 (2004); Saddler, 227 A.2d 394; Johnson, 641 A.2d at 495; Rosenboro, TP 3,991 & TP 4,673.

G. Whether it was error for the ALJ to fail to order relief for all units and tenants affected by the proved-violations of the Act/regulations.

H. Whether it was error for the ALJ to not rule that *every* rent ceiling increase claimed on the Certificate of Election filed in Jan. 2003 was invalid.[23]

The Commission's regulations provide that: "[A]ny party aggrieved by a final decision of the Rent Administrator may obtain review of that decision by filing a notice of appeal with the Commission." 14 DCMR § 3802.1 (2004). The Commission has explained that "[i]n order for a party to have 'standing,' there must be an allegation of 'an actual or imminently threatened injury;' a mere contingent or speculative interest in a problem is not sufficient." Young, TP 28,635 (quoting York Apartments Tenants Ass'n v. D.C. Zoning Comm'n, 856 A.2d 1079, 1084 (D.C. 2004)); *see* Friends of Tilden Park, Inc. v. District of Columbia, 806 A.2d 1201, 1209 (D.C. 2002).

Moreover, "[a] party has not been adversely affected or aggrieved by agency action, unless . . . it has suffered or will sustain some actual or threatened 'injury in fact' from the challenged agency action." Mitchell v. Salarbux, RH-TP-09-29,686 (RHC Feb. 3, 2012) at 3 (quoting Mallof v. D.C. Bd. of Elections & Ethics, 1 A.3d 383, 391 (D.C. 2010)). There must be "'a substantial probability that the requested relief would alleviate [the] asserted injury,' i.e., that [the] injury can be redressed." Mallof, 1 A.3d at 394 n.51 (quoting Miller v. D.C. Bd. of Zoning Adjustment, 948 A.2d 571, 574-75 (D.C. 2008)); *see, e.g.*, Hago, RH-TP-08-11,552 & RH-TP-

[23] The Commission, in its discretion, will combine its discussion of issues G and H, because it observes that these issues raise substantially similar contentions, and because these issues involve overlapping legal issues and the application of common legal principles. *See, e.g.*, Bower, TP 27,838; Barac Co., VA 02-107; Avila, RH-TP-28,799 at n.8.

08-12,085 (dismissing the tenant's appeal where the tenant lacked standing because he had settled his claims with the housing provider); In re: Landry, SC 001-04 (RHC May 12, 2004) (commenting that under 14 DCMR § 3802, only aggrieved parties can file appeals to the Commission); *see also* Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-14-28,794 (RHC Aug. 19, 2014) (Order on Attorney's Fees) (asserting that a "prevailing party" is any party "in whose favor a judgment is rendered, regardless of the amount of damages awarded" (quoting Hardy, RH-TP-09-29,503)).

The Tenant claims on appeal that it was error for the ALJ to not "order relief for all units and tenants . . . not rule that every rent ceiling increase . . . was invalid . . . [and] not rule that any and all rent increase demands . . . were invalid . . . ." Tenant's Notice of Appeal at 1-2 (emphasis added). As noted, *supra* at 7, the ALJ ruled that the rent ceiling adjustment at issue in this case was invalid for the Tenant. Final Order 10-11.

Based on its review of the record, the Commission determines, first, that the Tenant was the prevailing party on the sole issue claimed in the Tenant Petition regarding an improper rent ceiling increase, and that therefore she did not suffer a cognizable injury on appeal because of the ALJ's holding in her favor on this issue. Final Order at 6-11; 14 DCMR § 3802.1; Mallof, 1 A.3d at 394 n.51; Friends of Tilden Park, 806 A.2d 1201; Young, TP 28,635; Mitchell, RH-TP-09-29,686. Second, insofar as the Tenant is alleging that the ALJ erred by not awarding relief to every tenant of the Housing Accommodation, the Commission observes that the Tenant cannot raise on appeal issues regarding relief for other persons who are not parties to this appeal.[24] 14 DCMR § 3802.1; Mallof, 1 A.3d at 394 n.51; Friends of Tilden Park, 806 A.2d 1201; Young,

[24] As the Commission also stated previously, *supra* at 12-13, the Commission's review of the record does not indicate that the Tenant was acting in any representative capacity during these proceedings on appeal.

TP 28,635; Mitchell, RH-TP-09-29,686. The Commission determines that the Tenant does not have standing as a party aggrieved (or in any other legal capacity) on the Issues G and H, and thus dismisses Issues G and H for lack of standing. *See* Young, TP 28,635; Mitchell, RH-TP-09-29,686; *see also* Mallof, 1 A.3d. at 394 n.51.

I. Whether it was error for the ALJ to not rule that any and all rent increase demands based on the ceiling increases claimed on the Certificate of Election filed in Jan. 2003 were invalid and therefor a basis for damages.

The Commission observes that Issue I involves claims of rent increases that were not raised in the Tenant Petition, and were barred by the ALJ from being raised at the evidentiary hearing.[25] Tenant Petition at 3; R. at 15. It is well-settled that an issue that was not raised below cannot be raised for the first time on appeal. *See* Miller v. Avirom, 384 F.2d 319, 321 (D.C. Cir. 1967) (appellate review is commonly confined to "matters *appropriately* submitted for determination in the court of first resort") (emphasis added); Lenkin, 642 A.2d 1282; Boer v. D.C. Rental Hous. Comm'n, 564 A.2d 54, 57 (D.C. 1989); Reid v. Weinstein, TP 28,010 (RHC Apr. 3, 2008); Stone v. Keller, TP 27,033 (RHC May 19, 2004).

The ALJ did not discuss rent charged increases, or any other issues beyond the sole issue raised in the Tenant Petition of an improper rent ceiling increase. Final Order at 1-12; Tenant Petition at 3; R. at 15. The Commission has concluded that the ALJ appropriately determined that there was only one (1) claim in the Tenant Petition: that the Housing Provider filed an improper rent ceiling adjustment. *See supra* at 25; *see also,* Final Order at 6 ("[t]enants' sole complaint in this case is that Housing Provider filed an improper rent ceiling adjustment with RACD."); Tenant Petition at 3; R. at 15. As the issue of improper rent charged increases was not raised below, the Commission is unable to review this issue for the first time on appeal. Avirom,

[25] In the context of the Tenant's Issues D and E, the Commission has previously affirmed the ALJ's refusal to allow the Tenant to litigate issues that were not raised in the Tenant Petition. *See supra* at 23-26.

384 F.2d 319; Lenkin, 642 A.2d 1282; Boer, 564 A.2d 54; Weinstein, TP 28,010; Stone, TP 27,033. Consequently, the Commission dismisses Issue I.

J. Whether it was error for the ALJ to not rule that the invalid ceiling increases claimed in Jan. 2003 would not ever have any "legal effect" (at any time, not limited to a period ending January 31, 2006).

For a housing provider to be able adjust a rental unit's rent ceiling pursuant to the annual CPI-W adjustment, the Commission's regulations, implementing the Act, require a housing provider to:

> [T]ake and perfect a rent ceiling increase authorized by [D.C. OFFICIAL CODE § 42-3502.06(b)] by filing with the Rent Administrator . . . a [Certificate of Election] which shall . . . [b]e filed . . . within thirty (30) days following the date when the housing provider is first eligible to take the adjustment.

14 DCMR § 4204.10(c); *see* Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 104 (D.C. 2005). In Sawyer, the DCCA addressed the procedural requirements for rent ceiling adjustments under the Act at 14 DCMR §§ 4204.9-.10 stating that:

> In order to obtain one of the several upward rent ceiling adjustments authorized by law, a housing provider must "take" and "perfect" the adjustment in accordance with the requirements of the housing regulations . . . The provider must perfect its entitlement to a rent ceiling adjustment in accordance with regulatory requirements in order to "implement" the adjustment in a rent increase.

Sawyer, 877 A.2d at 103.

Thus, under the Act, when a housing provider does not meet the thirty (30) day filing requirement, and thus, fails to take and perfect a rent ceiling adjustment, the housing provider forfeits the right to the rent ceiling adjustment and cannot ever use the unperfected adjustment to increase the tenant's rent charged.[26] 14 DCMR § 4204.9-.10; *see* Sawyer, 877 A.2d at 103-104; Grant v. Gelman Mgmt. Co., TP 27,995 (RHC Feb. 24, 2006) (citing Sawyer, 877 A.2d at 103);

[26] The Commission also notes that the Act was amended effective August 5, 2006, by the Rent Control Reform Amendment Act of 2006 (2006 Amendments), D.C. Law 16-145, 53 DCR 4889, abolishing rent ceilings.

see also, Hinman, RH-TP-06-28,728 (affirming ALJ's decision that an adjustment in rent charged in August 2006 was invalid because its implementation was based upon an April 2001 rent ceiling adjustment that was not properly taken and perfected).

In this case, the ALJ determined that the Housing Provider filed the Certificate of Election on January 6, 2003, eight (8) months after it was first eligible to take the adjustment on May 1, 2002, and consequently that the Housing Provider failed to properly take and perfect the rent ceiling adjustment under 14 DCMR § 4204.10(c) within the requisite thirty (30) day period after it was first eligible to take it. Final Order at 7, 9-11; Tenant Petition at 1-9; R. at 1-9. Based upon its review of the record, the Commission is satisfied, that the ALJ's determination that the Housing Provider failed to properly take and perfect the rent ceiling adjustment filed on January 6, 2003 under 14 DCMR § 4204.10(c) is in accordance with the Act and supported by substantial evidence in the record. 14 DCMR §§ 3807.1 & 4204.10(c); Sawyer, 877 A.2d at 103; Final Order at 7, 9-11; *see* Hinman, RH-TP-06-28,728.

Furthermore, the Commission notes that, in accordance with the holdings in Sawyer, 877 A.2d at 103-104, and Grant, TP 27,995, the rent ceiling adjustment taken by the Housing Provider on January 6, 2003 has been completely forfeited and rendered void; it may never be implemented to increase the rent charged on unit 805. *See* Sawyer, 877 A.2d at 103-104; Grant, TP 27,995. Nevertheless, the ALJ erroneously ordered that the January 6, 2003 rent ceiling adjustment had no legal effect only for the period beginning February 1, 2003, and ending January 31, 2006,[27] rather than determining that it was void in perpetuity. Final Order at 11; *see* Sawyer, 877 A.2d 96; Gelman Mgmt. Co., TP 27,995; *see also* Hinman, RH-TP-06-28,728.

[27] The Commission's review of the record reflects that these dates correspond to the date that the Housing Provider attempted to implement the rent ceiling adjustment on February 1, 2003, and the date the Tenant Petition was filed, January 31, 2006. Tenant Petition at 1, 8, 17; R. at 1, 10, 17.

Therefore, based on Sawyer, 877 A.2d at 103-104 and Grant, TP 27,995, the Commission determines that it was error for the ALJ to conclude that the improper rent ceiling adjustment would have no legal effect only through January 31, 2006. However, the Commission is satisfied that this determination amounted to "harmless error"[28] because the Commission's review of the record reveals no evidence that the rent ceiling increase was implemented through an increase in rent charged prior to the August 5, 2006 effective date of the Amendments that abolished rent ceilings, and thus the error did not affect the substantive rights of the Tenant, or the final outcome of the case. D.C. OFFICIAL CODE § 42-3502.06(a) (Supp. 2007); s*ee* Sawyer, 877 A.2d 96; Gelman Mgmt. Co., TP 27,995; *see also, supra* at n.15. Thus, the ALJ is affirmed on this issue.

K. Whether it was error for the ALJ to not levy a civil fine.

The provision of the Act providing for civil fines is D.C. OFFICIAL CODE § 42-3509.01(b), which provides:

> Any person who *willfully* (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than $ 5,000 for each violation.

D.C. OFFICIAL CODE § 42-3509.01(b) (emphasis added). The Commission and the DCCA define willfully as "a more culpable mental state than the term 'knowingly.'" *See* Miller, 870 A.2d at 559; Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 505 A.2d 73, (D.C. 1986) 75 n.6; Washington Cmtys. v. Joyner, TP 28,151 (RHC Dec. 12, 2005) (determining that the term "willfully" addresses an intention to violate the law); Quality Mgmt., Inc., 505 A.2d at 75 n.6;

[28] *See supra* at 18 n.15 (citing Karpinski, RH-TP-09-29,590; Young, TP 28,635; Jackson, RH-TP-12-28,898; Smith, RH-TP-07-28,961; Borger, RH-TP-06-28,854 at n. 13).

see also Recap v. Powell, TP 27,042 (RHC Dec. 19, 2002) (stating that the term "willfully" requires an intention to violate the Act); Ratner Mgmt. Co. v. Tenants of Shipley Park, TP 11,613 (RHC Nov. 4, 1988) (explaining that the Act places a heavier burden under D.C. OFFICIAL CODE § 42-3509.01(b) (2001) of showing that a housing provider's conduct was "intentional, or deliberate, or the product of a conscious choice"). To find willfulness, and thus impose a fine on a party, the ALJ must make specific findings of fact that "the housing provider intended to violate the Act or at least knew that it was doing so, from which the intent to do so could be inferred." Miller, 870 A.2d at 559; *see also* Torres, RH-TP-07-29,064 at 20; Dreyfuss Mgmt., LLC, RH-TP-07-28-895.

Additionally, "the Commission has consistently stated that credibility determinations are 'committed to the sole and sound discretion of the ALJ.'" Notsch v. Carmel Partners, LLC, RH-TP-06-28,690 (RHC May 16, 2014) (quoting Fort Chaplin Park Assocs. 649 A.2d at 1079) (emphasis added); *see* Burkhardt, RH-TP-06-28,706; Marguerite Corsetti Trust, RH-TP-06-28,207. The Commission has customarily asserted that "[w]here substantial evidence exists to support the hearing examiner's [or ALJ's] findings, even 'the existence of substantial evidence to the contrary does not permit the reviewing agency to substitute its judgment for that of the [hearing] examiner.'" Boyd v. Warren, RH-TP-10-29,816 (RHC June 5, 2013) (quoting Hago, RH-TP-08-11,552 & RH-TP-08-12,085); Loney v. Tenants of 710 Jefferson St., N.W., SR 20,089 (RHC Jan. 29, 2013) at n.13; Marguerite Corsetti Trust, RH-TP-06-28,207.

The Commission has already affirmed the ALJ's determination that the Housing Provider failed to properly take and perfect the January 6, 2003 rent ceiling adjustment in violation of the Act. *See supra* at 32-34. The ALJ also determined that the Housing Provider did not act willfully under D.C. OFFICIAL CODE § 42-3509.01(b) in failing to properly take and perfect the

January 6, 2003 rent ceiling adjustment, concluding that the Housing Provider believed (in apparent good faith and reasonableness) that an oral agreement made between the Housing Provider and the KWRA resulted in the delay of the 2002 rent ceiling increase to January 6, 2003. Final Order at 7-8, 11; Hearing CD (OAH Mar. 29, 2011) at 12:06).

The Commission's review of the record indicates that, in determining that the Housing Provider did not act willfully under D.C. OFFICIAL CODE § 42-3509.01(b), the ALJ credited the testimony of Tanya Marhefka, the property manager of the Housing Accommodation, that the delay in the January 6, 2003 rent ceiling adjustment was the result of apparently good faith negotiations and oral contract between her supervisor, David Newcome, and Lee Cohen, the then KWRA president. Hearing CD (OAH Mar. 29, 2011) at 12:06. The ALJ, citing to D.C. OFFICIAL CODE § 42-3509.01(b) and referencing Ms. Marhefka's testimony, did not levy any civil fines on the Housing Provider, determining that the evidence did not support a finding that the improper rent ceiling adjustment by the Housing Provider had been willful. Final Order at 11. Although the Commission notes that Ms. Marhefka's testimony was contested by the Tenant, credibility determinations are within the discretion of the ALJ, and the Commission will not substitute its judgment for that of the ALJ. Boyd, RH-TP-10-29,816; Loney, SR 20,089 at n.13; Marguerite Corsetti Trust, RH-TP-06-28,207.

The Commission observes that the ALJ applied the correct provision of the Act in declining to impose civil fines on the Housing Provider. *See* OFFICIAL CODE § 42-3509.01(b); Final Order at 11. Additionally, despite the existence of evidence in the record that may support a different conclusion, the Commission is satisfied that the ALJ's determination that the Housing Provider did not intend to violate the Act, and thus did not act willfully, was supported by substantial evidence, including Ms. Marhefka's testimony. Final Order at 6-11; Hearing CD

(OAH Mar. 29, 2011) 12:06; *see* Boyd, RH-TP-10-29,816; Loney, SR 20,089 at n.13; Marguerite Corsetti Trust, RH-TP-06-28,207. Therefore, the Commission affirms the ALJ on this issue. D.C. OFFICIAL CODE § 42-3509.01(b); 14 DCMR § 3807.1; Miller, 870 A.2d at 559; *see* Notsch, RH-TP-06-28,690; Boyd, RH-TP-10-29,816.

L. Whether it was error for the ALJ(s) to make findings of fact without citing evidence in the record (e.g., for "Findings of Fact" nos. 1, 2, 3, 5, and 7).

In accordance with the DCAPA, an ALJ is required to make findings of fact that are based on substantial evidence in the record. D.C. OFFICIAL CODE § 2-509(e) ("The findings of fact and conclusions of law shall be supported by and in accordance with the reliable, protective, and substantial evidence."); *see* Notsch, RH-TP-06-28,690 (explaining that where an ALJ's findings are supported by substantial evidence, the findings will not be overturned even if substantial evidence exists to the contrary); Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085.

The Tenant is not alleging that the ALJ made the Findings of Fact that are not supported by substantial evidence, but only that the ALJ's findings of fact were made without citing to any supporting evidence in the record. Tenant's Notice of Appeal at 2. The Tenant gives the following examples of findings of fact that the Tenant claims were made without citing to evidence in the record,: Findings of Fact numbers one (1), two (2), three (3), five (5), and seven (7), which provide as follows:

1. On January 31, 2006, Peter Schwartz, then President of KWRA filed TP 28,524, on behalf of KWRA members. The petition charged Housing Provider with filing an improper rent ceiling with RACD.

2. KWRA filed and attached a Certificate of Election of Adjustment of General Applicability (Certificate of Election or Certificate) to TP 28,524. Tenants who leased seven of the units listed on the Certificate are Tenant Petitioners in this case.

3. KWRA did not represent a majority of the tenants in the housing accommodation on January 31, 2006.

5. David Newcome, Housing Provider's representative, and Lee Cohen, then KWRA President, entered into an oral agreement to delay implementation [of] the 2002 rent ceiling increase for the housing accommodation's units. The delay was intended to compensate residents of the housing accommodation for inconveniences attendant to the on-going construction of the housing accommodation's South Wing.

7. Certificates of Election and documents pertaining to rent ceiling increases implemented prior to February 1, 2003, were maintained in the management office at the housing accommodation and were available for tenants to review during business hours or by appointment after business hours. Housing Provider did not proffer the documents as evidence during the evidentiary hearing in this case.

Final Order at 2-3; *see* Tenant's Notice of Appeal at 2.

The Commission observes that while the Tenant is correct that the ALJ did not offer any citations to the record in Findings of Fact 1, 2, 3, 5, and 7, the Commission is satisfied that this alone does not warrant reversal. D.C. OFFICIAL CODE § 2-509(e); Notsch, RH-TP-06-28,690; Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085. Moreover, based on its review of the evidence, the Commission is satisfied that each of the Findings of Fact recited above are supported by substantial evidence, including, for example, the Tenant Petition, Attachment A to the Tenant Petition, PX100, the testimony of Tanya Marhefka at the OAH hearing and other evidence in the record. Tenant Petition; Tenant Petition at 9-17 (Attachment A); PX100; Hearing CD (OAH Mar. 29, 2011) at 12:06; R. at 1-17.

Accordingly, where the Commission is satisfied that Findings of Fact 1, 2, 3, 5, and 7 are supported by substantial record evidence in the record, the Commission affirms the ALJ on this issue. D.C. OFFICIAL CODE § 2-509(e); 14 DCMR § 3807.1; Notsch, RH-TP-06-28,690; Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085

V. CONCLUSION

In accordance with the foregoing, the Commission determines that the only tenant with standing on appeal is Suzanne Crawford, and therefore this Commission's decision on appeal applies only to Ms. Crawford, in her individual capacity.

The Commission determines with respect to the Tenant's Issue A, that the ALJ's erroneous application of 1 DCMR § 2924 (2006), rather than the regulation in effect at the time the Tenant Petition was filed, 14 DCMR § 3904 (2004), was harmless error, and affirms the ALJ on this issue. *Compare* 14 DCMR § 2924 (2006), *with* 14 DCMR § 3904 (2004); *see generally,* Final Order at 5.

With respect to issue B, the Commission affirms the ALJ's determination that the KWRA did not represent a majority of the tenants of the Housing Accommodation, and was thus not eligible to be a party to the case. *See* 14 DCMR § 3807.1; Doyle, RH-TP-27,067; E&J Prop., HP-20,812; Dorchester, RH-SF-09-20,098; Daro Realty, RH-TP-08-29,407; Borger, RH-TP-06-28,854.

The Commission affirms the ALJ on issue C, regarding the denial of discovery in this case, where the record reflects that this case was at no time designated as a "complex case" by OAH (and/or the ALJ). *See* 1 DCMR § 2823.2; 14 DCMR § 3807; Prime, 955 A.2d 178; Johnson, 641 A.2d at 501; Saddler, 227 A.2d at 395; Chaney, RH-TP-06-28,366 & RH-TP-06-28,577.

The Commission dismisses the Tenant's issues D and E for failing to provide a clear and concise statement of an error in the ALJ's decision. 14 DCMR § 3802.5(b); Sellers TP 29,437; Levy TP 28,830; TP 28,835; Hawkins TP 29,201.

The Commission, in consideration of issue F, affirms ALJ's Cobbs' Order Denying Motions for Consolidation. 1 DCMR § 2927.1 (2006); 14 DCMR § 3807.1 (2004); Saddler, 227 A.2d 394; Johnson, 641 A.2d 495; Rosenboro, TP 3,991 & TP 4,673.

Having determined that the Tenant does not have standing as a party aggrieved (or in any other legal capacity) on issues G and H, the Commission dismisses these issues for lack of standing. *See* Young, TP 28,635; Mitchell, RH-TP-09-29,686; *see also* Mallof, 1 A.3d. at 394 n.51.

The Commission dismisses issue I, where the record reflects that the Tenant did not properly raise it during the OAH proceedings. Avirom, 384 F.2d 319; Lenkin, 642 A.2d 1282; Boer, 564 A.2d 54; Weinstein, TP 28,010; Stone, TP 27,033.

The Commission determines that it was harmless error for the ALJ to conclude, with respect to issue J, that the improper rent ceiling adjustment would have no legal effect only through January 31, 2006 (rather than determining that the improper rent ceiling adjustment was void in perpetuity), and affirms the ALJ on this issue. D.C. OFFICIAL CODE § 42-3502.06(a) (Supp. 2007); s*ee* Sawyer, 877 A.2d 96; Gelman Mgmt. Co., TP 27,995; D.C. Law 16-145, 53 DCR 4889.

The Commission affirms the ALJ on issue K, that the substantial record evidence did not support the imposition of fines against the Housing Provider. D.C. OFFICIAL CODE § 42-3509.01(b); 14 DCMR § 3807.1; Miller, 870 A.2d at 559; *see* Notsch, RH-TP-06-28,690; Boyd, RH-TP-10-29,816.

With respect to issue L, where the Commission is satisfied that Findings of Fact 1, 2, 3, 5, and 7 are supported by substantial evidence in the record, the Commission affirms the ALJ on

this issue. D.C. OFFICIAL CODE § 2-509(e); 14 DCMR § 3807.1; Notsch, RH-TP-06-28,690; Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, COMMISSIONER

CLAUDIA L. McKOIN, COMMISSIONER

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
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the **DECISION AND ORDER** in RH-TP-06-28,524 was served by first-class mail, postage prepaid, this **9th day of September, 2015**, to:

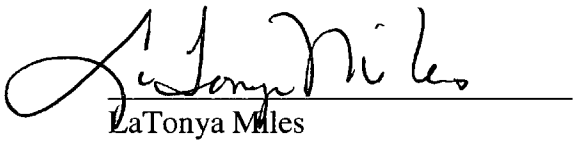
Suzanne B. Crawford
3133 Connecticut Ave., NW, Apt. 805
Washington, DC 20008

Lloyd Siegel
3133 Connecticut Ave., NW, Apt. 502
Washington, DC 20008

Ken Mazzer
3133 Connecticut Ave., NW, Apt. 115
Washington, DC 20008

Christine Burkhardt
3133 Connecticut Ave., NW, Apt. 901
Washington, DC 20008

Richard W. Luchs
Joshua M. Greenberg
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, NW, Suite 900
Washington, DC 20036



LaTonya Miles
Clerk of Court
(202) 442-8949