DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,707

In re: 907 6th Street, S.W., Unit 308-C

Ward Six (6)

UNITED DOMINION MANAGEMENT COMPANY
Housing Provider/Appellant

v.

DELORES JACKSON KELLY
Tenant/Appellee

DECISION AND ORDER

August 15, 2013

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).[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 D.C. Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (2001 Supp. 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.

[1] 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) (2001 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 (2001 Supp. 2008).

I. PROCEDURAL HISTORY

On July 13, 2006, Tenant/Appellee Delores Jackson Kelly (Tenant), residing in Unit 308-C of 907 6th Street, S.W. (Housing Accommodation), filed Tenant Petition RH-TP-06-28,707 (Tenant Petition) with the DCRA, claiming that the Housing Provider/Appellant, United Dominion Management Company (Housing Provider), violated the Act as follows:

1. The rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Emergency Act of 1985.

2. The Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division.

3. The rent ceiling filed with the Rental Accommodations and Conversion Division for my/our unit(s) is improper.

Tenant Petition at 1-4; Record (R.) at 24-27.

On December 20, 2006, Administrative Law Judge Robert E. Sharkey (ALJ) issued a Case Management Order that set a hearing date for January 18, 2007. Kelly v. United Dominion Mgmt., RH-TP-06-28,707 (OAH Dec. 20, 2006); R. at 38. A hearing was held in this matter on January 18, 2007 at which both the Tenant and the Housing Provider appeared. R. at 52. On April 23, 2008, the ALJ issued a final order, Delores Jackson Kelly v. United Dominion Mgmt. Co., RH-TP-06-28,707 (OAH Apr. 23, 2008) (Final Order). R. at 101-108. The ALJ made the following findings of fact: [2]

1. At all times relevant, Petitioner leased the Housing Accommodation, and her rent as of June 2006 was $822 per month. Respondent's Exhibit ("RX") 200.

2. In a Notice of Increase in Rent Charged dated June 28, 2006, Respondent informed Petitioner that her rent would be increased by $478 per month to $1,300 per month as of August 1, 2006. The notice attributed the rent increase to a $528 rent ceiling adjustment, effective on November 30, 1995, involving a vacancy

[2] 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 findings of fact and conclusions of law for ease of reference.

increase under Section 213(a)(2) of the Act, D.C. OFFICIAL CODE § 42-3502.13(a)(2) [(2001)]. RX 200. The rent ceiling adjustment that Respondent implemented on August 1, 2006, was documented in an Amended Registration form filed with the RACD on January 17, 1996. The Amended Registration recorded an increase in the rent ceiling for Petitioner's apartment from $895 to $1[,]423, and listed the date of change as November 30, 1995. Plaintiff's Exhibit ("PX") 100.

3. On July 13, 2006, Petitioner filed this tenant petition with the RACD. The petition asserted the following complaints: (1) The rent increase was larger than the amount of increase which was allowed by any applicable provision of the Act; (2) The Housing Provider failed to file the proper rent increase forms with the RACD; and (3) The rent ceiling filed with the RACD for Petitioner's apartment is improper.

4. The rent increase effective on August 1, 2006, was the only rent increase Petitioner disputed.

Final Order at 2-3; R. at 106-107.

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

1. This matter is governed by the Act; substantive rules implementing the Act at 14 DCMR [§§] 4100-4399 [(2004)]; the Office of Administrative Hearings Establishment Act of 2001 at D.C. OFFICIAL CODE § 2-1831.03(b-1) [(2001)], which authorizes OAH to adjudicate rental housing cases; and OAH procedural rules, OAH Rules 2800-2899 and 2920-2941.

A. The Validity of the August 2006 Rent Increase

2. The rent increase that Respondent implemented on August 1, 2006, was based on a rent ceiling increase arising out of a vacancy adjustment on November 30, 1995. RX 200. The vacancy adjustment was documented by an Amended Registration Form filed with RACD on January 17, 1996. PX 100. The effective date of the adjustment was November 30, 1995, more than thirty (30) days prior to the filing of the Amended Registration Form. *Ibid.* [sic]

3. For an increase in rent ceiling to be valid the housing provider must comply with the Rental Housing Commission's rules for documenting and filing the increase. The regulations provide that:

> Except as provided in § 4204.10 [relating to adjustments of general applicability], any rent ceiling adjustment authorized by the Act and this chapter shall be taken and perfected within the time provided in this chapter, and shall be considered taken and perfected only if the housing

provider has filed with the Rent Administrator a properly executed amended Registration/Claim of Exemption Form as required by § 4103.1, and met the notice requirements of § 4101.6.

14 DCMR [§] 4204.9 [(2004)].

4. The applicable registration requirement requires that a housing provider of a rental unit covered by the Act file an amendment to the Registration/Claim of Exemption form "[w]ithin thirty (30) days after the implementation of any vacant accommodation rent increase pursuant to § 213 of the Act." 14 DCMR [§] 4103.1(e) [(2004)]. The Rental Housing Commission has interpreted this regulation to require that the amended registration be filed within 30 days of when an apartment becomes vacant. Sawyer Prop. Mgmt. v. Mitchell, TP 24,991 (RHC Oct. 31, 2002) at 32-33, *aff'd*, Sawyer Prop[.] Mgmt.[,] Inc. v. D.C. Rental Hous. Comm'n, 877 A.2d 96 ([D.C.] 2005); Grant v. Gelman Mgmt. Co., TP-27,995 [sic] (RHC Mar. 30, 2006) at 26-27.

5. The Amended Registration Form here indicated that the vacancy was effective on November 30, 1995. Accordingly, the rent ceiling increase was not properly perfected because the Amended Registration was not filed until January 17, 1996, more than 30 days after the apartment became vacant. As a result, the August 1, 2006, rent increase of $478 per month, which purposed to implement a portion of the 1995 rent ceiling adjustment, is invalid.

B. Respondent's Defense based on the Statute of Limitations

6. Respondent contended that the statute of limitations barred Petitioner's claim because the basis for the rent increase, the rent ceiling adjustment, had been perfected more than three (3) years before the filing of the tenant petition. The Rental Housing Commission has held, however, that the Act's statute of limitations does not bar challenges made within three years of a rent adjustment that implements an improperly perfected rent ceiling adjustment, irrespective of when the rent ceiling adjustment occurred. D.C. Official Code § 42-3502.06(e); Grant v. Gelman Mgmt. Co., [TP 27,995] at 26; [*s*]*ee* Hinman v. United Dominion Management Company, OAH Case No. RH-TP-06-28[,]728 (Final Order, Oct. 5, 2007) for a thorough analysis of the Commission's holding in light of the Act, the Commission's rules and its prior decisions, and the applicable decisions of the District of Columbia Court of Appeals. Accordingly, I hold that Petitioner's claims are not barred by the Act's statute of limitations.

7. Because Petitioner established that the August 2006 rent increase implemented a rent ceiling adjustment that was improperly perfected, Petitioner has proved her three claims in the tenant petition.

C. Tenant's Award

8. If a housing provider fails to take and perfect a rent ceiling adjustment properly, a subsequent rent increase resulting from that adjustment is invalid and must be refunded to the tenant through the date of the hearing. Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC Mar. 26, 2002) at 46. Here, Respondent demanded the invalid $478 per month rent increase from Petitioner from August 1, 2006, through the month of the hearing, January 2007, six months, for a total of $2,868. Accordingly, I will award Petitioner a rent refund of $2,868.

9. Tenant is also entitled to a roll back of her rent to the level it was prior to August 1, 2006, when Respondent implemented the improper rent increase. *See* D.C. Official Code § 42-3509.01(a) [(2001)]; Sawyer v. Mitchell[, TP 24,991] at 2, 23; Redmond v. Majerle Mgmt., Inc., [TP 23,146] at 48. Accordingly, I will direct a roll back of Petitioner's rent to $822 per month, the amount Petitioner paid before the illegal increase in rent, effective as of the month following the hearing, February 2008.

D. Interest

10. The Rental Housing Commission Rules implementing the Rental Housing Act provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia from the date of the violation to the date of issuance of the decision. 14 DCMR [§§] 3826.1–3826.3 [(2004)]; Marshall v. District of Columbia [sic] Rental Hous. Comm'n, 533 A.2d 1271, 1278 (D.C. 1987). Below is a schedule that computes the interest due on each month's overcharge at the five (5) percent interest rate set for judgments of the Superior Court of the District of Columbia on the date hereof.

. . .[3]

Final Order at 3-6; R. at 103-106.

On May 1, 2008, the Housing Provider filed an appeal (Notice of Appeal) with the Commission, in which it raised the following issue:[4]

1. The Final Order is erroneous as a matter of law in that the Tenant Petitioner's claim is barred by the statute of limitations in D.C. [OFFICIAL] CODE ¶ [sic] 42-3502.06(e).

[3] The Commission omits a table detailing the ALJ's calculation of interest from its recitation of the ALJ's Conclusions of Law.

[4] The Commission recites the issues here using the language of the Housing Provider in the Notice of Appeal.

Notice of Appeal at 2.

The Housing Provider filed the Housing Provider/s Brief on Appeal (hereinafter "Housing Provider's Brief") on May 19, 2008. The Commission held a hearing in this matter on June 24, 2008.

II. ISSUE ON APPEAL

1. Whether the Final Order is erroneous as a matter of law in that the Tenant Petitioner's claim is barred by the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e).[5]

III. DISCUSSION

1. Whether the Final Order is erroneous as a matter of law in that the Tenant Petitioner's claim is barred by the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e).

In the Final Order, the ALJ determined that the Tenant's claim was not barred because the "Act's statute of limitations [at § 42-3502.06(e)] does not bar challenges made within three years of a rent [charged] adjustment that implements an improperly perfected rent ceiling adjustment, irrespective of when the rent ceiling adjustment occurred." Final Order at 5; R. at 104 (citing Grant v. Gelman Mgmt. Co., TP 27,995 (RHC Mar. 30, 2006) (Order on Reconsideration) at 26 (hereinafter "Grant Order on Reconsideration)) (emphasis added). The Grant Order on Reconsideration thus served as Commission case precedent for the ALJ's Final Order. *See* Final Order at 5; R. at 104 (citing Grant Order on Reconsideration).

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[5] D.C. OFFICIAL CODE § 42-3502.06(e) (2001) shall be referred to herein as "D.C. OFFICIAL CODE § 42-3502.06(e)" or as "§ 42-3502.06(e)," and provides the following:

> A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment, except that a tenant must challenge the new base rent as provided in § 42-3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

(emphasis added).

Furthermore, in the Final Order, the ALJ cited for support a prior OAH decision which (1) addressed practically identical legal issues related to the statute of limitations in § 42-3502.06(e), (2) provided a "thorough analysis of the Commission's holding [in the Grant Order on Reconsideration] in light of the Act, the Commission's rules and its prior decisions, and the applicable decisions of the District of Columbia Court of Appeals," and (3) was the first OAH decision to rely upon the Grant Order on Reconsideration for its interpretation of § 42-3502.06(e) in reaching a decision identical to that in the Final Order. Hinman v. United Dominion Mgmt. Co., RH-TP-06-28,728 (OAH Oct. 5, 2007). *See* Final Order at 5; R. at 104. The OAH's decision in Hinman, RH-TP-06-28728, was recently affirmed on appeal by the Commission in United Dominion Mgmt. Co. v. Hinman, RH-TP-06-28,728 (RHC June 5, 2013).[6]

The Commission observes that the factual context in this case is identical to that in Hinman, RH-TP-06-28,728.[7] In each case, a tenant is contesting an increase in rent charged which has occurred within three years of the date of filing of the respective tenant petition at issue, thereby within the limitations period of § 42-3502.06(e). *See* Final Order at 2; R. at 107; Hinman, RH-TP-06-28,728 at 3. In each case, the tenant's legal challenge is based upon the failure of the housing provider to comply with the Act's requirements for taking and perfecting an adjustment in the rent ceiling upon which the corresponding, contested increase in rent charged is based. *See* Final Order at 2-3; R. at 106-107; Hinman, RH-TP-06-28,728 at 3. In each case, the contested rent ceiling adjustment occurred more than three years before the filing

[6] Hereinafter, the Commission notes that all citations and references to "Hinman, RH-TP-06-28,728" shall refer to the Commission's Decision and Order in that case, issued on June 5, 2013.

[7] The Commission observes that all factual references in its decision and order in Hinman, RH-TP-06-28,728, were adopted and affirmed from the OAH's findings of fact and conclusions of law in that case.

of the respective tenant petition at issue, thereby beyond the limitations period of § 42-3502.06(e). *See id.* In each case, the housing provider claimed that, because the contested rent ceiling adjustment occurred beyond the three-year limitations period of § 42-3502.06(e), the tenant's claim of an illegal increase in the corresponding rent charged was barred by § 42-3502.06(e), even though the allegedly improper adjustment in rent charged occurred within the limitations period of § 42-3502.06(e). *See* Final Order at 5; R. at 104; Hinman, RH-TP-06-28,728 at 4.

Specifically, in this case, the Tenant is challenging a 2006 adjustment in rent charged that implements a 1996 adjustment in rent ceiling that was not properly taken and perfected in violation of 14 DCMR § 4204.9 (2004).[8] *See* Final Order at 2; R. at 107. In Hinman, RH-TP-06-28,728, the tenant challenged a 2006 adjustment in rent charged that implemented a 2001 adjustment in rent ceiling that was not properly taken and perfected in violation of 14 DCMR §§ 4204.9, -.10 (2004). *See* Hinman, RH-TP-06-28,728 at 7-8.

Having noted an identical factual context in this case and Hinman, RH-TP-06-28,728, the Commission also observes that the over-arching legal issue raised in this case is identical to the issue addressed and determined by the Commission in Hinman, RH-TP-06-28,728: whether § 42-3502.06(e), as a matter of law, bars a tenant's claim of an improper adjustment in rent charged that occurs within the three-year limitations period of § 42-3502.06(e), when the allegedly improper corresponding adjustment in rent ceiling upon which the tenant's claim is

[8] The Commission observes that previous, identical versions of the regulations governing the taking and perfecting of adjustments in rent ceilings, 14 DCMR §§ 4204.9, -.10 (2004), were in effect at the time of the 1996 adjustment in rent ceiling at issue in this case – 14 DCMR §§ 4204.9, -.10 (1991). For the language of these regulations, *see infra* at n.10.

based occurred beyond the three-year limitations period of § 42-3502.06(e). *See* Notice of Appeal at 2; Hinman, RH-TP-06-28,728 at 4.[9]

Finally, the Commission observes that the additional legal issues identified in the Housing Provider's Brief in this case are nearly identical to those raised in the housing provider's brief in Hinman, RH-TP-06-28,728, and that these issues were also addressed (and determined) by the Commission in its decision in Hinman, RH-TP-06-28,728. *Compare* Housing Provider's Brief at 4-8, 16-25, *with* Hinman, RH-TP-06-28,728 at 7-9, 17-18, 45-46. For example, the Housing Provider in this case, makes the following assertions in its brief: (1)

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[9] The Commission notes that, in addition to the issue raised on appeal in this case, the housing provider in Hinman (RHC) raised six (6) additional issues on appeal, as follows:

1. The Final Order is erroneous as a matter of law in that the invalidation of the August 2006 rent increase is barred by the statute of limitations in D.C. [OFFICIAL] CODE [§] 42-3502.06(e).

2. The Final Order is erroneous as a matter of law in that the invalidation of the March 1, 2001 vacancy rent ceiling adjustment was barred by the statute of limitations in D.C. [OFFICIAL] CODE [§] 42-3502.06(e).

3. This Commission's Decision and Order in Grant v. Gelman Management Co., TP 27,995 (RHC Feb[.] 4 [sic], 2006), and its application in the Final Order in this case, is contrary to the statute of limitations in D.C. [OFFICIAL] CODE [§] 42-3502.06(e), and precedents of the District of Columbia Court of Appeals, and must be overruled.

4. This Commission's Decision and Order in Grant v. Gelman Management Co., TP 27,995 (RHC Feb[.] 4 [sic], 2006), and its application in the Final Order in this case, is contrary to the Constitution of the United States, including, without limitation, U.S. Const., Amend 5, as interpreted by the Supreme Court of the United States in inter alia, William Danzer & Company, Inc. v. Gulf & Ship Island Railroad Company, 268 U.S. 633 (1925) and precedents of the District of Columbia Court of Appeals and this Commission interpreting the statute of limitations in D.C. [OFFICIAL] CODE [§] 42-3502.06(e).

5. The Final Order and its unconstitutional application of Grant v. Gelman Management Co., TP 27,995 (RHC Feb[.] 4 [sic], 2006) violates the Civil Rights of Appellant to due process of law and violates 42 U.S.C. [§] 1983 [(2006)].

6. The Final Order is erroneous as a matter of law in that it retroactively applies the Decision and Order in Grant v. Gelman Management Co., TP 27,995 (RHC Feb[.] 4 [sic], 2006) to the March 1, 2001 rent ceiling adjustment at issue in this proceeding.

See Hinman, RH-TP-06-28,728 at 4-5.

the Act's statute of limitations at § 42-3502.06(e) applies to rent ceilings as well as rents charged, *see* Housing Provider's Brief at 4-6 (citing Kennedy v. D.C. Rental Hous. Comm'n, 709 A.2d 94, 97-100 (D.C. 1998); Borger Mgmt. v. Godfrey, TP 20,116 (RHC Sept. 4, 1989)); (2) the effective date of an adjustment in rent ceiling for purposes of calculating the limitations period in § 42-3502.06(e) is the date when it is "taken and perfected" through the filing of an amended registration form by a housing provider pursuant to 14 DCMR §§ 4204.9-.10 (2004),[10] not the date of implementation, *see* Housing Provider's Brief at 6-8 (citing Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 866 A.2d 41 (D.C. 2004); Kennedy, 709 A.2d at 99; Williams v. Alvin L. Aubinoe, Inc., TPs 22,821 & 22,814 (RHC Aug. 12, 1992); Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990) at 17-18)); and (3) the ALJ's Final Order violates the Due Process Clause of the Constitution. *See* Housing Provider's Brief at 16-25 (citing William Danzer & Co., Inc. v. Gulf & Ship Island R.R. Co., 268 U.S. 633 (1925); Amoco Prod. Co. v. Newton Sheep Co., 83 F.3d 1464, 1474 (10th Cir. 1996); Kennedy, 709 A.2d at 99).

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[10] 14 DCMR § 4204.9 states the following:

> Except as provided in § 4204.10, any rent ceiling adjustment authorized by the Act and this chapter shall be taken and perfected within the time provided in this chapter, and shall be considered taken and perfected only if the housing provider has filed with the Rent Administrator a properly executed amended Registration/Claim of Exemption Form as required by § 4103.1, and met the notice requirements of § 4101.6.

14 DCMR § 4204.10 provides as follows:

> Notwithstanding § 4204.9, a housing provider shall take and perfect a rent ceiling increase authorized by § 206(b) of the Act (an adjustment of general applicability) by filing with the Rent Administrator and serving on the affected tenant or tenants in the manner prescribed in § 4101.6 a Certificate of Election of Adjustment of General Applicability, which shall:
>
> (a) Identify each rental unit to which the election applies;
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> (b) Set forth the amount of the adjustment elected to be taken, and the prior and new rent ceiling for each unit; and
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> (c) Be filed and served within thirty (30) days following the date when the housing provider is first eligible to take the adjustment.

The housing provider's brief in Hinman, RH-TP-06-28,728, made the following, nearly identical, contentions: (1) the term "rent adjustment" in § 42-3502.06(e) has been interpreted to apply to adjustments in rent ceiling as well as adjustments in rent charged, *see* Hinman, RH-TP-06-28,728 at 8 (citing Kennedy, 709 A.2d at 97-100; Godfrey, TP 20,116); (2) the effective date of an adjustment in rent ceiling for purposes of § 42-3502.06(e) is the date it is "taken and perfected" pursuant to 14 DCMR §§ 4204.9-.10 (2004), *see* Hinman, RH-TP-06-28,728 at 8 (citing Majerle Mgmt., 866 A.2d 41; Williams, TPs 22,821 & 22,814; Ayers, TP 21,273); and (3) an interpretation of § 42-3502.06(e) that allows a tenant to challenge an adjustment in rent ceiling that occurred more than three years prior to the filing of the tenant petition, even where the adjustment in rent ceiling was implemented through a corresponding adjustment in rent charged that occurred within the three years prior to the filing of the tenant petition, is unconstitutional and violates the Due Process Clause of the Constitution. *See* Hinman, RH-TP-06-28,728 at 45 (citing Danzer, 268 U.S. 633; Amoco Prod. Co., 83 F.3d at 1474; Kennedy, 709 A.2d at 99).[11]

Based upon its foregoing analysis, the Commission is satisfied that the relevant factual contexts in this case and in Hinman, RH-TP-06-28,728, are substantially similar, if not identical, s*ee supra* at 7-9, and that the major legal issues raised in this appeal and in Hinman, RH-TP-06-28,728, regarding the interpretation and application of § 42-3502.06(e) with respect to such similar factual contexts, are also substantially similar, if not identical. *See supra* at 9-11. Due to

[11] In observing the similarities between the notices of appeal and the briefs on appeal submitted by the Housing Provider in this case and the housing provider in Hinman, RH-TP-06-28,728, the Commission notes further that the housing accommodation is the same in both cases (907 6th St., S.W.), the housing provider is the same in both cases (United Dominion Management Company), and counsel for the housing provider is the same in both cases (Richard Luchs and Vincent Policy of the law firm Greenstein, DeLorme & Luchs, P.C.). Hinman, RH-TP-06-28,728. *See* Notice of Appeal; Housing Provider's Brief. The primary difference between these two cases appears to be merely the identity of the tenant.

the similarity of factual contexts and legal issues regarding the interpretation and application of § 42-3502.06(e) in this case and in Hinman, RH-TP-06-28,728, the Commission determines that its decision in Hinman, RH-TP-06-28,728, serves as appropriate and controlling legal precedent for its decision and order in this case. The Commission thus affirms the Final Order on the same legal authority, grounds, and analysis as contained and elaborated in detail in its decision and order in Hinman, RH-TP-06-28,728, and will apply the legal standards established in Hinman, RH-TP-06-28,728, to the issues raised in this appeal which, as noted *supra* at 9-11, are substantially similar to the issues raised in Hinman, RH-TP-06-28,728.

(1) Whether the term "rent adjustment' as contained in § 42-3502.06(e) refers to both rent ceilings and rents charged

The Commission determined in Hinman, RH-TP-06-28,728, that, while both the Act and its regulations indisputably incorporate and utilize separate and distinct definitions for "rent [charged]" and "rent ceiling," thereby undermining the housing provider's assertion that the term "rent adjustment" in § 42-3502.06(e) applies to both adjustments in rent ceiling and adjustments in rent charged, the applicable language and text of the Act (especially in the absence of clarifying legislative history) do not by themselves conclusively determine this issue. *See* Hinman, RH-TP-06-28,728 at 11-15 (citing D.C. OFFICIAL CODE §§ 42-3501.03 (28)-(29) (2001); 14 DCMR §§ 4200.5, -.7 (2004)). The Commission is not persuaded by the legal contentions of the Housing Provider on this issue to disturb our decision in Hinman, RH-TP-06-28,728. *See* Hinman, RH-TP-06-28,728 at 14-15. *See also* Housing Provider's Brief at 4-6.

(2) Whether the effective date of an adjustment in rent ceiling for purposes of calculating the limitations period in § 42-3502.06(e) is the date when it is "taken and perfected" through the filing of an amended registration form by a housing provider pursuant to 14 DCMR §§ 4204.9-.10 (2004), not the date of implementation through an adjustment in rent charged

In Hinman, RH-TP-06-28,728, the Commission rejected the contention by the housing provider, also made in this appeal, that an uninterrupted line of cases, including Majerle Mgmt., 866 A.2d 41, Kennedy, 709 A.2d at 99, Williams, TPs 22,821 & 22,814, and Ayers, TP 21,273 at 17-18, serve as clear, conclusive precedent that the "effective date" for an adjustment in rent ceiling under § 42-3502.06(e) is the date when an adjustment in rent ceiling is "filed" or "taken and perfected" under 14 DCMR §§ 4204.9-.10 (2004), and not the date when it is implemented through a corresponding adjustment in rent charged. *See* Hinman, RH-TP-06-28,728 at 38-39. To the contrary, the Commission determined that the "effective date" of an adjustment in rent ceiling is the date that it is implemented through a corresponding adjustment in rent charged, and not the date when it is "taken and perfected" through the filing of an amended registration form by a housing provider pursuant to 14 DCMR §§ 4204.9-.10 (2004). *See* Hinman (RHC) at 23-24.

In Hinman, RH-TP-06-28,728, addressing the same cases cited by the Housing Provider in this appeal to support its interpretation of the term "effective date" in § 42-3502.06(e), the Commission noted that the "effective date" of the contested adjustments in rent ceiling in those cases, *see* Majerle, 866 A.2d at 43-44, Kennedy, 709 A.2d at 98-99, Williams, TPs 22,821 & 22,814 at 7-9, Ayers, TP 21,273 at 15-19, occurred beyond the limitations period of § 42-3502.06(e) regardless of whether the term "effective date" had been interpreted as the date when an adjustment in rent ceiling was taken and perfected under 14 DCMR §§ 4204.9-.10 (2004), or as the date of its implementation through a corresponding adjustment in rent charged. *See* Hinman, RH-TP-06-28,728 at 28-39. *See also* Majerle, 866 A.2d at 43-44; Kennedy, 709 A.2d at 98-99; Williams, TPs 22,821 & 22,814 at 7-9; Ayers, TP 21,273 at 15-19. The Commission thus concluded that the outcome of the cases cited by the housing provider, including Majerle,

866 A.2d at 43-44 and Kennedy, 709 A.2d at 98-99, failed to support any assertion that the ALJ in Hinman, RH-TP-06-28,728, like the ALJ in this case, erred in determining that, under § 42-3502.06(e), the "effective date" of a rent ceiling adjustment is the date of its implementation through a corresponding adjustment in rent charged. *See* Hinman, RH-TP-06-28,728 at 28-39.

The Commission further concluded that, just as in this case, when a contested adjustment in rent ceiling is beyond the three-year limitations period in § 42-3502.06(e), but the date of its implementation through a corresponding adjustment in rent charged is within the limitations period, any claims under the Act regarding an alleged impropriety in either the adjustment in rent charged or the adjustment in rent ceiling are not barred by § 42-3502.06(e).[12] *See* Hinman, RH-TP-06-28,728 at 23-24.

For the same reasons that the Commission rejected the housing provider's contentions regarding this issue in Hinman, RH-TP-06-28,728, we are not persuaded by the equivalent legal

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[12] Consistent with its interpretation of the meaning of the term "effective date" in § 42-3502.06(e) in Hinman, RH-TP-06-28,728, the Commission made the following observations regarding the applicability of § 42-3502.06(e) in various factual scenarios:

> When, as in Kennedy, [709 A.2d at 97-99,] the "effective date" of a contested adjustment in rent ceiling is beyond the limitations period in § 42-3502.06(e) – because the date of its implementation through a corresponding, contested adjustment in rent charged is also beyond the limitations period – the Commission is satisfied that any claims under the Act regarding either adjustment are barred by § 42-3502.06(e) . . . .
>
> [W]hen the "effective date" of a contested adjustment in rent ceiling is within the limitations period in § 42-3502.06(e) – and its corresponding, contested adjustment in rent charged also occurs within the limitations period – the Commission observes that any claims under the Act regarding either adjustment are not barred by the limitations period of § 42-3502.06(e).
>
> Finally . . . when a contested adjustment in rent ceiling is beyond the limitations period in § 42-3502.06(e) – but the date of its implementation through a corresponding, contested adjustment in rent charged is within the limitations period – the "effective date" of the contested adjustment in rent ceiling under § 42-3502.06(e) remains as the date of its implementation through the corresponding adjustment in rent charged, and any claims under the Act regarding either adjustment are permitted under § 42-3502.06(e).

See Hinman, RH-TP-06-28,728 at 23-24 (citing Kennedy, 709 A.2d at 97-9; Grant Order on Reconsideration at 10-11; Grant, TP 27,995 (Feb. 24, 2006)) (emphasis in original).

contentions made by the Housing Provider in this case to disturb our decision in Hinman, RH-TP-06-28,728, on the meaning of the term "effective date" in § 42-3502.06(e). *See* Hinman, RH-TP-06-28,728 at 16-44. *See also* Housing Provider's Brief at 6-8.

(3) Whether the ALJ's Final Order violates the Due Process Clause of the Constitution, U.S. Const. amend. V

The Commission in Hinman, RH-TP-06-28,728, rejected the same assertion as made by the Housing Provider in this appeal, that the ALJ's interpretation of § 42-3502.06(e) violates the Due Process Clause of the Fifth Amendment of the Constitution, U.S. Const. amend. V ("[n]o person shall...be deprived of life, liberty, or property, without due process of law.") *See* Hinman, RH-TP-06-28,728 at 45; Housing Provider's Brief at 16-25. The Commission found no merit in the housing provider's contention, also made in this appeal, that the District of Columbia Court of Appeals (DCCA) in Kennedy, 709 A.2d at 99,[13] determined that § 42-3502.06(e) is a "statute of repose" which completely extinguishes a cause of action after the expiration of the three year limitations period contained therein. *See* Hinman, RH-TP-06-28,728 at 45-50; Housing Provider's Brief at 16-25. The Commission observed that, "[w]hile the DCCA in Kennedy did assert that § 42-3502.06(e) placed a limitation on a tenant's right to recover and right to a remedy, the Commission does not agree that the DCCA made any specific conclusion in Kennedy, as claimed by the [h]ousing [p]rovider, that § 42-3502.06(e) constituted a "statute of

[13] The Housing Provider in this appeal, like the housing provider in Hinman, RH-TP-06-28,728, maintains that the following characterization of § 42-3502.06(e) from Kennedy, 702 A.2d at 99, properly serves as the basis of its constitutional challenge to the ALJ's interpretation of § 42-3502.06(e) herein: "[T]he statute of limitations in the Act [§ 42-3502.06(e)] places a limitation on the tenants' right to recover, as well as, the right to a remedy (refunds)." *See* Housing Provider's Brief at 18; Hinman, RH-TP-06-28,728 at 46.

repose" equivalent in nature and effect to the statute of limitations at issue in Danzer, 268 U.S. 633."[14] *See* Hinman, RH-TP-06-28,728 at 49.

The Commission in Hinman, RH-TP-06-28,728, dismissed a claim also made in this appeal by the Housing Provider, that an uninterrupted line of cases in this jurisdiction, including Kennedy, 709 A.2d at 99, Estate of Huang v. D'Albora, 644 A.2d 1, 3-4 (D.C. 1994), and Scholz P'ship v. Rental Accommodations Comm'n, 427 A.2d 905, 914-15 (D.C. 1981), served as clear precedent for interpreting § 42-3502.06(e) as an absolute bar to the Tenant's claim. *See* Hinman (RHC) at 47-50; Housing Provider's Brief at 23-24. The Commission determined in Hinman, RH-TP-06-28,728, that the cases cited by the Housing Provider in support of its constitutional challenge in this appeal, such as Danzer, 268 U.S. 633, Stogner v. California, 539 U.S. 607 (2003), and Amoco Prod. Co., 83 F.3d at 1474, were factually distinguishable, raised different legal issues, or were otherwise substantively inapposite, to serve as appropriate precedent supporting a claim that the ALJ's interpretation of § 42-3502.06(e) violated the Due Process Clause of Fifth Amendment. U.S. Const. amend. V. *See* Hinman, RH-TP-06-28,728 at 45-54 & nn.42,46.

With respect to the constitutional issues raised in this appeal regarding the ALJ's interpretation of § 42-3502.06(e), which are substantially similar to the constitutional issues that were raised in Hinman, RH-TP-06-28,728, the Commission concluded as follows:

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[14] As noted in Hinman, RH-TP-06-28,728 at 47 (citations omitted):

> In Danzer, . . . the Interstate Commerce Commission had interpreted the Transportation Act of 1920 to allow the revival of a plaintiff's claim for damages that was otherwise barred under a state's statute of limitations. The Supreme Court determined that the company's "lapse of time" in filing its claim for damages "not only barred the remedy but also destroyed the liability of defendant to plaintiff." The Court observed that it would be a violation of the Due Process Clause of the Fifth Amendment to interpret a law to create liability that had otherwise been properly barred under a state's statute of limitations.

> The Commission is further satisfied that the ALJ's interpretation of § 42-3502.06(e) in the Final Order is rationally related to the purposes of the Act, and is consistent with the due process requirements of the Fifth Amendment of the Constitution. The ALJ's interpretation of the term "effective date" in § 42-3502.06(e) in this case does not alter the limitations period contained in § 42-3502.06(e).

Hinman, RH-TP-06-28,728 at 58 (citations omitted). The Commission is similarly not persuaded by the legal contentions of the Housing Provider in this appeal regarding this issue to disturb its decision in Hinman, RH-TP-06-28,728, as described *supra*. *See* Hinman, RH-TP-06-28,728 at 44-59. *See also* Housing Provider's Brief at 16-25.

For the foregoing reasons, and on the basis of the legal standards and holdings on the same issues addressed by the Commission in Hinman, RH-TP-06-28,728, the Commission determines that the Final Order is not erroneous as a matter of law, and that the Tenant's claim that the Housing Provider implemented an adjustment in rent charged in violation of the Act is not barred by the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e). *See* Hinman, RH-TP-06-28,728 at 7-44. Accordingly, the Commission affirms the Final Order. *See* Hinman, RH-TP-06-28,728.

IV. CONCLUSION

For the reasons stated herein, the Commission affirms the Final Order.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD YOUNG, COMMISSIONER

MARTA W. BERKLEY, 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 foregoing **DECISION AND ORDER** was mailed, postage prepaid, by first class U.S. mail on this **15th day** of **August, 2013** to:

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