DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,708

In re: 3133 Connecticut Ave, NW, Unit 901

Ward Three (3)

CHRISTINE L. BURKHARDT
Tenant/Appellant

v.

B.F. SAUL CO., et al.
Housing Providers/Appellees

DECISION AND ORDER

September 25, 2014

YOUNG, COMMISSIONER. 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 Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).[1] The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over the conduct of hearings on tenant petitions from the RACD and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Supp. 2005). The functions and duties of the RACD were transferred to 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 § 42-3502.04(b) (Repl. 2010)).

I. PROCEDURAL HISTORY

On July 14, 2006, Christine Burkhardt, the tenant (Tenant), residing at 3133 Connecticut Ave, NW, Unit 901, Washington, D.C. 20008 (Housing Accommodation), filed Tenant Petition RH-TP-06-28,708 (Tenant Petition) alleging that her housing provider B.F. Saul Company (Housing Provider) committed the following violations of the Act:[2]

1. The rent was increased by an amount that was larger than allowed by any applicable provision of the Act.

2. Tenant did not receive a proper 30-day notice of rent increase before the increase was charged.

3. Housing Provider did not file the correct rent increase forms with the Rental Accommodations Division of the Department of Housing and Community Development.

4. The rent exceeded the legally calculated rent ceiling for the unit.

5. The rent ceiling filed with the Rental Accommodations Division was improper.

See Tenant Petition at 3; Record for RH-TP-06-28,708 (R.) at 8.

On April 9, 2010, the Tenant filed a motion to amend the tenant petition (Second Motion to Amend).[3] R. at 1229-36. On April 22, 2010, Administrative Law Judge Erika Pierson (ALJ) issued an Order granting in part, and denying in part, Tenant's motion to amend the petition. Burkhardt v. B.F. Saul Co., RH-TP-06-28,708 (OAH Apr. 22, 2010); R. at 1237-43. The Housing Provider filed a motion seeking reconsideration of that Order on May 5, 2010 (Motion for Reconsideration). R. at 1244-53. On May 21, 2010, the Tenant filed a renewed motion to amend the tenant petition (Third Motion to Amend). R. at 1481-94.

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[2] The Tenant's claims are recited herein using the same language as appears in the Tenant Petition.

[3] The Commission notes that the Tenant filed the First Motion to Amend on October 5, 2007; the ALJ never issued an order addressing this motion. For further discussion, see issue "G," infra at 26.

On December 6, 2010, the ALJ issued an Order: 1) granting the Housing Provider's Motion for Reconsideration; 2) denying the Tenant's Motion for Partial Summary Judgment; 3) denying, in part, the Tenant's Third Motion to Amend the Tenant Petition, seeking a) to add additional allegations regarding the rent increases, b) to add an allegation that the rent was increased while her apartment was not in substantial compliance with the housing regulations, c) to add an allegation of retaliation, d) to add B.F. Saul Property Company as a party; and 4) granting the Tenant's request to add Klingle Corporation as a party to the Tenant Petition.[4] See Burkhardt v. B.F. Saul Co., RH-TP-06-28,708 (OAH Dec. 6, 2010) (Order on Pending Motions); R. at 1468-89.

An evidentiary hearing was held before the ALJ on January 31, 2011. On August 3, 2011, the ALJ issued a final order, Burkhardt v. B.F. Saul Co., RH-TP-06-28,708 (OAH Aug. 3, 2011) (Final Order); R. at 1726-45. In the Final Order the ALJ made the following findings of fact:[5]

> 1. Tenant/Petitioner Christine Burkhardt has resided at 3133 Connecticut Avenue, NW, known as the "Kennedy Warren Apartments," since 1984. From 1984 to March 2006, Tenant resided in apartment 829. In January 2006, Tenant applied for a larger apartment in the building. An employee in the rental office named Ms. Churchill, informed Tenant that apartment 901, a two-bedroom unit, had become available due to the death of the tenant. The tenant in 901 died in February 2006. The deceased tenant's family were [sic] given time to clear out the apartment and the rent was paid for the apartment through the end of February 2006. Ms. Churchill told Tenant that if she wanted the apartment, she needed to apply quickly because Housing Provider was going to stop renting apartments. Tenant was aware that the Housing Provider intended to take a vacancy increase on apartment 901, but Ms. Churchill did not know the rent amount for the apartment. Mr. [sic] Churchill

[4] Hereinafter, the term "Housing Provider" shall be used to refer to both Klingle Corporation and B.F. Saul Company.

[5] The findings of fact are recited here using the same language as the ALJ in the Final Order, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

told Tenant she would have to speak with Tanya Marhefka, the property manager, to find out the rent amount and the comparable apartment.

2. Tenant signed the lease for apartment 901 on March 25, 2006. PX 100. Tenant was not given a copy of the lease at that time because it had to be signed by Ms. Marhefka. Ms. Marhefka signed the lease on April 6, 2006. *Id.* After signing the lease, Tenant went to the RAD to look up the amended registration for the property to see what apartment Housing Provider used as a comparable unit for taking a vacancy increase. Tenant was unable to locate an amended registration for apartment 901.

3. Tenant moved into apartment 901 on March 31, 2006. Tenant received a copy of her lease from Housing Provider on May 16, 2006, after making multiple requests. PX 100. The lease states that the monthly rent for the apartment was $3,915 and that the rent ceiling (maximum amount of rent that could be charged) for the apartment was $4,483. *Id.* Tenant paid her rent for April and May 2006. After receiving the lease and the amended registration for the apartment in May 2006, Tenant stopped paying rent because she did not believe she was being charged the correct amount.

4. . . .[6]

5. On December 23, 2003, Housing Provider filed with the RAD, a Certificate of Election of Adjustment of General Applicability (CEAGA), effective February 1, 2004, increasing the rent ceiling for apartment 901 from $1,661 to $1,696 ($35 increase). PX 114. The basis for the increase was the 2003 CPI-W of 2.1%. *Id.*

6. On October 1, 2004, Housing Provider filed a CEAGA with the RAD, effective November 1, 2004, increasing the rent charged for apartment 901 from $1,614 to $1,656 ($42 increase). PX 115. The basis for the increase was the "2003 CPI-W of 2.9%." *Id.*

7. On March 1, 2005, Housing Provider filed a CEAGA with the RAD, effective April 1, 2005, increasing the rent ceiling for apartment 901 from $1,696 to $ 1,745 ($49 increase). PX 115. The basis for the increase was the 2004 CPI-W of 2.9%.

8. On September 30, 2005, Housing Provider filed a CEAGA with the RAD, effective November 1, 2005, increasing the rent charged for apartment 901 from $1,656 to $1,701 ($45 increase). PX 116. The basis for the increase was the "2005 CPI-W of 2.7%." *Id.*

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[6] The Commission omits from this Decision and Order a recitation of the ALJ's "Table A," detailing the rent history for the Tenant's unit. See Final Order at 5; R. at 1730.

9. On March 16, 2006, Housing Provider filed an Amended Registration Form with the RAD to implement an authorized $179 Capitol [sic] Improvement Increase. PX 118. The Amended Registration reflects that the "previous rent ceiling" for apartment 901 was $4,483, and it was increased to $4,662. Housing Provider subsequently rescinded the capital improvement increases which were deferred to November 2006.

10. On March 29, 2006, Housing Provider filed an Amended Registration Form with the RAD, which reflects that effective March 1, 2006, the rent ceiling for apartment 901 was increased from $1,745 to $4,483 ($2,738 increase), based on a vacancy increase. PX 117. The comparable unit for the increase was apartment 801, which was also a two-bedroom unit in the same tier.

Final Order at 4-6; R. at 1729-31 (footnotes omitted).

The ALJ made the following conclusions of the law in the Final Order:[7]

. . .[8]

B. The Vacancy Increase

1. Tenant's allegations that the rent was increased in an amount higher than allowed by the Act, that she did not receive a proper 30-day notice of rent increase, that Housing Provider failed to file the correct rent increase forms with the RAD, and that the rent exceeded the legally calculated rent ceiling, all arise from the vacancy increase in question. Tenant alleges the following violations of the Act in regards to the vacancy increase: (1) Housing Provider failed to "perfect" the vacancy increase by filing it within 30-days and posting notice in a conspicuous place; (2) the comparable unit for the vacancy increase was not a "substantially identical unit;" (3) Tenant did not receive proper notice of the vacancy increase; and (4) the vacancy increase was taken within 180 days of another increase. I will address each of these contentions in turn.

(1) Whether Housing Provider properly "perfected" the vacancy increase

2. As a preliminary matter, there were two amended registrations that Tenant alleges Housing Provider failed to properly perfect, only one of which I find

[7] The conclusions of law are recited here as stated by the ALJ in the Final Order, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

[8] The Commission has omitted a recitation of the ALJ's statement of jurisdiction. See Final Order at 6; R. at 1731.

relevant. On March 16, 2006, Housing Provider filed an amended registration increasing the rent ceiling for a number of apartments, including apartment 901, based on an approved capital improvement surcharge of $179. PX 118. The document increases the rent ceiling from $4,438 to $4,662, but Housing Provider had not yet filed the vacancy increase, increasing the rent from $1,745 to $4,483. *See Chart in Findings of Fact.*

3. However, I find the March 16, 2006, amended registration is not relevant because it was superseded by the March 29, 2006, amended registration. Ms. Marhefka testified that there was a problem with the capitol [sic] improvement surcharges and therefore, after filing the March 16th amended registrations to take the surcharge, it was subsequently rescinded and delayed until a later date. As such, the vacancy increase filed on March 29, 2006, was applied to the rent ceiling on record prior to the March 16, 2006, filing, and superseded that filing. Accordingly, there was no reason to provide notice of the March 16, 2006, amended registration, which was never implemented. Therefore, I will only address whether Housing Provider properly perfected the March 29, 2006, vacancy increase.

4. Prior to August 2006, a housing provider was allowed to take a vacancy rent ceiling adjustment without approval of the Rent Administrator, provided the housing provider filed an amended registration form to document the increase and provided notice to the tenants. D.C. Official Code § 42-3502.13 [(2001)]; 14 DCMR [§] 4204.9 [(2004)]. In order for a housing provider to obtain a rent ceiling adjustment, a housing provider was required to "take" and "perfect" the adjustment in accordance with the requirements of the housing regulations. *See Sawyer Prop. Mgmt. of Maryland* [sic] *v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 103 (D.C. 2005); 14 DCMR [§] 4200.5. The applicable housing regulations provide:

> **4207.5** A housing provider who so elects shall take and perfect a vacancy rent ceiling adjustment in the manner set forth in **§ 4204.10**, and the date of "perfection" shall be the date on which the housing provider satisfies the notice requirements of **§ 4101.6**.
>
> **4204.10** [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;

(b) Set forth the amount of the adjustment elected to be taken, and the prior and new rent ceiling for each unit; and

(c) Be filed and served within thirty (30) days following the date when the housing provider is first eligible to take the adjustment.

4101.6 Each housing provider who files a Registration/Claim of Exemption form under the Act, shall, **prior to or simultaneously with the filing**, post a true copy of the Registration/Claim of Exemption form in a conspicuous place at the unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.

(Emphasis added).

5. Tenant's argument is three-fold. First, Tenant argues that Housing Provider failed to file the amended registration within 30-days of the date it was first eligible to take the adjustment. Second, Tenant argues that Housing Provider failed to post the amended registration in a conspicuous place; and third, that it failed to post the amended registration **prior to or simultaneously with** the March 29, 2006, filing, as required by § 4101.6.

(a) The 30-day filing requirement

6. Pursuant to §§ 4204.9 and 4204.10(c) of the regulations, a housing provider is required to file an amended registration for a vacancy rent ceiling increase within 30 days of the date it was first eligible for the adjustment. In applying these provisions, the District of Columbia Court of Appeals (Court of Appeals) has held that an amended registration form must be filed within 30 days of when the rental unit becomes vacant. *Sawyer*, 877 A.2d at 109.

7. In this case, the unit in question, apartment 901, became vacant due to the occupant's death which occurred sometime in February 2006. Neither Tenant nor Housing Provider knew the exact date of death, although Tenant testified she believed it was "on or about the 3rd of February 2006." Transcript ("Tr.") at 23. Regardless, the 30-day timeframe begins to toll on the date the "rental unit becomes **vacant**." *Sawyer*, 877 A.2d at 109 (emphasis added). The apartment did not become "vacant," meaning available to rent, on the day the tenant died. Housing Provider's witness, Tanya Marhefka, testified credibly that the family was given time to clear out the apartment and the rent was paid through the end of February 2006. Tenant also testified that when she viewed the apartment in February 2006, the former occupant's belongings were still there. As such, the apartment was not vacant and available to rent until March

1, 2006. Housing Provider, therefore, had until April 1, 2006, to file the vacancy increase.

8. Tenant argued that the 30 days began to run the date the tenant died because of the following provision in the lease: "This lease will automatically terminate upon Tenant's death." PX 100. However, Tenant fails to give credit to the rest of the paragraph in the lease which states: "It is understood and agreed that no interest whatsoever in the Lease or the Apartment will pass to Tenant's heirs, executors, administrators . . .. [sic] Tenant's estate shall nevertheless be responsible for payment of Tenant's outstanding obligations under the Lease, and for the use and occupancy of the Apartment . . . during the administration of the estate until the apartment is actually vacated and surrendered to the Landlord." PX 100 at 4. By paying rent until the end of February 2006, the family of the former tenant remained in possession of the unit pursuant to the lease and it became vacant on March 1, 2006. Housing Provider filed an amended registration for the vacancy increase on March 29, 2006, with an effective date of March 1, 2006. Therefore, I find that the vacancy increase was timely filed.

(b) Posting of the Amended Registration

9. The regulations provide that the date of perfection of a vacancy rent ceiling increase, shall be "the date on which the housing provider satisfies the notice requirements of § 4101.6." 14 DCMR [§] 4207.5. Section 4101.6 requires a housing provider to either conspicuously post the amended registration or mail it to all affected tenants. 14 DCMR [§] 4101.6.

10. Regarding the posting of the amended registration, Ms. Marhefka testified credibly that Housing Provider maintains all the registration documents for the housing accommodation in a binder in the office that is available to the tenants during business hours or by appointment. Notices are posted in the laundry room informing tenants that a new registration has been filed and is available for viewing. Tenant testified that she has never seen such a posting in the laundry room. However, the fact that Tenant has not seen it, does not mean the postings were not made and I found Ms. Marhefka's testimony in this regard to be credible. I also find that the laundry room is a sufficiently available and public space to meet the requirements of the Act. While Tenant suggests that not all tenants use the laundry room as they may have their own washers, that does not make it an improper place for posting. Indeed, there is likely no specific place that every tenant in the building visits, but the laundry room is available for them to visit. In this case, Tenant not only viewed the documents in the office, but, without authorization, removed registration documents from the binders. As such, there is no question that she was aware of how to view the documents.

11. A similar issued [sic] was address [sic] by the Court of Appeals in *Tenants Council of Tiber Island-Carrollsburg Square,* [sic] *v. D.C. Rental Hous. Comm'n*, 426 A.2d 868 (D.C. 1981). In that case, which involved a hardship increase, the Court rejected the tenant's contention that the housing provider was not entitled to an increase because the housing provider failed to comply with the Act's notice requirements. The court held: "Evidence that the landlord kept a copy of the registration form posted in the resident manager's office, [e]ven if this method of providing notice does not comply with the literal meaning of [the statute] . . . substantially and sufficiently comports with the intent of the Act." *Id.* at 875. The court also quoted the following holding from the Rental Housing Commission: "We have previously ruled that a failure to post the registration mandates neither dismissal of hardship petitions nor rent rollbacks. *See* H/P 182, RAC 12/30/76." *Id.* Therefore, I find that Tenant has failed to establish that Housing Provider did not conspicuously post the amended registration.

12. The remaining question then, is <u>when</u> Housing Provider posted notice of the amended registration. Tenant's argument on this issue is not entirely clear as throughout her post-hearing brief, Tenant intertwines and confuses the requirements for increasing the rent ceiling and increasing the rent charged. Tenant's brief states that Housing Provider identified that new rent ceiling in its March 16th filing "Therefore, [sic] it is impossible that the notice could have been provided within the 30-days prior required by the Act." *Tenant's Post-Hearing Brief* at 7.

13. As previously discussed, the regulations regarding vacancy increases state that the "date of perfection shall be the date on which the housing provider satisfies the notice requirements of § 4101.6." 14 DCMR [§] 4207.5. Section 4101.6 requires posting in a conspicuous place "prior to or simultaneously with the filing." 14 DCMR [§] 4101.6. Neither Tenant nor Housing Provider established when notice was posted regarding the amended registration. On direct examination of Ms. Marhefka, Counsel for Tenant established only that Ms. Marhefka did not post notice of the amended registration before it was filed on March 29, 2006. Tr. 58-62. Counsel for Tenant did not establish whether the notice was posted on the day of filing or anytime thereafter. Counsel simply did not ask the question. Counsel for Tenant asked: "If this [Amended Registration] was filed on March 29th, with a date of change of March 1st, 2006, how was notice provided." Tr. 60. Ms. Marhefka responded "All the copies of all our amended registration forms were kept in the business office and available for review. And there's a possibility as well that we - - because we started actually documenting with photographs of posting them in the laundry room." *Id.* Counsel for Tenant then asked: "Was a copy of this amended registration form file-stamped March 29, 2006, posted 30 days before March 1st, 2006," and Ms. Marhefka replied, "No," and that line of questioning ended. Tr. 61. Tenant established that the amended registration

was not posted before March 29th, but did not establish when or if it was posted on or after March 29th.

14. Tenant testified that by the time she received a copy of her lease on May 16, 2006, she had also received a copy of the amended registration. Tenant did not however, establish when or how she received the amended registration. Therefore, Tenant has not met her burden on this issue.

(2) The Rent Increase Forms

15. Tenant's petition alleges that Housing Provider failed to file the correct rent increase forms with the RAD. Tenant did not make any arguments regarding what forms she believes should have been filed but were not. I find that the amended registration form filed on March 29, 2006, complied with the regulatory requirements. It identified the unit, set forth the amount of the adjustment and the prior and new rent ceilings, and was filed within 30 days of when Housing Provider was first eligible to take the adjustment. 14 DCMR [§§] 4204.9, 4204.10, and 4207.5. Tenant did not identify any other documents she believes Housing Provider should have filed and I cannot make assumptions. Tenant has failed to meet her burden on this issue.

(3) Whether Housing Provider properly used apartment 801 as the comparable unit

16. In taking a vacancy increase, the Act allows the landlord to increase the rent either by 12% of the current allowable rent or to the amount of a "substantially identical rental unit in the same housing accommodation." D.C. Official Code § 42-3502.13(a) (2005); 14 DCMR [§] 4207.2. The Amended Registration for the vacancy increase identified the comparable unit on which the vacancy increase was based as unit 801. Apartments 801 and 901 are both two-bedroom units located in the same tier of the building. The only evidence Tenant offered that the units were not comparable was that apartment 801 had a microwave installed. The Act provides that for the purposes of a vacancy increase, rental units are "substantially identical" where they contain essentially the same square footage, the same floor plan, comparable amenities and equipment, comparable locations, and are in comparable physical conditions. D.C. Official Code § 42-3502.13(b). The addition of a microwave alone (which may have been purchased by the tenant), does not make apartment 801 substantially different from 901. Therefore, I find that Tenant failed to establish that 801 was not a comparable unit.

(4) Whether Tenant received proper notice of the vacancy increase

17. Tenant argues that in addition to posting the notice of amended registration, Housing Provider was required to provide her with notice of the basis for [sic]

vacancy increase when she occupied the unit. Tenant argued that Housing Provider failed to provide her notice as required by § 4205.4 of the regulations (*Tenant's Closing Stmt* at 5), which states:

> A housing provider shall **implement a rent adjustment** by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions have been taken:
>
> (a) the housing provider shall **provide the tenant of the rental unit** not less than thirty **(30) days written notice**, pursuant to § 904 of the Act, in which the following items shall be included:
>
> (1) The amount of the rent adjustment;
> (2) The amount of the adjusted rent;
> (3) The date upon which the adjusted rent shall be due; and
> (4) The date and authorization for the rent ceiling adjustment taken and perfected pursuant to § 4204.9.

14 DCMR [§] 4205.4 (emphasis added).

18. However, this Section is not applicable to Tenant because her rent was not increased. The above regulation applies to **"implement[ing] a rent adjustment."** Housing Provider did not implement a rent adjustment as defined in the Act. Rather, Housing Provider established a new rent level through the vacancy increase for which Tenant was notified through the lease she signed and there is no additional notice requirement for vacancy increases for an unoccupied unit. Tenant cites the Rental Housing Commission's decision in *Sawyer v. Mitchell*, TP 24,991 (RHC Oct. 31, 2010) to support her contention that Housing Provider was required to give Tenant notice pursuant to § 4205.4. However, *Sawyer*, specifically involved an increase to the rent charged for an occupied unit wherein the housing provider attempted to implement a previously unperfected vacancy rent ceiling increase. The Commission held "[P]ursuant to § 4205.4 (1998) housing providers must identify to tenants, the date and authorization for the rent ceiling adjustment taken and perfected pursuant to § 4205.4." *Sawyer*, TP 24,991 at 12. However, the *Sawyer* decision has to be read in the context of its facts. The Commission went on [sic] say that the notice in *Sawyer* was improper "because it did not contain the identity of the date and authorization of the perfected and delayed rent ceiling adjustment." *Id. Sawyer* stands for the proposition that, in implementing a vacancy increase as an increase in rent charged for an occupied unit, notice pursuant to § 4205.4 must be provided. *Sawyer* does not extend to the situation here, where a vacancy rent ceiling increase was taken of [sic] an unoccupied unit. Subsection (a) of 4205.4, above, specifically states that the housing provider shall "provide the tenant of the rental unit" with notice. While the notice requirements of § 4205.4 apply

to increases in rent ceilings and rents charged for occupied units, it does not apply to vacancy rent ceiling increases for an unoccupied unit. When a vacancy ceiling increase is taken on an unoccupied unit, there is no tenant in the rental unit entitled to notice.

19. When the Rental Housing Act was amended in August 2006, there were additional provisions added that would require a housing provider to give a new tenant additional notices regarding vacancy increases, but those provisions are not applicable to increases prior to August 2006. *See.* [sic] D.C. Official Code § 42-3502.22 ("Disclosure to Tenants," effective August 1, 2006) and D.C. Official Code § 42-3402.13(d) [sic] (requiring notice of vacancy increase within 15 days of commencement of new tenancy, effective August 1, 2006). Tenant has failed to meet her burden on this issue.

20. Tenant also testified that she did not receive notice of the rent amount until she received a copy of her lease on May 16, 2006. However, I do not credit Tenant's testimony in this regard. Tenant completed an application for a larger apartment in January 2006. RX 212. In February 2006, she learned that apartment 901 had become available. The leasing agent, Ms. Churchill, was not able to tell her the rent amount and referred Tenant to Ms. Marhefka. Tenant did not state whether or when she spoke with Ms. Marhefka. Yet, Tenant moved into the apartment on March 30, 2006, and paid rent for April and May 2006. Therefore, Tenant must have known the rent amount as she would have to pay the first month's rent before taking occupancy of the apartment. The rental application completed by Tenant reflects that the rent for apartment 901 was $3,915. RX 212. However, that amount had to have been written onto the application at a later date as Tenant completed the application on January 21, 2006, before the former occupant died in February 2006. Ms. Marhefka signed the application on March 7, 2006, and most likely wrote in the rent amount at that time as the handwriting matches that of Ms. Marhefka. *Id.* Neither Ms. Marhefka nor Tenant recalled whether Tenant was given a copy of the application. However, Ms. Marhefka testified credibly that once apartment 901 became available, there had to have been additional communication with Tenant, because once the rent amount was determined, Tenant had to qualify for the apartment by establishing that she had income equaling at least 40 times the rental amount. As such, I find that Tenant was aware of the rent amount before she moved into unit 901.

C. Tenant's other allegations regarding improper rent increases

21. Tenant also alleges that her rent exceeded the legally calculated rent ceiling because (1) that 180 days had not lapsed [sic] between the November 1, 2005, rent increase, and the vacancy increase and (2) that Housing Provider failed to perfect the November 1, 2004, and November 1, 2005, rent ceiling increases.

22. At the time of the vacancy increase the rent ceiling for apartment 901 was $1,701. PX 116. The rent ceiling was increased to $4,438, a $2,782 increase. Tenant was charged rent in the amount of $3,915, which was less than the rent ceiling.

23. Tenant is correct that the evidence shows that Housing Provider did not perfect the November 2004 or November 2005 rent increases, which were increases of general applicability, because the increases were not filed within 30 days of May 1st, the effective date of the CPI-W. On October 1, 2004, Housing Provider increased the rent charged, effective November 1, 2004, based on the 2003 CPI-W increase. PX 115. However, Housing Provider did not perfect the 2004 CPI-W increase. Housing Provider filed a CEAGA on December 23, 2003, to increase the rent ceiling based on the 2003 CPI-W. The 2003 CPI-W was effective May 1, 2003. Therefore, to [sic] Housing Provider was required to file a CEAGA to take the 2003 CPI-W increase no later than May 30, 2003. Housing Provider filed the CEAGA seven months la te and therefore the November 1, 2004, increase in rent charged was improper.

24. Similarly, on September 30, 2005, Housing Provider filed a CEAGA, increasing the rent charged (effective November 1, 2005), based on the 2005 CPI-W increase by filing a CEAGA by May 30, 2004, or at any time thereafter. To increase the rent charged, a housing provider must demonstrate there was a previously perfected, but unimplemented rent ceiling increase applied. *The Rittenhouse v. Campbpell*, [sic] TP 25,093 (RHC Dec. 17, 2008). As such, the November 1, 2005, rent increase was also improper. However, I need not have a lengthy discussion on these deficiencies because they have no impact on Tenant. The improper rent increases were implemented on the former tenant and therefore there is no recourse for Ms. Burkhardt. Ms. Burkhardt is not entitled to a refund of rent that was never demanded from her. At best, the two unperfected rent ceiling increases invalidated those increases to the rent ceiling thereby making the proper rent ceiling, prior to the vacancy increase, $1,661. Even if I find that the rent ceiling of $1,701 exceeded the legally calculated rent ceiling (which it did), Housing Provider was still able to raise the rent ceiling to $4,483 based on the vacancy increase. Therefore, the rent ceiling applicable to Tenant when she occupied the apartment on March 30, 2006, did not exceed the legally calculated rent ceiling, which was $4,483.

25. The remaining issue is whether 180 days had lapsed [sic] between rent increases. As a preliminary matter, in its Post-Hearing Memorandum, Housing Provider argued that I had previously ruled that Tenant could not challenge whether 180 days had lapsed [sic] between rent increases, however, that is not correct. When Tenant filed her petition in 2006, she alleged improper rent increases, but failed to specify what increases were being challenged. In response to an Order issued on January 4, 2010, Tenant

supplemented her petition by setting forth with specificity the rent increases she was challenging, which included whether 180 days had lapsed [sic] between the November 5, 2005 rent increase and the vacancy increase. In my "Order on Pending Motions" issued on December 6, 2010, I stated on page 7:

> As discussed at the status conference, Tenant may amend the petition to allege that 180 days had not lapsed [sic] between rent increases and that the vacancy increase was not properly taken and perfected. The vacancy increase that occurred on March 26, 2006, falls within the applicable statute of limitations (July 14, 2003, to July 14, 2006) and the original petition stated that Tenant was challenging a vacancy increase.

26. Prior to August 5, 2006, when the Rental Housing Act was amended, a housing provider was permitted to increase the "rent charged" once every 180 days and increase the "rent ceiling" once every 12 months. D.C. Official Code § 42-3502.06 (1985). The evidence in this case shows that on September 30, 2005, Housing Provider filed a CEAGA with the RAD, increasing the rent charged for apartment 901, effective November 1, 2005. PX 116. The authorization for the rent increase was the 2005 CPI-W increase of 2.7%. As such, Housing Provider could not increase the "rent charged" again for 180 days, which was May 1, 2006. However, as previously discussed, a vacancy increase in [sic] not an adjustment of Tenant's rent. There is only one time in which a housing provider can take a vacancy increase – within 30 days of the apartment becoming vacant – irrespective of other rent adjustments that may have been made. There is nothing in the Act or regulations that would prohibit a housing provider from taking a valid vacancy increase on an unoccupied unit within 180 days of a rent adjustment on the occupied unit. Accordingly, Tenant has failed to meet her burden on this issue.

Final Order at 4-17; R. at 1729-42 (footnotes omitted) (emphasis in original).

On October 11, 2011, the Tenant filed a Notice of Appeal ("Notice of Appeal") with the Commission, states the following:

1. It was error for the ALJ to fail to designate Tenant's Petition as "Complex Track."

2. It was error for the ALJ to deny discovery.

3. It was error for the ALJ to fail to allow Tenant to amend the Tenant Petition.

4. It was error for the ALJ to fail to rule on Tenant's October 5, 2007 Motion to Amend.

5. The ALJ erred in applying D.C. Code § 45-2516(e).[9]

6. It was error and an abuse of discretion for the ALJ to remove from the record, prior to the hearing, all exhibits previously submitted by Tenant that pre-dated July 14, 2003.

7. It was error for the ALJ to apply regulations and case law under the Rental Housing Act of 1975 where the Rental Housing Act of 1985 [sic].

8. The ALJ erred by failing to allow Tenant to present evidence regarding of [sic] unabated housing code violations and relevant Notices of Violation.

9. It was error for the ALJ to make findings of fact that do not reflect the testimony given at the proceeding or are otherwise not supported by substantial evidence in the record.

10. It was error for the ALJ to disregard DCMR §§ 3905.1 & 2 and fail to correct the case caption.

11. It was error for the ALJ to deny Tenant's August 15, 2007 Motion for Partial Summary Disposition.

12. It was error for the ALJ to exceed the jurisdiction of OAH by modifying a contract between the parties.

13. It was error for the ALJ to make findings of fact in ruling on the Motion for Partial Summary Disposition that the ALJ did not allow to be fully litigated.

14. It was error the [sic] ALJ to fail to invalidate the vacancy rent ceiling adjustment where uncontroverted evidence on the record demonstrated that the unit on which the vacancy rent ceiling adjustment was based was not substantially identical to Unit 901.

15. It was error for the ALJ to fail to find that the rent ceiling on Unit 801 was not properly calculated and could not, therefore, form the basis of a valid vacancy rent ceiling increase for unit 901.

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[9] The Commission notes that the cited statutory provision referenced by the Tenant is erroneous. The statute of limitations is currently contained in D.C. OFFICIAL CODE § 42-3502.06(e); however, it was formerly contained at D.C. OFFICIAL CODE § 45-2516(e), as cited by the Tenant. See, e.g., Kornblum v. Charles E. Smith Residential Realty, L.P., TP 26, 155 (Mar. 11, 2005) at 4. Nonetheless, because the arguments of the Tenant clearly reference the statute of limitations, see, e.g., Tenant's Brief at 7, and because the Housing Provider premised its argument on the same, see, e.g., Housing Provider's Brief at 9, the Commission is satisfied that the Tenant was simply mistaken in her citation to the previous codification of the Act's statute of limitations.

16. It was error for the ALJ to find that Tenant never raised the issue of the validity of Unit 801's rent ceiling history.

17. It was error for the ALJ to fail to invalidate the vacancy rent ceiling increase because it was not taken within thirty days of the date Housing Provider was first eligible to do so.

18. It was error for the ALJ to fail to invalidate the vacancy rent ceiling increase due to incorrect or false information on the AR.

19. It was error for the Hearing Examiner to fail to find that Housing Provider failed to comply with D.C. Code § 42-3502.05(g) and 14 DCMR § 4103.1(e) with respect to a vacancy rent increase.

20. It was error for the ALJ to fail to find that the Housing Provider failed to give the proper notice of rent increase to Unit 901 Tenant pursuant to 14 DCMR § 4205.4 with respect to a vacancy rent increase.

21. It was error for the ALJ to fail to invalidate the vacancy rent increase when the uncontroverted record evidence demonstrated that the Housing Provider implemented the vacancy rent increase before 180 days had elapsed since the previous rent increase was implemented.

22. It was error for the ALJ to fail to find that the implementation of the vacancy rent increase invalid because an upward rent adjustment was taken when there was no AR on file which provided a basis for the adjustment.

23. It was error for the ALJ to find that "Tenant After [sic] signing the lease, Tenant went to the RAD to look up the amended registration for the property to see what apartment Housing Provider used as a comparable unit for taking a vacancy increase" when Tenant stated at the hearing that she had gone to RAD the day before she signed the lease and relied upon the fact that the Housing Provider had not filed an AR regarding unit 901 as of the close of business on March 24, 2006, the day before she signed the lease.

24. It was error for the ALJ to fail to find that the Housing Provider failed to provide Tenant with a copy of her lease within the [sic] seven days of signing.

25. It was error for the ALJ to fail to find that the Housing Provider had failed to properly take rent ceiling adjustments through Certificates of Election of General Applicability ("CEs") or Amended Registrations ("ARs"), applicable to Unit 901 (or any unit in Unit 901's rent history) including a vacancy adjustment.

26. It was error for the ALJ to fail to find that the Housing Provider had filed ARs and CEs when the Housing Accommodation was not properly registered, rendering the CEs and ARs invalid.

27. It was error for the ALJ to fail to invalidate CEs and ARs that contained incorrect or false information or that were not otherwise in compliance with filing requirements.

28. It was error for the ALJ to fail to find that the Housing Provider had failed to timely provide the required notice to Tenant of rent ceiling adjustments including the vacancy rent ceiling adjustment.

29. It was error for the ALJ to fail to find that the Housing Provider had failed to timely perfect rent ceiling adjustments through CEs or ARs pursuant to the Act or the regulations, including a vacancy adjustment.

30. It was error for the ALJ to fail to find that the Housing Provider failed to provide required notice of the all [sic] rent adjustments, including the vacancy rent adjustment.

31. It was error for the ALJ to fail to find that the Housing Provider acted knowingly and willingly in its violations of the Act.

32. It was error for the ALJ to fail to find that Housing Provider acted in bad faith in its violations of the Act.

33. It was error for the ALJ to fail to find that the Housing Providers [sic] actions were retaliatory.

34. The ALJ erred in failing to impose civil fines of $5,000 for each violation under the provisions of D.C. Code § 42-3509.01(b).

35. It was error for the ALJ to dismiss the petition.

36. It was error for the ALJ to fail to find that Tenant's legally calculated rent could not exceed $985.

37. Tenant reserves the right to raise any additional errors in Tenant's brief on appeal in this proceeding.

Notice of Appeal at 2-4. Both parties filed appellate briefs in this matter. The Commission held its hearing on May 29, 2013.

II. ISSUES ON APPEAL[10]

The Tenant's appeal raised the following issues.

A. Whether it was error for the ALJ to make findings of fact that do not reflect the testimony given at the proceeding or are otherwise not supported by substantial evidence in the record.

B. Whether it was error for the ALJ to dismiss the Tenant Petition.

C. Whether the ALJ erred in applying D.C. OFFICIAL CODE § 45-2516(e).[11]

D. Whether the ALJ erred by failing to designate the Tenant's Petition as a "Complex Case."

E. Whether the Tenant is permitted to reserve the right "to raise any additional errors" in her brief.

F. Whether the ALJ erred in denying the Tenant's August 15, 2007 Motion for Partial Summary Disposition.

G. Whether the ALJ erred in failing to rule on the Tenant's October 5, 2007 Motion to Amend the Tenant Petition.

H. Whether it was error for the ALJ to deny discovery.

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[10] The Commission, in its discretion, has reordered and consolidated the Tenant's issues on appeal for ease of discussion, and to group together claims that involve overlapping legal issues and the application of common legal principles. See, e.g., Barac Co. v. Tenants of 809 Kennedy St., Nw., VA 02-107 (RHC Sept. 27, 2013); Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012) at n.8; Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012) at n.9.

[11] The Commission observes that, in addition to her broader Statute of Limitations claim, the Tenant also asserts that "it was error and an abuse of discretion for the ALJ to remove from the record, prior to the hearing, all exhibits previously submitted by Tenant that pre-dated July 14, 2003." Notice of Appeal at 2. The Tenant in her brief expanded the issue to assert that "it was error and an abuse of discretion for the ALJ to remove from the record prior to the hearing all exhibits previously submitted on August 23, 2007. (Error No. 6)." Tenant's Brief at 32 (emphasis added). The Commission notes that this issue as stated in the Notice of Appeal or Tenant's Brief is not supported by the record. See generally Hearing CD (OAH Jan. 31, 2011).

The ALJ stated the following in the Scheduling Order: "[P]lease note that all of Tenant's previously filed exhibits were returned to her former counsel on October 5, 2010. The documents previously filed by Housing Provider remain in the record." Burkhardt v. B.F. Saul Co., RH-TP-06-28,708 (OAH Dec. 20, 2010) (Scheduling Order) at 1; R. at 1492. In spite of this note, the Tenant's counsel failed to re-file the appropriate documents in advance of the Evidentiary Hearing, but was nonetheless permitted to file them the day of the Hearing. See Hearing CD 9:45:40-9:50:20 (OAH Jan. 31, 2011). Insofar as the Tenant alleges that the ALJ erred by excluding the pre-2003 evidence, the Commission dismisses the Tenant's issue no. 6 as we do not find it to be supported by the record of the Evidentiary Hearing; and thus the issue cannot be said to contain a clear and concise statement of the alleged error. See infra at 20-21; D.C. Official Code § 42-3502.06(e).

I. Whether the ALJ erred in denying the Tenant's motion to amend the Tenant Petition to present evidence regarding unabated housing code violations and relevant Notices of Violation, and to include an allegation of retaliation.

J. Whether the ALJ erred in finding that the 2006 vacancy rent ceiling adjustment was proper.

K. Whether it was error for the ALJ to fail to invalidate the vacancy rent charged increase when the uncontroverted record evidence demonstrated that the Housing Provider implemented that increase within 180 days of when the previous rent charged increase was implemented.

L. Whether the ALJ erred in finding that the Housing Provider provided the Tenant with the required notice of the rent charged adjustment.[12]

M. Whether the ALJ erred in failing to award treble damages.

N. Whether the ALJ erred in failing to impose fines.

III. DISCUSSION OF THE ISSUES

A. Whether it was error for the ALJ to make findings of fact that do not reflect the testimony given at the proceeding or are otherwise not supported by substantial evidence in the record.

B. Whether it was error for the ALJ to dismiss the petition.

C. Whether the ALJ erred in applying D.C. OFFICIAL CODE § 45-2516(e).[13]

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[12] The Tenant asserts in her Notice of Appeal that the ALJ erred in failing to find that the Housing Provider did not provide the Tenant with a copy of her lease within seven days of signing. Notice of Appeal at 3. The Commission observes that the Tenant does not provide any statute, regulation, or relevant case law precedent in support of this issue on appeal, nor does the Tenant address this issue in her brief. See generally Tenant's Brief. Thus, the Commission, in its discretion, has interpreted the issue to be an allegation that is intended to support the claim that the Tenant was not provided proper notice of the rent ceiling and rent charged adjustments. See, e.g., Barac Co., VA 02-107; Ahmed, Inc., RH-TP-28,799 at n.8; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.9.

[13] The Commission, in its discretion, will combine its discussion of issues "A," through "C," because it observes that these issues raise substantially similar contentions – namely, whether the claims as raised in the notice of appeal are too vague for appellate review, see Notice of Appeal at 2, 4 – and because they involve overlapping legal issues and the application of common legal principles. See, e.g., Ahmed, Inc., RH-TP-28,799 at n.8; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.9.

The Commission's regulations require that a notice of appeal contain "a clear and concise statement of the alleged error(s)." 14 DCMR § 3802.5(b) (2004); Barac Co., v. Tenants of 809 Kennedy St., N.W., VA 02-107 (RHC Sept. 27, 2013). The Commission is prohibited from reviewing issues that are "vague, overly broad, or do not allege a clear and concise statement of error [in the Final Order]." Barac Co., VA 02-107; accord, e.g., Marbury Plaza, LLC v. Tenants of 2300 & 2330 Good Hope Rd., Se., CI 20,753 & CI 20,754 (RHC Apr. 18, 2005) (dismissing an issue that stated "tenants on the list for 2300 and 2330 are not listed as parties in item number 1"); Norwood v. Peters, TP 27,678 (RHC Feb. 3, 2005) (dismissing an issue that stated "the conclusions of law in regards to D.C. [OFFICIAL CODE], Section 42-3502.05(g) (2001) and Section 42-3502.02 (2001) are completely misapplied in this case."); Johnson v. Dorchester House Assocs., LLC, RH-TP-07-29,077 (RHC July 31, 2012) at 2-3 (dismissing issues raised in the tenant's motion for reconsideration where they failed to set forth a clear and concise statement of the Commission's alleged error). For example, in Barac Co., VA 02-107, the appellants raised an issue on appeal that stated "the Hearing Examiner used the wrong burden of proof." Id. at 49. The Commission dismissed the issue after determining that the statement of the issue failed to identify either the allegedly erroneous legal standard for the burden of proof that was applied, or the legal standard for the burden of proof that the appellant asserts should have been applied. Id. at 50.

The Commission observes that, like the issue on appeal in Barac Co., VA 02-107, the Tenant's statements of issues "A," "B," and "C," in the instant case are too vague to warrant appellate review. Id.; see 14 DCMR § 3802.5(b); Gardiner v. Charles C. Davis, Real Mgmt. Realty, TP 24,955 (RHC May 11, 2001). Issue "A," as asserted by the Tenant, fails to identify the specific findings of fact that she believes were not supported by substantial evidence, or the

specific testimony that the Tenant believes contradicts the findings of fact. See Notice of Appeal at 2. Issue "B" fails to identify either the specific grounds upon which the claim of error is based, or the legal standard that should have been applied by the ALJ. See id. at 4. Issue "C," in the Tenant's appeal stated, "[t]he ALJ erred in applying D.C. [OFFICIAL CODE] § 45-2516(e)." In this issue the Tenant fails to identify any finding of fact or conclusion of law reached by the ALJ contrary to the provisions of D.C. [OFFICIAL CODE] § 45-2516(e).[14] Further, the Tenant fails to indicate how the ALJ erroneously applied the statute.[15] See Notice of Appeal at 2. Contra Norwood, TP 27,678.

Accordingly, for failure to present a "clear and concise statement of the alleged errors," the Commission dismisses issues "A," "B," and "C." See 14 DCMR § 3802.5(b); Barac Co., VA 02-107; Redmond v. Majerle Mgmt., TP 23,146 (RHC June 4, 1999) (dismissing five (5) issues after determining that they "did not contain a clear and concise statement of the alleged errors in the hearing examiner's decision.").

D. Whether the ALJ erred by failing to designate the Tenant's Petition as a "Complex Case."

As it relates to issue "D," the Tenant asserts in her Notice of Appeal that the ALJ erred by failing to designate the instant case as a "Complex Case." Notice of Appeal at 2. The OAH Rules provide that "[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

[14] D.C. CODE § 45-2516(e), is currently codified at D.C. OFFICIAL CODE § 42-3502.06(e).

[15] The Commission notes that the Tenant dedicates several pages of her brief to the issue of statute of limitations. See Tenant's Brief at 16-32. Nonetheless, the Commission determines that this expansion of the issue in her brief went beyond "developing issues raised in the notice of appeal" as permitted by relevant case law, and into the realm of advancing issues "that were not raised in the notice of appeal." Killingham v. Wilshire Inv. Corp., TP 23,881 (Sept. 30, 1999) at 10. This exceeds the permissible scope of the brief. Id.; see also infra (discussion of issue "E."). Thus, the Commission will not address the Tenant's arguments related to the statute of limitations that were raised for the first time in her brief.

to a Complex Case track." 1 DCMR § 2806.2; see 1433 T St. Assocs., LLC v. Tenants of 1433 T St., N.W., RH-SR-08-20,115 (OAH Jan. 3, 2009) at 2. The Commission notes that neither the Notice of Appeal nor the Tenant's Brief addresses when the Tenant requested a change in the designation in accordance with 1 DCMR § 2806.2; nor does either of the Tenant's submissions address when, or why the ALJ should have changed the designation of her own accord. See Notice of Appeal at 2; Tenant's Brief at 6. The Tenant instead simply asserts that the decision of OAH to designate rental housing cases generally as Standard Cases "flies in the face of logic, fairness (due process) and precedent." Tenant's Brief at 6. The Commission observes that the Tenant does not provide any statute, regulation, or relevant case law precedent in support of this issue on appeal. See generally id.

The Commission has consistently held that it is prohibited from reviewing issues raised for the first time on appeal. See, e.g., Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994); Barac Co., VA 02-107. The Commission's review of the record reveals that the Tenant failed to file a motion before the ALJ to change this case to a Complex Case in accordance with 1 DCMR § 2806.2. Therefore, having not raised the issue before the ALJ, the Commission is unable to review this issue for the first time on appeal. See e.g., 1880 Columbia Rd. Nw. Tenants' Ass'n v. D.C. Rental Accommodations Comm'n, 400 A.2d 333, 339 (D.C. 1979); Dorchester House Tenants Ass'n v. Dorchester House Assocs., LLP, CI 20,758 (RHC Oct. 19, 2004); Tenants of 2480 16th St., Nw. v. Dorchester House Assocs., LLP, CI 20,768 (RHC Aug. 31, 2004) at 9. Moreover, the Commission observes that the Tenant's statement of the issue fails to identify either the allegedly erroneous legal standard for the designation that was applied, or the legal standard that the Tenant believes should have been

applied. Cf. Barac Co., VA 02-107. Accordingly, this appeal issue is dismissed. See Lenkin Co. Mgmt., 642 A.2d at 1286.

E. Whether the Tenant is permitted to reserve the right "to raise any additional errors" in her brief.

Review by the Commission is limited to the issues raised in the notice of appeal. 14 DCMR § 3807.4; accord Killingham, TP 23,881 at 10. The applicable regulation at 14 DCMR § 3802.7, grants to the parties the right to file briefs in support of their positions;[16] and the Commission has noted that it is appropriate for parties to use the brief as a means of developing issues raised in the notice of appeal. Killingham, TP 23,881 at 10. Nonetheless, the use of the brief as a means of advancing issues that were not raised in the notice of appeal "exceeds the permissible scope of the . . . brief." Id.; see Frye & Welch Assocs., P.C. v. D.C. Contract Appeals Bd., 664 A.2d 1230, 1233 (D.C. 1995); Joyner v. Jonathan Woodner Co., 479 A.2d 308, 312 (D.C. 1984), cited in Johnson v. District of Columbia, 728 A.2d 70 (D.C. 1999).

In her notice of appeal, the Tenant stated the following for issue "E:" "Tenant reserves the right to raise any additional errors in Tenant's brief on appeal in this proceeding." Notice of Appeal at 4. As 14 DCMR § 3807.4 limits the Commission's review to the issues raised in the Notice of Appeal, it is not within the Commission's authority to review any errors raised in the brief that were not first raised in a timely notice of appeal. 14 DCMR § 3807.4. Accordingly, this issue is dismissed. See 14 DCMR § 3807.4; Killingham, TP 23,881.

F. Whether the ALJ erred in denying the Tenant's August 15, 2007 Motion for Partial Summary Disposition.[17]

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[16] Pursuant to the applicable rule, 14 DCMR § 3802.7, provides: "Parties may file briefs in support of their position within five (5) days of receipt of notification that the record in the matter has been certified."

[17] To the extent that the Tenant alleges that "[i]t was error for [ALJ Wilson-Taylor] to make findings of fact in ruling on the motion for partial summary disposition," Notice of Appeal at 2, the DCAPA provides that "[e]very decision and order adverse to a party to the case . . . shall be in writing and shall be accompanied by findings of fact and

On August 15, 2007, the Tenant made a Motion for Partial Summary Disposition ("MPSD") on the issue of whether the Housing Provider was properly registered. See MPSD; R. at 768-73. The Tenant asserted that "the property management agent of the owner of the Housing Accommodation was B.F. Saul Property [Company]," not the B.F. Saul Company listed on the March 2006 Amended Registration. Id. at 4; R. at 771 (emphasis added) (construing PX 118; R. at 1860). The Housing Provider offered an affidavit by David Newcome, the Vice President for the Apartment Division of B.F. Saul Company that stated "[t]he listing of B.F. Saul Property Company as the agent for the landlord in the Lease is a scrivener's error," and that B.F. Saul Company is the management agent for the Housing Accommodation. See Affidavit of David Newcome at 1; R. at 77, cited in Housing Provider/Respondent's Response in Opposition to Petitioner's MPSD; R. at 93.

On November 23, 2007, ALJ N. Denise Wilson-Taylor issued an order denying the Tenant's MPSD.[18] See Order on MPSD at 6; R. at 460. While the OAH rules address motions for summary adjudication; see 1DCMR § 2828, they do not address legal standards applicable to such motions; however, "[w]here a procedural issue coming before [OAH] is not specifically addressed in these Rules, [OAH] may rely upon the District of Columbia Rules of Civil Procedure as persuasive authority." 1 DCMR § 2801.2. Accordingly, ALJ Wilson-Taylor determined that the controlling rule to be utilized during review of a MPSD is Super. Ct. R.Civ.

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conclusions of law." D.C. OFFICIAL CODE § 2-509(e) (2001). Therefore, ALJ Wilson-Taylor (see infra at 24n.17), was justified, if not required to make findings of fact in her Order on the Tenant's Motion for Partial Summary Disposition. See id.

[18] The Commission observes that ALJ Wilson-Taylor addressed the Tenant's MPSD; however, ALJ Pierson handled the subsequent, relevant parts of the OAH proceedings related to the Tenant Petition. See supra at 2. Accordingly, hereinafter the Commission will refer exclusively to ALJ Wilson-Taylor as "ALJ Wilson-Taylor," and to ALJ Pierson as "the ALJ."

P. 56(c). Order on MPSD at 4; R. at 458 (citing 1 DCMR § 2801.2). The rule states that in deciding a motion for summary judgment, "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Id. (citing Super. Ct. R. Civ. P. 56(c)); see, e.g., Han v. Se. Acad. of Scholastic Excellence Pub. Charter School, 32 A.3d 413, 416 (D.C. 2011) (emphasis added).

The grant of summary judgment is a question of law that reviewing courts such as the Commission review de novo, and, in so doing, the record should be assessed in the light most favorable to the nonmoving party. See, Han, 32 A.3d at 416 ("Summary judgment is a question of law, which [the District of Columbia Court of Appeals (DCCA)] reviews de novo."); Borger Mgmt., Inc. v. Sindram, 886 A.2d 52, 58 (D.C. 2005). Nevertheless, in addressing Super. Ct. R. Civ. P. 56(c), the DCCA has held that "a denial of a motion for summary judgment is not reviewable on appeal, either during trial or after trial," because an order denying summary judgment is not a final judgment. Allen v. Yates, 870 A.2d 39, 45 (D.C. 2005) (emphasis added); accord Morgan v. Am. Univ., 534 A.2d 323, 328-29 (D.C. 1987). The Commission's rules provide: "Any party aggrieved by a final decision of the [Office of Administrative Hearings] may obtain review of the decision by filing a notice of appeal with the Commission." 14 DCMR § 3802.1 (2004). In general, the Commission does not have jurisdiction on appeal unless the order at issue is "final as to all the parties, the whole subject matter, and all of the causes of action involved." E.g. Smith Prop. Holdings Three (D.C.) L.P. v. Martin, RH-TP-06-28,222 (RHC Sept. 11, 2012); accord LaPrade v. Klinberg, TP 27-920 (Jan. 2, 2004) (citing Davis v. Davis, 663 A.2d 499, 503 (D.C. 1995)). Accordingly, the Tenant's claim that ALJ

Wilson-Taylor erred by declining to award partial summary judgment in her favor is not properly before the Commission, because the denial of the Tenant's MPSD was not a final judgment subject to appellate review. See 14 DCMR § 3802.1; Allen, 870 A.2d at 45. The Commission thus dismisses issue "F."

G. Whether the ALJ erred in failing to rule on the Tenant's October 5, 2007 Motion to Amend the Tenant Petition.

On October 5, 2007, the Tenant filed a Motion to Amend the Tenant Petition ("First Motion to Amend") to include an allegation of "improper registration." See R. at 172. From its review of the record, the Commission determines that the First Motion to Amend was never ruled upon, see generally Docket, R. at 1494; the Tenant alleges in her Notice of Appeal that this was error. Notice of Appeal at 2.

The Commission's standard of review is contained at 14 DCMR § 3807.1, and provides the following:

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

See, Notsch, RH-TP-06-28,690; Atchole v. Royal, RH-TP-10-29,891 (RHC Mar. 27, 2014); Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013).

The OAH Rules do not address the amendment of tenant petitions, but OAH Rule 2801.2 states that "[w]here a procedural issue coming before [OAH] is not specifically addressed in these Rules, [OAH] may rely upon the District of Columbia Rules of Civil Procedure as persuasive authority." 1 DCMR § 2801.2. Thus, the Commission has consistently determined Super. Ct. R.Civ. P. 15 to provide the legal standard applicable to amending tenant petitions.

See, e.g., Tavana Corp. v. Tenants of 1850-1854 Kendall St., Ne., CI 20,694 (RHC Mar. 8, 1996). Super. Ct. R. Civ. P. 15(a) provides, in relevant part:

> A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. . . .

Id.

Although "broad latitude" is permitted by Super. Ct. R. Civ. P. 15(a), the Commission agrees with the DCCA that granting leave to amend is a matter within the sound discretion of the trial judge and that "only an abuse of that discretion is reviewable on appeal." 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) [hereinafter Fairfax Vill.] ("[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."). The DCCA has even determined that "a refusal to allow an amendment is to be upheld if predicated on some valid ground." Sherman v. Adoption Ctr. of Wash., Inc., 741 A.2d 1031, 1037-38 (D.C. 1999) (citing Eagle Wine & Liquor Co. v. Silverberg Elec. Co., 402 A.2d 31, 34 (D.C. 1979)) (emphasis added). Nonetheless, where the Commission's review of the record reveals that no order was issued on the First Motion to Amend, the record provides the Commission with no findings of fact or conclusions of law on which to base its review; thus, it is unable to determine whether the decision not to allow the amendment was predicated on "some valid ground," or was otherwise not an abuse of discretion. See 14 DCMR § 3807.1; cf. Bennett v. Fun & Fitness of Silver Hill, Inc., 434 A.2d 476, 478-79 (D.C. 1981) (finding an abuse of discretion where the trial court's order denying appellant's

motion to amend was "not accompanied by a statement of reasons."). See, Sherman, 741 A.2d at 1037-38.

Moreover, the Commission cannot regard the failure to rule on the First Motion to Amend as being harmless, as it deprived the Tenant of the opportunity to litigate the claim of improper registration while also foreclosing the possibility of obtaining any meaningful review of ALJ Wilson-Taylor's decision. Cf. 14 DCMR § 4008.5 ("The hearing examiner shall render a decision in writing on each motion made which shall include the reasons for the ruling."); Clark v. Keesee, 136 A.2d 394, 396 (D.C. 1957) (stating "appellee's motion was not premature and should have been acted upon.").

Accordingly, the Commission determines that it was an abuse of discretion for ALJ Wilson-Taylor to fail to rule on the Tenant's First Motion to Amend, and thus remands to OAH on issue "G," with instructions to issue an order ruling on the First Motion to Amend in accordance with Super. Ct. R. Civ. P. 15(a). 14 DCMR § 3807.1; see Dada v. Children's Nat'l Med. Ctr., 715 A.2d 904, 908 (D.C. 1998) (DCCA remanding for a ruling on a discovery motion that was never ruled upon stating that it would not remand "if the trial court's decision on the discovery motion were a foregone conclusion.").

On remand, if the ALJ allows the amendment to the Tenant Petition, the Commission further instructs the ALJ to hold an evidentiary hearing strictly limited to the claim of improper registration, and to issue findings of fact and conclusions of law on this claim.

H. Whether it was error for the ALJ to deny discovery.[19]

[19] The Tenant also claims it was error for the ALJ to fail to correct the case caption. Notice of Appeal at 2. Like her requests for discovery, the Commission observes that the Tenant's statements of error regarding the case caption are related to the issue of improper registration. The Tenant claims that the ALJ erred when she rejected the Tenant's assertion that B.F. Saul Company ("B.F. Saul") should be replaced by B.F. Saul Property Company ("Property Company") in the case caption. Tenant's Brief at 33. Although the Tenant states that her lease constitutes evidence that Property Company is the management company, the Commission notes that 14 DCMR § 3905.2 only requires

The Commission observes that the Tenant's requests for discovery related to her claim of "improper registration," and that the ALJ denied the discovery requests because she determined that they failed to relate to issues in the Tenant Petition. Compare, e.g., Motion to Permit One Interrogatory Request for the Production of Documents and a Subpoena for Witnesses; R. at 511 (where the Tenant expressly conveys that if the discovery request is not granted, then the ALJ must decide that the property is not and has not been properly registered), with Order Denying Petitioner's Request for Subpoenas at 1; R. at 521 (stating that the Tenant "has failed to indicate how the appearance of the requested persons or the production of the documents relate to the issues in her Tenant Petition."). The Commission has already determined that issue "G," will be remanded to provide the ALJ with the opportunity to issue a written order on the Tenant's First Motion to Amend to include a claim of improper registration: until that occurs, the Commission determines that issue "H" is moot where the only claim on which the Tenant sought discovery was the claim of improper registration. See Motion to Permit One Interrogatory One Request for the Production of Documents and a Subpoena for Witnesses; R. at 511; cf. McChesney v. Moore, 76 A.2d 89 (D.C. 1951) (noting that "it is not within the province of appellate courts to decide abstract hypothetical or moot questions, disconnected with the granting of actual relief or from the determination of which no practical relief can follow."), cited in Oxford House-Bellevue v. Asher, TP 27,583 (RHC May 4, 2005); Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Dec. 27,

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the caption to contain "the name of the housing provider as listed on the registration statement; [p]rovided, however, that if the management agent represents the housing provider in any proceeding, the management agent shall also be listed in the caption and identified as the agent." 14 DCMR § 3905.2 (emphasis added). The Commission notes that the Tenant has failed to explain how Property Company, which is not listed on the registration statement, and which the Tenant does not assert is a "management agent that represents the housing provider in any proceeding," is required to be included in the caption under 14 DCMR § 3905.2. See Tenant's Brief at 33-34; cf. PX 118 at 1; R. at 1860 (registration statement listing "The Klingle Corporation" as the owner of the Housing Accommodation, and "B.F. Saul Company" as the management agent or company). Accordingly, this issue is dismissed.

2012). Thus, the Commission dismisses this issue on appeal without prejudice; however, if on remand the ALJ should decide to allow amendment of the Tenant Petition to include an allegation of improper registration, the Commission notes that the Tenant may request discovery related to that claim, in accordance with the applicable procedure. See, e.g., 1 DCMR § 2823.2.[20]

I. Whether the ALJ erred in denying the Tenant's motion to amend the Tenant Petition to present evidence regarding unabated housing code violations and relevant Notices of Violation, and to include an allegation of retaliation.

The Tenant claims that the ALJ, erred in denying the Tenant's Third Motion to Amend the Tenant Petition as follows: 1) to add an allegation that the rent was increased while her apartment was not in substantial compliance with the housing regulations, and 2) to add an allegation of retaliation.[21] Notice of Appeal at 2, 4.

As the Commission explained previously, see supra at 26, the OAH Rules do not address the amendment of tenant petitions, but the Commission has consistently determined Super. Ct. R. Civ. P. 15 to be controlling on the issue.[22] See, e.g., Tavana Corp., CI 20,694; see 1 DCMR § 2801.2 ("Where a procedural issue coming before [OAH] is not specifically addressed in these

[20] 1 DCMR § 2823.2 provides as follows: "No discovery shall be permitted unless authorized by order of the presiding Administrative Law Judge. Discovery shall be limited to Complex Track cases [as defined under 1 DCMR § 2806], and all requests for discovery shall be made upon motion."

[21] Preliminarily, the Commission notes that it is not readily apparent from the Notice of Appeal to which motion to amend the Tenant is referring. For example, although the Tenant alleges "[i]t was error for the ALJ to fail to allow Tenant to amend the Tenant Petition," Notice of Appeal at 2, the ALJ explicitly allowed the Tenant to amend the Tenant Petition to include an allegation that "180 days had not lapsed between rent increases and that the vacancy increase was not properly taken and perfected." Order on Pending Motions at 10; R. at 1477. Thus, the Commission dismisses that issue for vagueness as it did issues "A" through "C." See supra at 19-21. Nonetheless, because they were explicitly discussed in the Tenant's Notice of Appeal, the Commission will address the Tenant's claims regarding the failure of the ALJ to grant her motion to add allegations related to housing code violations and retaliation. Notice of Appeal at 2, 4; see also, e.g., Barac Co., VA 02-107; Ahmed, Inc., RH-TP-28,799 at n.8; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.9.

[22] Super. Ct. R. Civ. P. 15(a) is recited supra at 26-27.

Rules, [OAH] may rely upon the District of Columbia Rules of Civil Procedure as persuasive authority.").

Super. Ct. R. Civ. P. 15(a) provides for two separate grounds upon which a party may amend a pleading as a matter of course, neither of which the Commission regards as applicable in this case. See Super. Ct. R. Civ. P. 15(a). First, the Commission observes that neither party has alleged that tenant petitions are pleadings to which responsive pleadings are permitted. See generally Notice of Appeal; Tenant's Brief; Housing Provider's Brief. Therefore, the first ground for amendment, "as a matter of course before a responsive pleading is served," is inapplicable to this case. Super Ct. R. Civ. P. 15(a). Second, the Commission observes that the Third Motion to Amend, filed on May 21, 2010, was filed more than 20 days after the Tenant Petition was filed on July 14, 2006; (thus, the second ground for amendment as a matter of course, permitting amendment of a pleading within 20 days of the service of the pleading is inapplicable to this case.[23]) Id. Therefore, the Commission is satisfied that the substantial record evidence supports a determination that it was not an abuse of discretion for ALJ Wilson-Taylor not to permit the Third Motion to Amend the Tenant Petition "as a matter of course." See Super. Ct. R. Civ. P. 15(a). Contra Tenant's Brief at 6 ("It [sic] reasonable and equitable to allow Tenant to [a]mend her petition . . . without having to seek permission via a motion [to] amend . . . .").

[23] Pro se tenants typically are not held to the strict standards of timeliness in the same way that lawyers are. See Padou v. District of Columbia, 998 A.2d 286, 292 (D.C. 2010). But see United States v. Robinson, 361 U.S. 209 (1960) ("[T]ime limits are mandatory and jurisdictional."); Hija Lee Yu v. D.C. Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Marriott v. Dowling, TP 27,016 (RHC Jan. 29, 2002) ("The Commission is required to dismiss appeals that are untimely filed."). In this context however, timeliness is distinct as it removes only the Tenant's entitlement to amend her TP as a matter of course: not her ability to amend the TP at all. See Super. Ct. R. Civ. P. 15(a). The ALJ is still able to consider the specific circumstances of the case and determine for herself whether, in the interest of justice, the amendment should be allowed. See id. Therefore, the untimeliness of the Motion to Amend in this instance can be distinguished from other situations wherein untimeliness is usually forgiven. The Commission is satisfied that the Tenant was not entitled to amend her TP as a matter of course.

Having determined that the Tenant was not entitled to amend the Tenant Petition on both grounds for amendment as a "matter of course," the Commission focuses its attention on the clause of Super. Ct. R. Civ. P. 15(a) that the ALJ relied upon in deciding the claims at issue. The third clause of the rule provides that "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Super. Ct. R. Civ. P. 15(a). The Commission's review of the record indicates that the Tenant did not obtain the consent of the Housing Provider to amend the Tenant Petition to add claims of substantial housing code violations and retaliation. Third Motion to Amend at 1; R. at 1281; see generally Opposition to Tenant's Renewed Motion to Amend & Supplement Tenant Petition and Statement of Issues; R. at 1307. Thus, the Tenant's only recourse would be for the ALJ to grant leave to amend. See Super. Ct. Civ. R. 15(a).

Accordingly, as with issue "G," supra, we are presented with an issue where the granting of leave to amend is in the sound discretion of the ALJ, and "only an abuse of that discretion is reviewable on appeal." Saddler, 227 A.2d at 395; see supra, at 27. The DCCA has held that among the factors to be considered when ruling on a motion to amend are 1) the number of requests to amend, 2) the length of time that the case has been pending, 3) the presence of bad faith or dilatory reasons for the request, 4) the merit of the proffered amended pleading, and 5) any prejudice to the nonmoving party. See, e.g., Fairfax Vill., 641 A.2d at 501; Karr v. C. Dudley Brown & Assocs., 567 A.2d 1306, 1311 (D.C. 1989), (cited in Order on Pending Motions at 4; R. at 1471). The Commission will review the ALJ's grounds for denying both of the Tenant's proposed amendments, in turn.

(1) That the rent was increased while her apartment was not in substantial compliance with the housing regulations

The Tenant requested to add an allegation that the rent was increased while her unit was not in substantial compliance with the housing regulations. Order on Pending Motions at 8; R. at 1475. The Tenant references housing code violations that she alleges were outstanding and unabated when she leased the subject unit. Third Motion to Amend at 4; R. at 1289. The ALJ declined to grant leave for this amendment in her April 22, 2010 Order, as she found that the Tenant "did not specify what housing code violations existed, the dates of the violations, or when repairs were requested." Order on Pending Motions at 8; R. at 1475. The ALJ then noted that the Tenant, in her Third Motion to Amend, still failed to identify the specific housing code violations in question. Id.

As articulated supra, at 32, when deciding whether to grant leave to amend the Tenant Petition, the ALJ should consider the following; 1) the number of requests to amend, 2) the length of time that the case has been pending, 3) the presence of bad faith or dilatory reasons for the request, 4) the merit of the proffered amended pleading, and 5) any prejudice to the nonmoving party. Fairfax Vill., 641 A.2d at 501. The ALJ noted that the case had been pending for four years at the time of the Order on Pending Motions, that the Tenant did not present any argument as to why the Tenant Petition was not amended sooner, and that the grant of the amendment would require the Housing Provider to search for records that are seven years old. Order on Pending Motions at 9; R. at 1476. Based upon her review, the ALJ thus determined that the request to amend the Tenant Petition to include housing code violations "that existed seven years ago and three years prior to [the Tenant] occupying the unit" was unreasonable. Id. The ALJ also found the Tenant's multiple requests to amend the Tenant Petition, to be indicative "of either bad faith, poor planning, and/or dilatory representation." Id. at 4-5; R. at 1471-72.

The Commission is satisfied that the ALJ utilized the proper standard for deciding a motion to amend, and supported her decision to deny the Third Motion to Amend with appropriate considerations. 14 DCMR § 3807.1; Order on Pending Motions at 4; R. at 1471 (citing Karr, 567 A.2d at 1311). The Commission is satisfied that the aforementioned grounds upon which the ALJ based her decision were sufficient to form the basis for a denial of the amendment and were supported by substantial record evidence.[24] 14 DCMR § 3807.1; Order on Pending Motions at 9; R. at 1476; see Fairfax Vill., 641 A.2d at 501. The ALJ's denial of the Third Motion to Amend to include a claim of substantial housing code violations is affirmed.

(2) Retaliation

In her Third Motion to Amend, the Tenant also requested to add numerous allegations of retaliation. See Third Motion to Amend at 10-11; R. at 1290-91. The ALJ found that all of the Tenant's allegations regarding retaliation lacked the necessary specificity to determine their relevance. Order on Pending Motions at 11; R. at 1478. For example, the ALJ found that the Tenant's reference to retaliatory unabated housing code violations made no specific allegations, and provided no dates. Id. The ALJ who determined that the Tenant's Third Motion to Amend, in general, was "insufficient to place [the] Housing Provider on notice of the specific acts of retaliation in question." Id.

[24] For example, the ALJ's determination that as of the December 6, 2010 Order on Pending Motions the Tenant Petition had been pending for three years is supported by the filing date of the Tenant Petition: July 15, 2006. Order on Pending Motions at 2; R. at 1469; Tenant Petition at 1; R. at 10. Additionally, the number of times the Tenant had requested to amend the Tenant Petition is supported by the record which includes the First Motion to Amend the Tenant Petition, Second Motion to Amend the Tenant Petition, Third Motion to Amend the Tenant Petition, the October 5, 2007 Praecipe to Amend the Case Caption, the March 8, 2010 Supplement to TP 28,708, and the October 29, 2010 Second Praecipe to Amend the Case Caption. Order on Pending Motions at 5, R. at 1472; accord, e.g., Docket at 2, 4-5; R. at 1495, 1497-98.

Moreover, the ALJ found that the Tenant did not explain why she waited until her seventh request[25] to amend the petition to include the allegations of retaliation. Id. The ALJ found that the Tenant's request to add allegations, some of which arose before the Tenant Petition was initially filed, was both prejudicial to the Housing Provider and requested in bad faith. Id.; see Fairfax Vill., 641 A.2d at 501 (in deciding whether to grant leave to amend, the trial court should consider "the presence of bad faith," and "any prejudice to the nonmoving party."). Whether it was or was not filed in bad faith, the Commission is nonetheless persuaded that the danger of undue prejudice to the Housing Provider, and the lack of specificity in the pleading were sufficient grounds upon which the ALJ could find that justice did not require the grant of leave to amend, and the ALJ's determinations were supported by substantial record evidence.[26] See Fairfax Vill., 641 A.2d at 501. Thus, the Commission affirms the ALJ's denial of the Third Motion to Amend to include a claim of retaliation.

Overall, based on its review of the Order on Pending Motions, the Commission determines that the ALJ's decision to deny leave to amend the Tenant Petition to add the two identified allegations was not an abuse of discretion and was supported by substantial evidence. 14 DCMR § 38071. The Commission is satisfied that the ALJ "exercis[ed] [her] judgment in a rational and informed manner," and her action was "within the range of permissible alternatives." Howard Univ. v. Good Food Servs., Inc., 608 A.2d 116, 122 (D.C. 1992) (citing

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[25] The ALJ construed the First Motion to Amend the Tenant Petition, the Second Motion to Amend the Tenant Petition, the Third Motion to Amend the Tenant Petition, the October 5, 2007 Praecipe to Amend the Case Caption, the March 8, 2010 Supplement to TP 28,708, and the October 29, 2010 Second Praecipe to Amend the Case Caption as all being attempts to "amend the petition." Order on Pending Motions at 5; R. at 1475.

[26] Moreover, as explained supra at n.23, the Commission is satisfied that the ALJ's determinations regarding the length of time that the Tenant Petition had been pending, and the number of motions to amend filed by the Tenant were supported by substantial evidence. See supra, n.23 (citing Tenant Petition at 1, R. at 10; Docket at 2, 4-5; R. at 1495, 1497-98).

Johnson v. United States, 398 A.2d 354, 365 (D.C. 1979)). Therefore, upon finding that the ALJ's rulings were sound and comported with the Act and standards provided in Johnson v. Fairfax Village supra, and its progeny, the Commission affirms the ALJ on this issue.

J. Whether the ALJ erred in finding that the 2006 vacancy rent ceiling adjustment was proper.

A vacancy rent ceiling adjustment is authorized by § 213(a) of the Act.[27] It "is an increase in the rent ceiling for a previously registered rental unit which may be taken and perfected by a housing provider for a rental unit which became vacant under the conditions set forth in § 213(a) of the Act." 14 DCMR § 4207.1; see D.C. OFFICIAL CODE § 42-3502.13.

The Tenant's claim regarding the impropriety of the 2006 vacancy rent ceiling adjustment is based upon the following grounds: 1) that the ALJ erred in determining that the Housing Provider filed the required amended registration within 30-days of the date it was first eligible to take the rent ceiling adjustment; 2) that the ALJ erred in determining that the Housing Provider timely posted the Amended Registration in a conspicuous place; and 3) that the ALJ erred in determining that the comparable apartment, 801, was substantially similar to the Tenant's unit. Notice of Appeal at 2-3; see also Final Order at 9; R. at 1734. The Commission will address each of these claims in turn.

The Commission notes that its role is not to "weigh the testimony and substitute ourselves for the trier of fact who heard the conflicting testimony, observed the adversary witnesses, and determined the weight to be accorded their testimony." Notsch, RH-TP-06-

[27] Section 213 of the Act, D.C. OFFICIAL CODE § 42-3502.13(a), provides in relevant part:

> When a tenant vacates a rental unit on the tenant's own initiative or as a result of a notice to vacate for nonpayment of rent, violation of an obligation of the tenant's tenancy, or use of the rental unit for illegal purpose or purposes as determined by a court of competent jurisdiction, the rent ceiling may, at the election of the housing provider, be adjusted . . .

28,690; see, e.g., Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079; Atchole, RH-TP-10-29,891; Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012). Under 14 DCMR § 3807.1, supra at 26, the Commission will only reverse the ALJ's final decisions if it determines that they "contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings." Id.; accord Notsch, RH-TP-06-28,690; Atchole, RH-TP-10-29,891; Gelman Mgmt. Co., RH-TP-09-29,715.

(1) Whether the ALJ erred in determining that the Housing Provider filed the required amended registration within 30-days of the date it was first eligible to take the rent ceiling adjustment.

Pursuant to §§ 4204.9 and 4204.10(c) of the regulations, a housing provider is required to file an amended registration for a vacancy rent ceiling increase within 30 days of the date it was first eligible for the adjustment. 14 DCMR §§ 4204.9 and 4204.10(c). Accordingly, in applying this provision to vacancy rent ceiling adjustments, the DCCA has held that an Amended Registration must be filed within 30 days from the date when the rental unit becomes vacant. Sawyer Prop. Mgmt. of Md. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 109 (D.C. 2005) cited in Final Order at 9; R. at 1734.

In the instant case, the ALJ found that the previous tenant of apartment 901 passed away "sometime" in February 2006. Final Order at 9; R. at 1734. The ALJ found that neither the Tenant nor the Housing Provider knew the exact date of death, although the Tenant testified that she believed it was "on or about the 3rd of February 2006." Id. The ALJ credited the testimony of Ms. Marhefka, the property manager at the Housing Accommodation, that the family of the previous tenant was given time to clear out the apartment, and that the rent for the apartment was paid through the end of February 2006. Id.; see Hearing CD (OAH Jan. 31, 2011) 11:43:45-

11:45:05. Moreover, the ALJ credited the Tenant's testimony that when she viewed the apartment in February 2006, the previous tenant's belongings were still there. Id.; see Hearing CD (OAH Jan. 31, 2011) 10:09:04-10:09:26. Based upon this testimony, the ALJ determined that the apartment did not "become vacant, meaning available to rent," until March 1, 2006, and thus concluded that the Housing Provider would have had until March 31, 2006, to file the required amended registration.[28] Id.

The Tenant asserts that the ALJ should have found that the date that unit 901 became vacant, and thus the date the Housing Provider was first eligible to take the vacancy adjustment, was "February 3, 2006 not March 1, 2006"– i.e., the date that the previous tenant died, rather than the date after which the previous tenant no longer paid rent.[29] See Tenant's Brief at 11.

A court should look beyond the ordinary meaning of the words of a statute only where there are persuasive reasons for doing so. Peoples Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 755 (D.C. 1983), cited in Tenants of 1709 Capitol Ave., Ne. v. 17th & L St. Props., HP 20,328 (RHC Dec. 15, 1987). Accordingly, although the term "vacate" is nowhere defined in the Act, the Commission observes that the DCCA has held that "its ordinary meaning, as applied to a dwelling, is to move out; to make vacant or empty; to leave, especially, to surrender possession by removal; to cease from occupancy." Guerra v. D.C. Rental Hous. Comm'n, 501 A.2d 786, 789 (D.C. 1985) (citing BLACK'S LAW DICTIONARY 1388 (5th ed. 1979)) (quotations

[28] The Commission notes that the ALJ mistakenly stated the date by which the Amended Registration needed to be filed, i.e., thirty days from March 1, 2006, as April 1, 2006 rather than March 31, 2006. See Final Order at 9; R. at 1734 (construing 14 DCMR §§ 4204.9, 4204.10(c)). However, the Commission is satisfied this mistake is harmless because the Housing Provider filed the Amended Registration on March 29, 2006, thus satisfying both the April 1, 2006 deadline miscalculated by the ALJ, and the proper March 31, 2006 deadline. See id.

[29] The Tenant asserts that there was no record evidence that the rent was paid through the end of February 2006, Tenant's Brief at 64, but ignores the fact that there was testimony by Ms. Marhefka to that effect, and that she, the Tenant, provided no contradictory information. Final Order at 9; R. at 1734. In other words, the only evidence that addressed this point was Ms. Marhefka's testimony, which supported the ALJ's finding that the rent was paid through the end of February 2006. Hearing CD (OAH Jan. 31, 2011) 11:43:45-11:45:05.

omitted) (emphasis added); see also Wayne Tenants Council v. Mayor of Wayne, 433 A.2d 844, 848 (N.J. Super. 1981) (Under a local ordinance, "[a] vacancy is defined . . . to have occurred only if said unit has become vacant and unoccupied by reason of the fact that . . . any tenant . . . [has] voluntarily surrendered possession and removed therefrom."), cited in Guerra, 501 A.2d at 789 (emphasis in original); BLACK'S LAW DICTIONARY 1584 (8th ed. 2004) (defining "vacant" as "empty; unoccupied" and noting that "courts have sometimes distinguished vacant from unoccupied, holding that vacant means completely empty while unoccupied means not routinely characterized by the presence of human beings.").

The Commission is satisfied that the ALJ's determination that apartment 901 became vacant on March 1, 2006, when the unit "became vacant, meaning available to rent," is in accordance with the ordinary meaning of the term "vacant," see supra, and thus comports with relevant provisions of the Act. See D.C. OFFICIAL CODE § 42-3502.13(a); 14 DCMR § 3807.1; Final Order at 9; R. at 1734; cf. Guerra, 501 A.2d at 789. Additionally, the Commission is satisfied that the ALJ's determination is supported by substantial evidence, including the testimony of the Tenant and Ms. Marhefka at the OAH hearing. Hearing CD (OAH Jan. 31, 2011). Therefore, it being undisputed that the Housing Provider filed the Amended Registration prior to March 31, 2006, the Commission affirms the ALJ's finding that the Housing Provider filed the Amended Registration within 30 days of the date it first became eligible to take the increase; i.e., within 30 days of when the apartment became vacant.[30] 14 DCMR §§ 3807.1, 4204.9, 4204.10(c).

[30] Moreover, the Commission acknowledges the claim of the Tenant that because she was "ready, willing, and able" to move into unit 901 on March 1, 2006, the unit was never actually vacant, Tenant's Brief at 48; however, the Tenant has provided no legal authority to support her assertion that this is a relevant standard for determining when a unit is vacant for purposes of a rent increase under D.C. OFFICIAL CODE § 42-3502.13 (a). The Commission observes that the Act's definition of "tenant" does not use the phraseology "ready, willing and able" to move into a

(2) Whether the ALJ erred in determining that the Housing Provider timely posted the Amended Registration in a conspicuous place

The regulations provide that the date of perfection of a vacancy rent ceiling increase shall be the date on which the Housing Provider satisfies the notice requirements of 14 DCMR § 4101.6. 14 DCMR § 4207.5. The applicable rule, 14 DCMR § 4101.6 provides that a housing provider who files a Registration/Claim of Exemption form under the Act shall, prior to or simultaneously with the filing, "post a true copy of the Registration/Claim of Exemption form in a conspicuous place at the rental unit or housing accommodation to which it applies . . . ." Id.

In the present case, the ALJ found that the Housing Provider satisfied the notice requirements of 14 DCMR § 4101.6 when it posted a copy of the Amended Registration in the laundry room of the Housing Accommodation. Final Order at 10-11; R. at 1735-36 (citing Tenants Council of Tiber Island-Carrollsburg Square v. D.C. Rental Accommodations Comm'n, 426 A.2d 868, 875 (D.C. 1981) ("Evidence was adduced at the hearing that the landlord kept a copy of the registration form posted in the resident manager's office. Even if this method of providing notice does not comply with the literal meaning of [the statute], we hold that it substantially and sufficiently comports with the intent of the Act.").[31] Although accepting that

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unit. See D.C. OFFICIAL CODE § 42-3501.03(36). As defined in the Act, a tenant is one who is "entitled to the possession, occupancy, or the benefits of any rental unit owned by another person." D.C. OFFICIAL CODE § 42-3501.03(36).

[31] The Commission notes the concerns of the Tenant that Tenants Council of Tiber Island-Carrollsburg Square, 426 A.2d 868, involved application by the DCCA of the Rental Accommodations Act of 1975. See Notice of Appeal at 2 ("It was error for the ALJ to apply regulations and case law under the Rental Housing Act of 1975 where the Rental Housing Act of 1985 [sic]."). Initially, the Commission notes that it need not consider this issue as it fails to contain a clear and concise statement of the alleged error, as the Tenant has not provided any specific finding of fact or conclusion of law in the Final Order that was in error as a result of the ALJ's use of this case. See 14 DCMR § 3802.5(b); Barac Co., VA 02-107; see also supra, at 19-21; Notice of Appeal at 2. Accordingly, the Commission will only address this issue briefly. The Commission notes that the ALJ cited Tenants Council of Tiber Island-Carrollsburg Square, 426 A.2d 868 in support of her determination that the Housing Provider complied with the requirements for posting notice of an Amended Registration. See Final Order at 10-11; R. at 1735-36. Although the Commission observes that this case was decided under the Rental Housing Act of 1975, the Commission observes

every tenant probably does not use the laundry room, the ALJ found "that the laundry room is a sufficiently available and public space to meet the requirements of the Act." Final Order at 10; R. at 1735 (stating further that "there is likely no specific place that every tenant in the building visits, but the laundry room is available for them to visit.").

On the issue of whether the Amended Registration was posted "prior to or simultaneously with the filing," the ALJ ultimately found that the Tenant "did not establish whether the notice was posted on the day of filing . . . ." Id. at 11; R. at 1736. The ALJ noted that on cross-examination, counsel for the Tenant only asked Ms. Marhefka whether a copy of the Amended Registration was posted 30 days prior to March 1, 2006; he never proceeded to ask if it might have been posted simultaneously with the filing. Id.; see also Hearing CD (OAH Jan. 31, 2011) 11:21:47-11:22:30.

The Commission notes that under D.C. OFFICIAL CODE § 2-509(b), the petitioner – in this case, the Tenant – has the burden of proof. Consequently, the Commission is satisfied that the ALJ did not err by holding that the Tenant had the burden of proving that the Housing Provider failed to post the Amended Registration simultaneously with the filing (at the latest), in compliance with 14 DCMR § 4207.5. See D.C. OFFICIAL CODE § 2-509(b). As the Commission has consistently stated, credibility determinations are "committed to the sole and sound discretion of the ALJ," and the Commission will not substitute its own judgment for that of the ALJ who had a direct opportunity to assess witness testimony and credibility. See, e.g., Notsch, RH-TP-06-28,690; Atchole, RH-TP-10-29,891; Kuratu, RH-TP-07-28,985.

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that the current text of the Act mandating that a housing provider post the registration statement in a "public place," D.C. OFFICIAL CODE § 42-3502.05 (2001), is virtually identical to the version of the relevant section of the Act requiring posting in a "public place" that was in effect at the time that the DCCA issued its decision in Tenants Council of Tiber Island-Carrollsburg Square, 426 A.2d 868. Cf. D.C. OFFICIAL CODE § 45-1644(e) (1975). Thus, the Commission is not persuaded that the ALJ erred in using this case for the limited purpose of determining whether the Housing Provider posted the Amended Registration in compliance with the Act.

The Commission's review of the record reveals that, although the Tenant established that the Housing Provider did not post the Amended Registration 30 days prior to the effective date of the filing, the Commission observes that the Tenant failed to establish that the Housing Provider did not post the Amended Registration statement at some other time less than 30 days prior to, or simultaneously with, the filing. Hearing CD (OAH Jan. 31, 2011) 11:21:47-11:22:30; see 14 DCMR § 4101.6 (requiring posting of the Amended Registration "prior to or simultaneously" with the filing). Moreover, the Commission is satisfied that the Tenant was not prevented from introducing testimony or other evidence in support of her assertion that the Amended Registration was not posted in the laundry room, simultaneously with the filing.[32] See generally Hearing CD (OAH Jan. 31, 2011). The ALJ determined that the Tenant failed to satisfy her burden, and the Commission is persuaded that the ALJ's determination was made in accordance with the Act, and was not an abuse of discretion. See 14 DCMR § 3807.1. Therefore, the Commission affirms the ALJ, and dismisses this issue.

(3) Whether the ALJ erred in determining that the comparable apartment, 801, was substantially similar to the Tenant's unit

In taking a vacancy rent ceiling increase, the Act permits a housing provider to increase the rent ceiling to the amount of a "substantially identical rental unit in the same housing accommodation." D.C. OFFICIAL CODE § 42-3502.13(a)(2); 14 DCMR § 4207.2.[33] The

[32] To the extent that the Tenant seeks to introduce new evidence on this issue for the first time in her brief, see, e.g., Tenant's Brief at 73-76, such evidence is not properly before the Commission and cannot be considered at this time. Carmel Partners, Inc. v. Levy, RH-TP-06-28,830; RH-TP-06-28,835 (RHC May 16, 2014); see, e.g., 14 DCMR § 3807.5; see, e.g., Barac Co., VA 02-107 (determining that the Commission was not able to consider a document submitted for the first time with the notice of appeal); Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) (deciding that, where a document was not part of the record below, the Commission was not permitted to consider it on appeal); Mann Family Trust v. Johnson, TP 26,191 (RHC Nov. 1, 2005) (stating that where the evidence and records supporting the housing provider's res judicata claim were not presented to the hearing examiner, such new evidence could not be considered by the Commission on appeal).

[33] 14 DCMR § 4207.2 provides the following, in relevant part:

Commission's review of the record indicates that in taking a vacancy rent ceiling increase for the Tenant's unit, apartment 901, the Housing Provider used unit 801 as the substantially identical rental unit. PX 117; R. at 1858. In her appeal, the Tenant asserts that the ALJ erred in finding that it was proper for the Housing Provider to use unit 801 as the comparable unit, because, she contends, the two units are not substantially identical as required by D.C. OFFICIAL CODE § 42-3502.13(a)(2). Notice of Appeal at 2. The Tenant bases her claim that the two units are not substantially identical on the fact that unit 801 has a microwave, while unit 901 does not.[34] Final Order at 12; R. at 1737.

For the purposes of a vacancy rent ceiling increase, rental units are "substantially identical where they contain essentially the same square footage, essentially the same floor plan, comparable amenities and equipment, comparable locations with respect to exposure and height, if exposure and height have previously been factors in the amount of rent charged, and are in comparable physical condition." D.C. OFFICIAL CODE § 42-3502.13(b). Applying this standard, the ALJ determined that units 801 and 901 were both two-bedroom units located in the same tier of the building. Final Order at 12; R. at 1737. The Commission notes that the Tenant does not dispute this point. See generally Tenant's Brief. Furthermore, the ALJ found that "the addition

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> The amount of a rent ceiling increase that a housing provider may take and perfect under § 213(a) of the Act shall be one of the following: . . . (b) The amount required to increase the rent ceiling for the rental unit to equal the rent ceiling of a previously registered, substantially identical rental unit in the same housing accommodation as specified in § 4207.4.

[34] After the close of the Evidentiary Hearing, the Tenant sought in her closing statement to introduce additional evidence in support of her claim that the two units were not substantially identical. Tenant/Petitioner's Written Closing Statement; R. at 1703. Although the Commission is aware that the administrative setting is somewhat more liberal in its consideration of post-hearing evidence, post-hearing evidence "cannot be determinative of an issue unless the opposing party has a full opportunity to comment on and question the evidence." Brandywine Tenants Ass'n v. Charles E. Smith Co., TP 20,126 (May 4, 1989) (citing Tenants of Tiber Island-Carrollsburg Square, 426 A.2d at 874). Accordingly, the Commission will only consider whether the presence of a microwave in apartment 801 should have kept the two apartments from being considered "substantially identical" for purposes of the vacancy rent ceiling increase. Final Order at 12-13; R. at 1737-38.

of a microwave alone (which may have been purchased by the tenant), does not make apartment 801 substantially different from 901." Id. at 13; R. at 1738. Accordingly, the ALJ was not persuaded that the Tenant had established that the two units were not substantially identical for purposes of a vacancy rent ceiling increase under D.C. OFFICIAL CODE § 42-3502.13(a). Id.

As the Commission has previously stated, see supra at 26, the Commission will uphold the ALJ's decision where it is made in accordance with the provisions of the Act and supported by substantial evidence. 14 DCMR § 3807.1. The Commission is satisfied that the ALJ did not err in finding that the presence of a microwave oven, on its own, was not sufficient grounds upon which to find that the two apartments were not substantially identical. See D.C. OFFICIAL CODE § 42-3502.13(b); cf. Marshall v. D.C. Rental Hous. Comm'n, 533 A.2d 1271, 1276-77 (D.C. 1987) (noting that units located in the same building "no doubt increases the likelihood that it will be 'substantially identical," but that even units in different buildings within the same multi-building complex can "meet the test for substantial identity."); Mersha v. Marina View Tower Apts., TP 24,302 (RHC July 23, 1999) ("Mere physical comparability is not sufficient to insure a fair rental comparison if there are other, nonphysical factors affecting the rent of the allegedly comparable unit. . .") (quoting Marshall, 533 A.2d at 1277) (emphasis added); Prosper v. Dreyfuss Mgmt., TP 23,224 (RHC Oct. 24, 1996).

For example, in Prosper, TP 23,224, the Commission utilized the same standard under D.C. OFFICIAL CODE § 42-3502.13(b), and assessed the comparability of two units when one was a residence, and the latter was an office/residential space without comparable kitchen facilities. Prosper, TP 23,224. The tenant in Prosper, TP 23,224, asserted that there was a difference "in location, view, facilities, and floor space," that there was no stove in one of the units, and that the floor plans were different. Id. In that case, the Commission was persuaded that the two units

were not substantially identical. Id. Although the difference in kitchen appliances is a notable similarity between Prosper, TP 23,224, and the instant case, the Commission is not persuaded that the outcome in Prosper, TP 23,224 is applicable to this case. For example, the tenant in Prosper, TP 23,224 alleged multiple differences between the units, while the Tenant in this case alleged that the only difference between her unit and unit 801 was that unit 801 contained a microwave.[35] Compare Prosper, TP 23,224, with Final Order at 12-13; R. at 1737-38.

Moreover, the ALJ noted that no evidence was produced at the Evidentiary Hearing that would prove that the Housing Provider would normally charge a higher rent for a unit that had a microwave, as opposed to one that did not. Final Order at 13; R. at 1738. In particular, the ALJ was persuaded that because the Tenant produced no evidence prior to or at the Evidentiary Hearing proving that the tenant of unit of 801 did not install the microwave herself, that there were insufficient grounds upon which to base an assertion that the units were not comparable. See Final Order at 13; R. at 1738; cf. Mersha, TP 24,302; Gavin v. Fred A. Smith Co., TP 21,918 (RHC Nov. 18, 1992) (denying the Tenant's appeal where the tenant "merely assumed that certain units received new appliances" without offering any evidence of renovation conducted by the Housing Provider). Accordingly, the Commission is persuaded in the instant case that the ALJ's determination that the two units were substantially identical in spite of one having a microwave oven that the other did not was well-founded, and supported by substantial evidence in the record. 14 DCMR § 3807.1. Determining the decision to have been issued in accordance with the Act, and supported by substantial record evidence, the Commission affirms the finding of the ALJ that units 801 and 901 were substantially identical at the time that the vacancy

[35] The statute requires that the units must have "comparable amenities and equipment," not all of the same amenities and equipment. D.C. OFFICIAL CODE § 42-3502.13(b).

increase was taken.[36] See D.C. OFFICIAL CODE § 42-3502.13(b); 14 DCMR § 3807.1; Prosper, TP 23,224.

Having considered the three grounds upon which the Tenant bases her claim of error, the Commission hereby affirms the ALJ on issue "J." 14 DCMR § 3807.1.

K. Whether it was error for the ALJ to fail to invalidate the vacancy rent charged increase, when the uncontroverted record evidence demonstrated that the Housing Provider implemented that increase within 180 days of when the previous rent charged increase was implemented.[37]

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[36] The Commission notes the claim of the Tenant that it was error for the ALJ to fail to find that the rent ceiling on apartment 801 was not properly calculated. Notice of Appeal at 3. Although it is unclear from the record when the ALJ made this determination, the Commission is satisfied that, as a matter of law, the Tenant has no standing to challenge the rent ceiling of apartment 801. 14 DCMR §4214.2 states: a tenant may "challenge or contest any rent ceiling adjustment taken and perfected by a housing provider . . . under § 213 of the Act (vacancy adjustment); 1) if the adjustment under § 213(a)(1) of the Act was perfected sooner than twelve (12) months following any prior similar adjustment; or 2) if the adjustment under § 213(a)(2) of the Act was perfected based upon a comparable rental unit which failed to meet the criteria of § 4207.4," (i.e., the two units are not substantially identical). 14 DCMR § 4214.2(b)(1)-(2). Nowhere in that provision does it state that a Tenant may challenge the validity of a vacancy rent ceiling increase by arguing against the propriety of the comparable unit's rent ceiling. See id. Accordingly, the Commission dismisses this claim on appeal.

[37] The Commission notes the objection of the Housing Provider that the claim that the vacancy rent charged increase occurred within 180 days of the previous rent charged increase allegedly was not raised in adequate time to give the Housing Provider "fair notice of the grounds upon which [the] claim is based." See Housing Provider's Brief at 14. The Commission notes that the Housing Provider has not appealed the ALJ's determination to allow the amendment to the Tenant Petition. The ALJ found that the amendment to add an allegation on the issue that 180 days had not lapsed should be permitted because "[t]he vacancy increase that occurred on March 26, 2006, falls within the applicable statute of limitations, and the original petition stated that Tenant was challenging a vacancy increase." Final Order at 17; R. at 1742 (citing Order on Pending Motions at 7). Where the Housing Provider has not filed an appeal of this issue, and where the Commission observes that the Housing Provider has not indicated any prejudice that resulted based on any alleged lack of "fair notice" of this claim, the Commission is not persuaded that the ALJ erred in permitting the amendment.

The Housing Provider also asserts that the ALJ erred by allowing the amendment because "amendment of a petition does not allow one to circumvent the statute of limitations." Housing Provider's Brief at 9. The Commission observes that the Housing Provider has offered no legal or factual support for this statement that the amendment violates the Act's statute of limitations at D.C. OFFICIAL CODE § 42-3502.06(e). See Housing Provider's Brief at 9. The statute of limitations provides merely that "[n]o 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." D.C. OFFICIAL CODE § 42-3502.06(e) (emphasis added). The timeliness of an amendment to a tenant petition is subject to the doctrine of "relation back" under Super. Ct. R. Civ. P. 15(c) according to which:

> An amendment of a pleading relates back to the date of the original pleading when (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.

The ALJ found that on September 30, 2005, the Housing Provider filed a Certificate of Adjustment of General Applicability with the RAD that increased the rent charged for unit 901, effective November 1, 2005. Final Order at 17; R. at 1742 (discussing PX 116; R. at 1847). The ALJ also found that the Housing Provider took a vacancy rent charged increase for unit 901 on May 1, 2006. Final Order at 17; R. at 1742. The ALJ, citing the Act, explained that a housing provider was permitted to increase the rent charged only once every 180 days. Id. (citing D.C. OFFICIAL CODE § 42-3502.06). She then determined that as there was a rent charged increase on November 5, 2005, 180 days would not have passed until May 1, 2006; however, the ALJ went on to state that the Housing Provider could nevertheless take a vacancy rent charged increase within 30 days of the apartment becoming vacant, "irrespective of other rent adjustments that may have been made" within the previous 180 days. Final Order at 17; R. at 1742.

The Commission is required to reverse final decisions of the ALJ that it determines "contain conclusions of law not in accordance with the provisions of the Act." 14 DCMR § 3807.1, supra at 26; accord, Notsch, RH-TP-06-28,690; Atchole, RH-TP-10-29,891. The Commission holds that the ALJ's conclusion of law that the Housing Provider was permitted to take a vacancy rent charged increase within 180 days of the previous rent charged increase to be contrary to the provisions of the Act. See D.C. OFFICIAL CODE § 42-3502.06; 14 DCMR §§ 3807.1, 4207.

Id. (emphasis added). In accordance with this rule, the Commission is satisfied that the ALJ's determination constituted a well-founded conclusion that the 180 day claim asserted in the amendment "arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Id.; see Final Order at 1; R. at 1742 (the Tenant's Motion to Amend sought to set forth "with specificity the rent increases she was challenging, which included whether 180 days had lapsed."). Moreover, the Commission has previously determined that "[t]he law on amendments requires that they relate back to the date of the original filing." Tavana Corp., CI 20,694 (emphasis added). Accordingly, the Commission affirms the decision of the ALJ to allow the amendment, and rejects the counterarguments of the Housing Provider. See Super. Ct. Civ. R. 15(c).

According to 14 DCMR § 4207.6, entitled "vacancy rent ceiling adjustments:" "Where a housing provider increases the rent [charged] for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4207.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5." 14 DCMR § 4207.6 (emphasis added).[38] Additionally, 14 DCMR § 4205.5 provides that "a housing provider shall not implement a rent [charged] adjustment for a rental unit unless all of the following conditions are met . . . (c) At least one hundred eighty (180) days shall have elapsed since the date of implementation of any prior rent [charged] increase." 14 DCMR § 4205.5(c) (emphasis added). Based on its interpretation of the text of these regulations, the Commission determines that the ALJ erred in her assessment of the applicability of 14 DCMR § 4205.5(c). Final Order at 17; R. at 1742; 14 DCMR § 3807.1.

The Commission observes that under the regulations cited above, there is a mandatory 180-day waiting period for a housing provider to increase the rent charged, regardless of whether the subsequent rent charged increase is based on a vacancy. See Lovitky v. Smithy Braedon Prop. Co., TP 11,661 (RHC July 10, 1985). Accordingly, the Commission reverses the ALJ's finding that the Tenant failed to meet her burden on the issue of whether 180 days had lapsed between rent increases, and determines that the Housing Provider imposed two rent increases within 180 days of each other, in contravention of the Act. 14 DCMR § 3807.1; accord, Notsch, RH-TP-06-28,690; Atchole, RH-TP-10-29,891. On remand, the Commission instructs the ALJ to make a determination of the appropriate remedy, based on the existing record, including a rent rollback and/or a rent refund if the ALJ determines that the Tenant's rent charged exceeded her

[38] 14 DCMR § 4207.1 provides, in relevant part: "A vacancy rent ceiling adjustment, authorized by § 213(a) of the Act, is an increase in the rent ceiling for a previously registered rental unit." The full text of 14 DCMR § 4205.4 is provided supra, at 11.

rent ceiling during the relevant time period, in accordance with D.C. OFFICIAL CODE § 42-3509.01(a).[39]

L. Whether the ALJ erred in finding that the Housing Provider provided the Tenant with the required notice of the vacancy rent charged adjustment.

The Commission observes, that as it has already been determined that the 2006 vacancy rent charged increase [was invalid under 14 DCMR § 4207.1, issue "K," which also contests the propriety of the vacancy rent charged adjustment, is moot.] McChesney, 76 A.2d 89 (stating that "it is not within the province of appellate courts to decide abstract hypothetical or moot questions, disconnected with the granting of actual relief or from the determination of which no practical relief can follow."), cited in Oxford House-Bellevue, TP 27,583; Kuratu, RH-TP-07-28,985. Accordingly, this issue is dismissed.

M. Whether the ALJ erred in failing to award treble damages.

The Tenant asserts on appeal that the ALJ should have awarded treble damages, see Notice of Appeal at 4, and that such damages were warranted as the sworn affidavit submitted by Mr. Newcome was improperly submitted by the Housing Provider solely "for purposes of delay and to avoid detection." Tenant's Brief at 38.

The Act's penalty provision provides for the trebling of damages that are awarded to a tenant, when the ALJ determines that the housing provider has acted in bad faith. D.C. OFFICIAL CODE § 42-3509.01(a); see supra at n.39. Initially, noting that the ALJ found in favor of the

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[39] According to D.C. OFFICIAL CODE § 42-3509.01(a), in relevant part:

> [A]ny person who knowingly demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter . . . shall be held liable by the Rent Administrator or the Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or the Rental Housing Commission determines.

Housing Provider and did not award any damages to the Tenant, the Commission determines that there would have been no grounds upon which she could reasonably have based an imposition of treble damages. See D.C. OFFICIAL CODE § 42-3509.01(a) ("[A]ny person who knowingly demands or receives rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit . . . shall be held liable . . . for the amount by which the rent exceeds the applicable rent ceiling or for treble damages (in the event of bad faith). . . ."); Final Order at 18; R. at 1743 (dismissing the Tenant Petition with prejudice). Thus, the Commission is satisfied that the ALJ's determination not to award the Tenant treble damages is in accordance with the provisions of the Act, and affirms the ALJ on this issue. See id.; 14 DCMR § 3807.1.

Furthermore, although the Commission is permitted to award a rent refund and treble the amount of the rent refund ordered paid under 14 DCMR § 4217.1 "where it has been determined that a housing provider knowingly demanded or received rent above the rent ceiling for a particular rental unit,"[40] the Commission has not awarded the Tenant any damages in this case, and thus there is no basis for the Commission to make an award of treble damages. Id.; D.C. OFFICIAL CODE § 42-3509.01(a); see also 14 DCMR § 4217.1; Revithes v. D.C. Rental Hous. Comm'n, 536 A.2d 1007, 1020 (D.C. 1987) ("[S]ubsection (a) authorizes the RHC to treble rent overcharges.").

N. Whether the ALJ erred in failing to impose fines.

[40] 14 DCMR § 4217.1: "Where it has been determined that a housing provider knowingly demanded or received rent above the rent ceiling for a particular unit, or has substantially reduced or eliminated services previously provided, the Rent Administrator or the Commission shall invoke any or all of the following types of relief: (a) A rent refund; and (b) Treble the amount of the rent refund ordered paid; or (c) A rent rollback for a specific period or until specific conditions are complied with."

The Tenant asserts fines should have been imposed upon the Housing Provider for each violation under the provisions of D.C. OFFICIAL CODE § 42-3509.01(b). Notice of Appeal at 4. The statute provides the following:

> 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). A prerequisite to the imposition of a fine is a finding of willful conduct. Heidary v. Gomez, TP 27,179 (Oct. 24, 2003). In Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986), the DCCA discussed the meaning of the term willful:

> From the context it is clear that the word willfully as used in [§ 42-3509.01(b)] demands a more culpable mental state than the word "knowingly" as used in [§ 42-3509.01(a)]. . . .
>
> Willfully goes to intent to violate the law. Knowingly is simply that you know what you are doing: a different standard. If you know that you are increasing the rent, the fact that you don't intend to violate the law would be knowingly. If you also intended to violate the law, that would be willfully.

Id. at 76 n.6 (quoting Council of the District of Columbia, Council Period 3, Second Session, 43d Legislative Session at 88-93 (Nov. 14, 1980)); see also Shipe v. Carter, RH-TP-08-29,411 (RHC Sept. 18, 2012).

The ALJ did not make any findings that the Housing Provider engaged in any willful acts that would require the imposition of fines. See generally Final Order. Because she did not find in favor of the Tenant on any of the claims in the Tenant Petition, the Commission is satisfied that the ALJ's failure to impose fines was supported by substantial evidence and in accordance

with the provisions of the Act, and affirms the ALJ on this issue. See 14 DCMR § 3807.1. Contra D.C. OFFICIAL CODE § 42-3509.01(b) (The four grounds upon which a person can be fined all require a finding that the person violated a pertinent provision of the Act). Furthermore, where the record does not contain findings of fact and conclusions of law regarding whether the Housing Provider's conduct was "willful," the Commission is satisfied that the record does not contain substantial evidence that would support the imposition of fines by the Commission. D.C. OFFICIAL CODE § 42-3509.01(b); 14 DCMR § 3807.1; see also, e.g., Covington v. Foley Props., Inc., TP 27,985 (RHC June 21, 2006).

IV. CONCLUSION

For the foregoing reasons, the Commission dismisses the Tenant's issue "A" through "F," "H," and "L." The Commission affirms the ALJ on issues "I," "J," "M," and "N."

The Commission determines that it was an abuse of discretion for ALJ Wilson-Taylor to fail to rule on the Tenant's First Motion to Amend, and remands to OAH on issue "G," with instructions to issue an order ruling on the First Motion to Amend in accordance with Super. Ct. R. Civ. P. 15(a). On remand, if the ALJ allows the amendment to the Tenant Petition, the Commission further instructs the ALJ to hold an evidentiary hearing strictly limited to the claim of improper registration, and to issue findings of fact and conclusions of law on this claim. Also, the Commission reverses the ALJ's finding that the Tenant failed to meet her evidentiary burden on the issue of whether 180 days had lapsed between rent increases, and determines on the basis of its review of the record, that the Housing Provider filed two rent increases within 180

days of each other, in contravention of the Act. On remand, the Commission instructs the ALJ to make a determination of the appropriate remedy, based on the existing record, including a rent rollback and/or a rent refund if the ALJ determines that the Tenant's rent charged exceeded her rent ceiling during the relevant time period, in accordance with D.C. OFFICIAL CODE § 42-3509.01(a).

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:

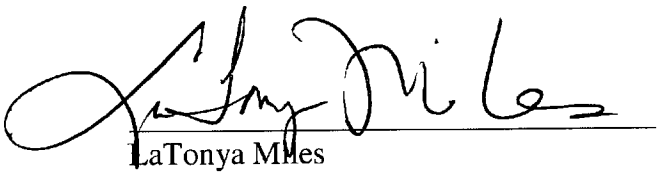
D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in **RH-TP-06-28,708** was mailed, postage prepaid, by first class U.S. mail on this **25th day** of **September, 2014** to:

Richard W. Luchs
Debra F. Leege
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, NW, Suite 900
Washington, DC 20036

Carol S. Blumenthal
Blumenthal and Cordone, PLLC
1700 17th Street, NW, Suite 301
Washington, DC 20009



LaTonya Miles
Clerk of Court
(202) 442-8949