DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,728

In re: 907 6th Street, S.W., Unit 207-C

Ward Six (6)

UNITED DOMINION MANAGEMENT COMPANY
Housing Provider/Appellant

v.

BRIAN HINMAN
Tenant/Appellee

DECISION AND ORDER

June 5, 2013

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the District of Columbia (D.C.) Department of Consumer & Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversions Division (RACD).[1] The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the D.C. Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (2001 Supp. 2008), and the D.C. Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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[1] OAH assumed jurisdiction over tenant petitions from RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the RACD were transferred to the Department of Housing and Community Development (DHCD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008)).

I. PROCEDURAL HISTORY

On July 25, 2006, Tenant/Appellee Brian Hinman (Tenant), residing in Unit 207-C of 907 6th Street, S.W. (Housing Accommodation), filed Tenant Petition RH-TP-06-28,728 (Tenant Petition) with the RACD, claiming that the Housing Provider/Appellant, United Dominion Management Company (Housing Provider), violated the Act as follows: (1) the Housing Provider implemented a rental increase which was larger than the amount of increase permitted by the Act; (2) the Housing Provider did not send proper notice of the rent increase before the rent increase became effective; (3) the Housing Provider failed to file proper rent increase forms with RACD; (4) the rent charged exceeded the legally calculated rent ceiling for the rental unit at issue; and (5) the rent ceiling filed with RACD for the Housing Accommodation is improper. Tenant Petition at 1-8; Record (R.) at 5-12.

On December 20, 2006, Administrative Law Judge Nicholas H. Cobbs (ALJ) issued a Case Management Order that set a hearing date for January 25, 2007. Hinman v. United Dominion Mgmt. Co., RH-TP-06-28,728 (OAH Dec. 20, 2006); R. at 22. A hearing was held in this matter on January 25, 2007 at which both the Tenant and the Housing Provider appeared. R. at 48. On October 5, 2007, the ALJ issued a final order, Hinman v. United Dominion Mgmt. Co., RH-TP-06-28,728 (OAH Oct. 5, 2007) (Final Order). R. at 82-106. The ALJ made the following findings of fact:[2]

1. At all times relevant to these proceedings Tenant Brian R. Hinman leased apartment No. 207 in the Housing Accommodation at 907 6th Street, S.W. In June 2006 he paid rent of $1,230 per month. Petitioner's Exhibit ("PX") 100.

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

2. In a Notice of Increase in Rent Charged dated June 28, 2006, Housing Provider informed Tenant that his rent would be increased by $225 per month to $1,488 per month as of August 1, 2006. The notice attributed the rent increase to a $531 rent ceiling adjustment, effective on March 1, 2001, involving a vacancy increase under Section 213(a)(2) of the Act, D.C. [OFFICIAL] CODE § 42-3502.13(a)(2) (2001). The notice contained: (1) the amount of the rent adjustment ($225 per month); (2) the amount of the adjusted rent ($1,488 per month); (3) the date upon which the adjusted rent would be due (August 1, 2006); (4) the date and authorization for the rent ceiling adjustment (March 1, 2001); and (5) certification that the rental unit and common elements of the housing accommodation were in substantial compliance with the Housing Regulations. PX 100.

3. The rent ceiling adjustment that Housing Provider implemented on August 1, 2006, was documented in an Amended Registration Form filed with the RACD on April 19, 2001. The Amended Registration [Form] recorded an increase in the rent ceiling for Tenant's apartment from $1079 to $1610, and listed the date of change as March 1, 2001. The form identified the rental unit to which the election applied (No. 207) and stated the amount of the adjustment and the prior and new rent ceilings for the unit. RX 200.

4. On July 25, 2006, Tenant filed this tenant petition with the RACD. The petition asserted the following complaints: (1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Act; (2) a proper 30 day notice of rent increase was not provided before Tenant's rent increase became effective; (3) Housing Provider failed to file the proper rent increase forms with the RACD; (4) the rent being charged exceeded the legally calculated rent ceiling for the unit; and (5) the rent ceiling filed with the RACD for the unit was improper.

5. The rent increase effective on August 1, 2006, was the only rent increase he disputed. Housing Provider demanded and Tenant paid the increased rent through the date of the hearing.

Final Order at 2-3; R. at 104-105.

After conducting an analysis of the issues raised by the Housing Provider, the ALJ made the following conclusions of law:

1. Housing Provider's August 2006 rent increase implemented a rent ceiling increase that was not properly taken and perfected by Housing Provider. Accordingly, the increase is invalid and disallowed. Sawyer Prop. Mgmt. v. Mitchell, TP 24,991 (RHC Oct. 31, 2002) at 32-33, *aff'd,* Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n, 877

A.2d 96 (D.C. 2005); Grant v. Gelman Mgmt. Co., TP 27-995 (RHC Feb. 24, 2006) at 26-27.

2. Tenant's challenge to a rent adjustment that was taken less than three years before the tenant petition was filed, implementing a rent ceiling adjustment that was taken more than three years before the petition was filed, but not properly perfected, is not barred under the Rental Housing Act's three-year statute of limitations D.C. [OFFICIAL] CODE § 42-3502.06(e); Grant v. Gelman Mgmt. Co., TP-27,995 (RHC Feb. 24, 2006) at 26.

3. Tenant has not proven that Housing Provider failed to provide Tenant with a proper 30 day notice of rent increase before the increase became effective or that Housing Provider failed to file the proper rent increase forms with the RACD.

4. Tenant has not adduced evidence of culpable misconduct or intentional violation of law sufficient to demonstrate bad faith or a willful violation by Housing Provider. D.C. [OFFICIAL] CODE § 42-3509.01(a); (b).

5. Tenant is entitled to a roll back of his rent to the level it was at prior to August 1, 2006, when Housing Provider implemented the improper rent increase. The roll back is effective as of the date of the hearing. D.C. [OFFICIAL] CODE § 42-3509.01(a).

6. Tenant is entitled to interest on the amount Housing Provider demanded in excess of the permissible rent through the date of this decision. 14 DCMR [§§] 3826.1 – 3826.3.

Final Order at 20-21; R. at 86-87.

On October 17, 2007, the Housing Provider filed an appeal (Notice of Appeal) with the Commission, in which he raises the following issues:[3]

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

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

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

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

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

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

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

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

Notice of Appeal at 2-3.

The Housing Provider filed the Housing Provider/Appellant's Brief on Appeal (hereinafter "Housing Provider's Brief") on November 8, 2007, and the Tenant filed Tenant/Appellee's Opposition to Housing Provider/Appellant's Brief on Appeal (hereinafter "Tenant's Brief") on November 28, 2007. The Commission held a hearing in this matter on January 10, 2008.

II. ISSUES ON APPEAL

1. Whether the Final Order is erroneous as a matter of law in that the Tenant Petitioner's claim is barred by the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e).[4]

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

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

4. Whether the Final Order in this case, is contrary to the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e), and precedents of the D.C. Court of Appeals, and must be overruled.[5]

5. Whether the Final Order in this case, is contrary to the Constitution of the United States, including, without limitation, U.S. Const., Amend 5, as interpreted by the Supreme Court of the United States in *inter alia*, William Danzer & Co. v. Gulf & Ship Island R.R. Co., 268 U.S. 633 (1925) and precedents of the D.C. Court of Appeals and this Commission interpreting the statute of limitations in D.C. OFFICIAL CODE §42-3502.06(e).

6. Whether the Final Order is unconstitutional and violates the Civil Rights of Appellant to due process of law and violates 42 U.S.C. §1983 (2006).

7. Whether the Final Order is erroneous as a matter of law in that it retroactively applies the Decision and Order in Grant v. Gelman Mgmt. Co., TP 27,995 to the March 1, 2001 rent ceiling adjustment at issue in this proceeding.

III. DISCUSSION

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

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[4] D.C. OFFICIAL CODE § 42-3502.06(e) (2001) shall be referred to herein as "D.C. OFFICIAL CODE § 42-3502.06(e)" or as "§ 42-3502.06(e)."

[5] The Commission notes that the Housing Provider's statement of issues numbered four (4), five (5), and six (6), (*see supra* at p. 5), alleges errors in the Commission's Decision and Order in Grant v. Gelman Mgmt. Co., TP 27,995 (RHC Feb. 24, 2006). The Decision and Order in Grant, TP 27,995, is itself not the subject of this appeal. The Commission will only address the ALJ's interpretation and application of the Decision and Order in Grant, TP 27,995, to the issues in this case. Accordingly, the Commission has restated the issues on appeal without reference to the Housing Provider's allegations of error in the Decision and Order in Grant, TP 27,995.

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

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

4. **Whether the Final Order in this case, is contrary to the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e), and precedents of the D.C. Court of Appeals, and must be overruled.**

In the Final Order, the ALJ determined that the Tenant's claim was not barred because the "Act's statute of limitations [at § 42-3502.06(e)] does not bar timely challenges to a rent [charged] adjustment that implements an improperly perfected rent ceiling adjustment, irrespective of when the rent ceiling adjustment occurred." Final Order at 15; R. at 92 (emphasis added). In reaching this conclusion, the ALJ addressed the language of the Act, its regulations, and controlling case precedent on the Act from both the D.C. Court of Appeals (hereinafter "DCCA") and the Commission. Final Order at 8-15 R. at 92-99. *See supra* at pp. 3-5.

The statutory provision of the Act at issue in this case, § 42-3502.06(e), states the following:

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

(emphasis added).

In its brief, the Housing Provider maintains that the ALJ erred in his interpretation of § 42-3502.06(e) in failing to bar the Tenant's claim that a 2006 adjustment in rent charged was unlawful where it was based upon an improperly taken and perfected 2001 adjustment in rent

ceiling.[6] *See* Housing Provider's Brief at 6. The Housing Provider asserts the following in support of its contention that the Tenant's claim is barred: (1) both the DCCA and the Commission previously decided that the term "rent adjustment" in § 42-3502.06(e) refers to both adjustments in rent ceilings and adjustments in rent charged, *see* Housing Provider's Brief at 6-7 (citing Kennedy v. D.C. Rental Hous. Comm'n, 709 A.2d 94, 97-100 (D.C. 1998);[7] Borger Mgmt. v. Godfrey, TP 20,116 (RHC Sept. 4, 1989));[8] *see infra* at pp. 11-15, 20-24, 29-30; (2) the effective date of an adjustment in rent ceiling for purposes of calculating the limitations period in § 42-3502.06(e) is the date when it is "taken and perfected" by a housing provider[9] pursuant to 14 DCMR §§ 4204.9-.10, *see* Housing Provider's Brief at 8-10 (citing Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 866 A.2d 41 (D.C. 2004);[10] Williams v. Alvin L. Aubinoe, Inc., TPs

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[6] The Commission notes that the Housing Provider's appeal is based solely on the ALJ's alleged failure to interpret § 42-3502.06(e) as an absolute bar to the Tenant's claims regarding improper increases in rent charged. The Housing Provider did not appeal, and thus contest, the ALJ's determination that the 2001 adjustment in rent ceiling was not properly "taken and perfected" in accordance with 14 DCMR §§ 4204.9-.10. *See* Final Order at 5; R. at 102. *See generally* Housing Provider's Brief at 6-22.

[7] The DCCA's decision in Kennedy, 709 A.2d at 94, will be referred to hereinafter as simply "Kennedy," with appropriate page references as required.

[8] The Commission refers to its decision in Borger Mgmt. v. Godfrey, TP 20,116, hereinafter as "Godfrey," with appropriate page references as required.

[9] The Housing Provider states throughout its brief that the "effective date" of an adjustment in rent ceiling is the "date of filing" with the Rent Administrator. *See* Housing Provider's Brief at 8. Based on its review of the Act's regulations, the Commission exercises its reasonable discretion in interpreting the Housing Provider's reference to the "date of filing" as the date of filing a proper Amended Registration form or Certificate of Election form in the process of "taking and perfecting" an adjustment in rent ceiling in accordance with 14 DCMR §§ 4204.9-.10. *See infra* at p. 17 n.17 for the text of 14 DCMR §§ 4204.9-.10.

[10] The Commission observes that one of the major cases relied on in the Housing Provider's Brief, in support of its contention that the ALJ erred in his interpretation of § 42-3502.06(e), is Majerle Mgmt., 768 A.2d 1003 (D.C. 2001), *vacated by* Majerle Mgmt., 777 A.2d 785 (D.C. 2001). As noted, the DCCA vacated Majerle Mgmt., 768 A.2d 1003, with respect to the issues related to the limitations period under § 45-2516(e), stating as follows:

> [W]e conclude the Rental Housing Commission did not adequately explain its consideration of relevant legal principles. Accordingly, Part III of the opinion of this court filed on March 15, 2001, which is published at 768 A.2d 1003, 1006-08, is vacated to the extent that it affirms the Rental Housing Commission's ruling that the tenant was entitled to a refund for rent overcharges.

See Majerle Mgmt., 777 A.2d 785. Following the DCCA's order vacating the initial determination in Majerle Mgmt., 768 A.2d 1003, the Commission again addressed the merits of the claims regarding the limitations period

22,821 & 22,814 (RHC Aug. 12, 1992);[11] Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990) at 17-18));[12] *see infra* at pp. 16-39; and (3) the ALJ misconstrued and therefore misapplied the DCCA's opinion in Kennedy, at 94. *See* Housing Provider's Brief at 10-11. *See infra* at pp. 20-24.

Conversely, the Tenant maintains that the ALJ's determination in the Final Order that the Tenant's claim is not barred was correct because the language of § 42-3502.06(e) is clear and unambiguous in that it does not make any reference to adjustments in rent ceiling, and therefore only applies to adjustments in rent charged. *See* Tenant's Brief at 3-4. The Tenant supports his position by citing the statutory definitions of "rent" and "rent ceiling" under D.C. OFFICIAL CODE §§ 42-3501.03(28) & (29),[13] and suggesting that, because the two terms are defined differently under the Act, they cannot be used interchangeably. *See id.* at 4 (citing D.C. OFFICIAL CODE §§ 42-3501.03(28) & (29)). In addition, the Tenant disagrees with the Housing Provider's interpretation of the term "effective date" as used in § 42-3502.06(e), asserting that only an adjustment in rent charged has an "effective date," and that the "effective date" of an adjustment in rent ceiling is the date of its implementation by means of an increase/decrease in rent charged. *See* Tenant's Brief at 5.

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under § 45-2516(e). *See* Redmond v. Majerle Mgmt., TP 23,146 (RHC Mar. 26, 2002). The Commission's March 26, 2002 decision was subsequently appealed to the DCCA, resulting in the DCCA's decision in Majerle Mgmt., 866 A.2d 41.

For purposes of this Decision and Order, all references herein to "Majerle," shall be to the DCCA's decision in Majerle Mgmt., 866 A.2d 41, with appropriate page references as required.

[11] The Commission refers to its decision in Williams, TPs 22,821 & 22,841, hereinafter as "Williams," with appropriate page references.

[12] The Commission refers to its decision in Ayers, TP 21,273, hereinafter as "Ayers," with appropriate page references as required.

[13] For the text of D.C. OFFICIAL CODE §§ 42-3501.03(28) & (29), *see infra* at p. 12.

The Commission's standard of review is contained in 14 DCMR § 3807.1, which provides that 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 provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator."

The Commission will sustain an ALJ's interpretation of the Act unless it is unreasonable or embodies a material misconception of the law, even if a different interpretation may also be supportable. *See* Dorchester House Assocs. Ltd. P'ship v. D.C. Rental Hous. Comm'n, 938 A.2d 696, 702 (D.C. 2007) (citing Sawyer Prop. Mgmt. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 102-103 (D.C. 2005)).[14] The Commission will defer to an ALJ's decision so long as it flows rationally from the facts and is supported by substantial evidence. *See* Majerle, at 46; Munchison v. D. C. Dept. of Public Works, 813 A.2d 203, 205 (D.C. 2002). *See also* Ruffin v. Sherman Arms, LLC, TP 27,982 (RHC July 29, 2005) at 10. As the DCCA has consistently held, "[p]articularly where there is a broad delegation of authority to an administrative agency, deference must be given to a reasonable construction of the regulatory statute by the agency." *See* 1773 Lanier Place, N.W., Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009) (citing Furtick v. D.C. Dep't of Emp't Servs., 921 A.2d 787-790 (D.C. 2007); Hughes v. D.C. Dep't of Emp't Servs., 498 A.2d 567, 570 (D.C. 1985)). *See also* Watergate E. Comm. Against Hotel Conversion to Co-op Apartments v. D.C. Zoning Comm'n, 953 A.2d 1036, 1043 (D.C. 2008) (noting that deference is given to an agency's interpretation of a statute it administers unless the

[14] The DCCA's decision in Sawyer Prop. Mgmt., 877 A.2d at 96 will be referred to hereinafter simply as "Sawyer," with appropriate page references as required.

"interpretation is unreasonable or in contravention of the language or legislative history of the statute.")

A. The Language of the Act and its Regulations

In evaluating the applicability of § 42-3502.06(e) to the Tenant's claims, the ALJ began by reviewing the language of the Act and the applicable regulations. Final Order at 8-9; R. at 98-99. The DCCA has stated that where a statute's language is clear and unambiguous, the statute will be given its plain meaning. *See* Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1080 (D.C. 1994) (citing Neighbors United for a Safer Cmty. v. D.C. Bd. of Zoning Adjustment, 647 A.2d 793 (D.C. 1994)). Where the plain meaning is not clear, the Commission will look to secondary sources to determine the meaning of the statute. *See* District of Columbia v. Brookstowne Cmty. Dev. Co., 987 A.2d 442, 448 (D.C. 2010) (quoting Wash. Gas Light Co. v. Pub. Serv. Comm'n of D.C., 982 A.2d 691, 702 (D.C. 2009)); Davis v. United States, 397 A.2d 951, 956 (D.C. 1979) (quoting Sanker v. United States, 374 A.2d 304, 307 (D.C. 1977)). The DCCA has provided the Commission with considerable deference and discretion in its interpretation of the Act, holding that the Commission's interpretation of the Act will be upheld unless it is unreasonable, plainly wrong, incompatible with the statutory purposes of the Act or embodies a material misconception of the law, even where a different interpretation may also be supportable. *See, e.g.*, Sawyer, at 102-103; Kennedy, at 97; Jerome Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 682 A.2d 178, 182 (D.C. 1996); Winchester Van Buren Tenants Ass'n v. D.C. Rental Hous. Comm'n, 550 A.2d 51, 55 (D.C. 1988); Charles E. Smith Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 492 A.2d 875, 877 (D.C. 1985).

The Commission concurs with the ALJ that § 42-3502.06(e) makes no reference to an adjustment in rent ceiling, only to a "rent adjustment."[15] *See* D.C. OFFICIAL CODE § 42-3502.06(e). *See* Final Order at 8; R. at 99. While the Commission notes that the "Definitions" section of the Act does not define the term "rent adjustment," the Act provides definitions for the terms "rent" and "rent ceiling."

According to D.C. OFFICIAL CODE §§ 42-3501.03(28)-(29):

> (28) "Rent" means the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.
>
> (29) "Rent ceiling" means that amount defined in or computed under § 42-3502.06.

The Commission observes that, while the Act provides the term "rent" with a substantive definition in its "Definitions" section, it defines the term "rent ceiling" by reference to another section of the Act entitled "Rent Ceilings." *See* D.C. OFFICIAL CODE § 42-3501.03(29). The term "rent ceiling" is "established by subsection (a)" of D.C. OFFICIAL CODE § 42-3502.06(b). *See* D.C. OFFICIAL CODE § 42-3502.06(a)-(b).[16] Under § 42-3502.06(a), a rent ceiling is "[t]he amount computed by adding to the base rent not more than all rent increases authorized after

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[15] The Commission notes that any ambiguity in the meaning of the term "rent adjustment" under the Act was resolved by the "Rent Control Reform Amendment Act of 2006," D.C. Law 16-145 (Aug. 5, 2006) which amended the Act by eliminating the term "rent ceiling," and, in its place, substituting the term "rent charged." *See* D.C. OFFICIAL CODE § 42-3502.06(a) (2001 Supp. 2008). *See,* D.C. Law 16-145, §§ 2(a) & (c), 53 D.C. Reg. at 4889, 4890 (2006). Rather than use the term "rent adjustment" herein to refer to an adjustment in rent ceiling or an adjustment in rent charged, the Commission will separately and distinctly refer to an "adjustment in rent charged" (or "rent charged adjustment") and to an "adjustment in rent ceiling" (or "rent ceiling adjustment").

[16] D.C. OFFICIAL CODE §§ 42-3502.06(a)-(b), entitled "Rent Ceiling," states in relevant part as follows:

> (a) Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction....
>
> (b) On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent ceiling established by subsection (a) of this section....

(emphasis added).

April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction." *See* D.C. OFFICIAL CODE § 42-3502.06(a).

While the Act clearly distinguishes the respective meanings of "rent" and "rent ceiling" in §§ 42-3501.03(28)-(29), the Act inextricably links "rent" to "rent ceiling" in § 42-3502.06(a) by setting a limit on the amount of "rent" that a housing provider may "charge or collect" for a housing accommodation regulated by the Act to the amount of the "rent ceiling." *See* D.C. OFFICIAL CODE § 42-3502.06(a). Under § 42-3502.06(a), therefore, both the validity and amount of "rent" charged by a Housing Provider under the Act are interdependent with the validity and amount of a corresponding "rent ceiling." *See id.* Nonetheless, while the language of the Act codifies a legal distinction and interdependence between "rent" and "rent ceiling," it does not provide a clear definition of the meaning of the term "rent adjustment" as contained in § 42-3502.06(e). *See generally,* D.C. OFFICIAL CODE § 42-3501.03.

The Commission proceeds to review the Act's regulations, which are designed to give meaning to the provisions of the Act. *See, e.g.* Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009); Tenants of 1755 N St., N.W. v. N St. Follies Ltd. P'ship, HP 20,746 (RHC June 21, 2000); Fla. House Ltd. P'ship v. Tenants of 1900 19th St., N.W., SR 20,001 (RHC Sept. 6, 1989). The Commission notes that the regulations provide rules and procedures to aid the Commission in the administration of the Act. *See, e.g.* Borger Mgmt. v. Lee, RH-TP-06-28,854 (noting that "the DCCA has held that the Commission 'has the express power to promulgate rules and procedures that will effectuate the administration of the rental housing laws.'") (quoting Dorchester House Assocs. Ltd. P'ship, 938 A.2d at 705); Tenants of 1755 N St., N.W., HP 20,746 (stating that the regulations were designed to implement the Act); Fla. House Ltd.

P'ship, SR 20,001 (explaining that the Commission has the power to promulgate regulations that will give meaning to the Act) (citing Amaya v. Antezana, TP 20,383 (RHC Mar. 25, 1987)).

The Act's regulations re-affirm the distinction in the Act between "rent" that is charged by a housing provider and a corresponding "rent ceiling" within the context of adjustments – i.e., increases or decreases. *See* 14 DCMR §§ 4200.5-.7. According to 14 DCMR § 4200.5: "[A] rent ceiling adjustment is any increase or decrease in a rent ceiling that is authorized by the Act, and taken and perfected by the housing provider in accordance with § 4204." (emphasis added). According to 14 DCMR § 4200.7: "[A] rent adjustment is any increase or decrease in rent required or permitted by the Act and this chapter." (emphasis added).

The Commission observes that the above text of 14 DCMR §§ 4200.5-.7, respectively, clearly distinguishes a "rent ceiling adjustment" from a "rent adjustment," although they are interdependent and share common characteristics. *See* 14 DCMR §§ 4200.5-.7. Both types of adjustments have to be "authorized," "required" or "permitted" by the Act, and are defined as an "increase or decrease" in the amount of a "rent ceiling" or "rent" charged by a housing provider, respectively. *See id.* However, unlike "rent" charged by a housing provider, a "rent ceiling" has an additional definitional requirement for validity under the Act: it must be "taken and perfected by a housing provider in accordance with 14 DCMR § 4204." *Compare* 14 DCMR § 4200.5, *with* 14 DCMR § 4200.7. Although not addressed by the ALJ in the Final Order, the Commission notes that the Housing Provider fails to contest that the text of 14 DCMR §§ 4200.5-.7 may serve as a reasonable interpretation of the meaning of "rent adjustment" in § 42-3502.06(e). *See generally,* Housing Provider's Brief.

The Commission is satisfied that the Act's incorporation and use of distinct definitions for "rent" charged by a housing provider and a "rent ceiling," together with the distinction in the

Act's regulations between a "rent adjustment" and a "rent ceiling adjustment," at minimum undermine the Housing Provider's contention that "rent adjustment" in § 42-3502.06(e) refers to both adjustments in rent ceiling and adjustments in rent charged. *Compare* § 42-3501.03(28), *and* 14 DCMR §§ 4200.7, *with* § 42-3501.03(29), *and* 14 DCMR § 4200.5. Nonetheless, even though the language of the Act recognizes distinctions between "rent" charged by a housing provider and a "rent ceiling" (including respective adjustments in each), *see supra* at pp. 11-15, the Commission is unable to conclude that the ALJ's determination in the Final Order – that the language of the Act and its regulations does not, by itself, conclusively resolve whether the term "rent adjustment" in § 42-3502.06(e) includes an adjustment in rent ceiling – is unreasonable, plainly wrong, incompatible with the purposes of the Act or embodies a material misconception of the law. *See* Final Order at 8-9; R. at 98-99. *See also* Sawyer, at 102-103; Kennedy, at 97; Jerome Mgmt., Inc., 682 A.2d at 182; Winchester Van Buren Tenants Ass'n, 550 A.2d at 55; Charles E. Smith Mgmt., Inc., 492 A.2d at 877. The Commission will proceed to review secondary sources to further assist in its evaluation of the ALJ's interpretation of the meaning of the term "rent adjustment" in § 42-3502.06(e). *See* Brookstowne Cmty. Dev. Co., 987 A.2d at 448; Davis v. United States, 397 A.2d at 956.

B. Legislative History

The Commission observes that the ALJ does not rely on the Act's legislative history in interpreting § 42-3502.06(e), and neither the Housing Provider nor the Tenant discusses the legislative history of the Act in their respective briefs. *See generally,* Final Order; Housing Provider's Brief; Tenant's Brief. Having reviewed the legislative history relevant to § 42-3502.06(e), the Commission could not find any meaningful discussion, document, or report by the City Council to assist the Commission in its interpretation of the explicit meaning or

definition of the term "rent adjustment" as it is used in § 42-3502.06(e). *See, e.g.*, Bill 6-33, "Rental Housing Act of 1985" (Jan. 18, 1985); Council of the District of Columbia, Committee on Consumer & Regulatory Affairs, Committee Report, Bill 6-33, "Rental Housing Act of 1985" (Mar. 22, 1985); "Statement of Councilmember Jarvis Re: Amendment in the Nature of a Substitute to Bill 6-33" (1985). Following its review of the available legislative history of the Act, the Commission determines that the legislative history does not undermine the ALJ's interpretation of § 42-3502.06(e) in the Final Order, and fails to provide any support for the Housing Provider's interpretation of § 42-3502.06(e). *See id.*

C. Interpretation of the Term "Effective Date" under § 42-3502.06(e)

Following its review of relevant language of the Act, its regulations, and its legislative history, and in the absence of any case precedent from the Commission, the DCCA or other courts holding that, in factual circumstances identical to this case, the term "rent adjustment" in § 42-3502.06(e) includes both adjustments in rent ceiling and adjustments in rent charged, the Commission concurs with the ALJ that "[e]ven if the statute [Act] is construed to apply to rent ceiling adjustments as well as to rent [charged] adjustments, it does not say what the "effective date" of the [rent ceiling] adjustment is." Final Order at 9; R. at 98.

The Commission will therefore continue its review of the Final Order – and the meaning of the term "rent adjustment" in § 42-3502.06(e) - by assessing the ALJ's interpretation of applicable case precedent as to whether the ALJ properly interpreted the meaning of the term "effective date" under § 42-3502.06(e), as applicable to the facts of this case and as consistent with the purposes of the Act and relevant case law. *See* Final Order at 8; R. at 98. In the absence of any definition of the term "effective date" in § 42-3502.06(e) of the Act, the Commission will review the ALJ's determination of the following issue in the Final Order:

whether the "effective date" of an adjustment in rent ceiling is the date the adjustment in rent ceiling is "taken and perfected" in accordance with 14 DCMR §§ 4204.9-.10,[17] or the date that the adjustment in rent ceiling is implemented through a corresponding adjustment in rent charged. *See* Final Order at 8-9; R. at 98-99.

In this case, the Housing Provider contends that the "effective date" of the contested adjustment in rent ceiling, for purposes of § 42-3502.06(e), is the date in April 2001 when the Housing Provider "filed" the Amended Registration form indicating an increase in rent ceiling based on a vacancy adjustment, taken and perfected in accordance with 14 DCMR §§ 4204.9-.10. *See* Housing Provider's Brief at 8-10.[18] *See supra* at n.17. *See also infra* at pp. 49-50. The

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[17] 14 DCMR § 4204.9 states the following:

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

14 DCMR § 4204.10 provides as follows:

> Notwithstanding § 4204.9, a housing provider shall take and perfect a rent ceiling increase authorized by § 206(b) of the Act (an adjustment of general applicability) by filing with the Rent Administrator and serving on the affected tenant or tenants in the manner prescribed in § 4101.6 a Certificate of Election of Adjustment of General Applicability, which shall:
>
> (a) Identify each rental unit to which the election applies;
>
> (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.

[18] The Commission observes that, under D.C. OFFICIAL CODE § 42-3502.08(h)(1), which codified the "Unitary Rent Ceiling Adjustment Amendment Act of 1992," D.C. Law 9-191 (March 16, 1993), the sole source for any adjustment in rent charged is the amount of a corresponding adjustment in rent ceiling authorized and otherwise in compliance with the Act. D.C. OFFICIAL CODE § 42-3502.08(h)(1) provides as follows:

> (h)(1) One year from March 16, 1993, unless otherwise ordered by the Rent Administrator, each adjustment in rent charged permitted by this section may implement not more than 1 authorized and previously unimplemented rent ceiling adjustment. If the difference between the rent ceiling and the rent charged for the rental unit consists of all or a portion of 1 previously unimplemented rent ceiling adjustment, the housing provider may elect to implement all or a portion of the difference.

Housing Provider maintains that the limitations period in § 42-3502.06(e) serves as an absolute bar to the Tenant's claim of an illegal adjustment in rent charged, since the alleged failure of the Housing Provider to "take and perfect" the adjustment in rent ceiling at issue herein in April 2001 occurred more than the three years before the filing of the Tenant Petition in July 2006. *See id.* at 6-31. The Housing Provider asserts his claim regarding § 42-3502.06(e) succinctly as follows:

> [A] challenge to a rent ceiling adjustment...is completely prohibited three years after it first becomes effective [through taking and perfecting]. This is so even if no required filing was made with the Rent Administrator (or if the filing made was wrong) and even if the housing provider is not registered.

See Housing Provider's Brief at 25 (emphasis added). In sum, according to the Housing Provider's interpretation of § 42-3502.06(e), any failure to comply with the mandatory requirements for taking and perfecting an adjustment of rent ceiling under 14 DCMR §§ 4204.9-.10 that occurs more than three years beyond the date of a corresponding contested adjustment in rent charged is immune from challenge under § 42-3502.06(e). *See id.*

In opposition, the Tenant contends (and the Housing Provider fails to contest)[19] that the adjustment in rent ceiling in this case was not properly taken and perfected in accordance with 14 DCMR §§ 4204.9-.10, insofar as the Amended Registration Form was filed with the Rent

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The Commission notes that, under the Act, two steps are necessary before an adjustment in rent ceiling may be used as the basis for an adjustment in rent charged. *See supra* at pp. 12-14. First, an adjustment in rent ceiling must be authorized by the Act. *See* 14 DCMR § 4200.5. Second, an adjustment in rent ceiling must be "taken and perfected" in accordance with 14 DCMR §§ 4204.9-.10. *See id.* As noted *supra* at p. 17 n.17, an adjustment in rent ceiling is "taken and perfected" under the Act when a housing provider has filed with the Rent Administrator either a proper Amended Registration/Claim of Exemption Form or a Certificate of Election of Adjustment of General Applicability, and has met the notice requirements to tenants in 14 DCMR § 4101.6 (2004). *See* 14 DCMR §§ 4204.9-.10. *See also* Sawyer, at 104, 109. Once the adjustment in rent ceiling has been taken and perfected in accordance with 14 DCMR §§ 4204.9-.10, it may be used by a housing provider for a corresponding adjustment in rent charged in compliance with the requirements of 14 DCMR §§ 4205.4-.10 including notice to the tenant, certification of compliance with the District's housing regulations, and filing with the Rent Administrator. *See* D.C. OFFICIAL CODE § 42-3502.08(h)(1); 14 DCMR § 4205.4. *See also* Kennedy, at 99.

[19] *See supra* at p. 8 n.6.

Administrator more than 30 days after the Housing Accommodation became vacant (in violation of 14 DCMR § 4103.1(e)). *See* Tenant's Brief at 1-2. Moreover, the Tenant contends that the "effective date" of the adjustment in rent ceiling, albeit improperly taken and perfected, was the date when it was implemented through a corresponding adjustment in rent charged on August 1, 2006. *See id.* at 4-6; Final Order at 2; R. at 105.

Based upon case precedent from the DCCA and the Commission, the ALJ determined that the August 1, 2006 adjustment in rent charged implemented an adjustment in rent ceiling from April 2001 that was not properly taken and perfected, that the limitations period in § 42-3502.06(e) did not bar the Tenant's claim of an illegal adjustment in rent charged under the Act, and that the August 1, 2006 increase in rent charged was invalid under the Act and was thus disallowed. Final Order at 20; R. at 87. *See, e.g,* Kennedy, at 94; Grant v. Gelman Mgmt. Co., TP 27,995;[20] Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995) at 6-7 (determining that an adjustment in rent charged falls within the three year limitations period of § 42-3502.06(e) based on the "effective date" of such adjustments in rent charged); Chin Kim v. Woodley, TP 23,260 (RHC Sept. 13, 1994) at 11 (holding that a tenant's challenge to an adjustment in rent charged was barred under § 42-3502.06(e) where the tenant petition was filed more than three years after the effective date of the adjustment in rent charged); Sendar v. Burke, HP 20,213 & TP 20,772 (RHC Apr. 6, 1988) at 21 (concluding that the claim of an illegal adjustment in rent charged that was first implemented more than three years prior to the filing of the tenant petition was barred under § 42-3502.06(e)). The Commission affirms the ALJ's determinations in the Final Order on the grounds cited by the ALJ as elaborated *infra.*

[20] The Commission's decision in Grant v. Gelman Mgmt. Co., TP 27,995 will be referred to hereinafter simply as "Grant," with appropriate page references as required.

1. The DCCA's Opinion in Kennedy

In the Final Order, the ALJ applied Kennedy to this case as follows:

> [K]ennedy held that the statute [D.C. OFFICIAL CODE § 45-2516(e) (1996)] was triggered only 'after the rent ceilings are implemented on a specific effective date.' That is the situation here, where the rent ceiling that [the] Housing Provider purported to take, but did not [take and] perfect, in 2001 was implemented on August 1, 2006, within three years of when the tenant petition was filed.

Final Order at 10; R. at 97.[21] The ALJ rejected the Housing Provider's contention that Kennedy prohibited a tenant, under § 45-2516(e), from challenging the implementation of a timely adjustment in rent charged because it implemented an adjustment in rent ceiling that was improperly taken and perfected under 14 DCMR § 4204 more than three years prior to the filing of the tenant petition. *See id.*

It is the Housing Provider's contention that the ALJ misconstrued Kennedy, because the DCCA held in Kennedy that "the statute of limitations [at § 45-2516(e)] applies to rent ceiling filings as well as to increases in the rent charged." *See* Housing Provider's Brief at 7. The Tenant asserts in opposition not only that the Housing Provider has not adequately explained how the ALJ misconstrued Kennedy, but also that ALJ's interpretation of Kennedy is correct and clearly supports the ALJ's determination in this case that the adjustments in rent charged by the Housing Provider for the Tenant were improper under the Act. *See* Tenant's Brief at 12.

In Kennedy, the tenants filed a tenant petition on April 11, 1994 seeking refunds of "excessive rents paid" since April 11, 1991. *See* Kennedy, at 95. The petition alleged that the rent overcharges were based on a miscalculation in the amount of a June 30, 1986 adjustment in rent ceiling that resulted in a series of subsequent unlawful adjustments in rent ceilings and corresponding unlawful adjustments in rents charged for several years. *See id.*

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[21] The Commission notes that, in Kennedy, a previous, identical codification of § 42-3502.06(e) was at issue: namely, D.C. OFFICIAL CODE § 45-2516(e) (1996), or "§ 45-2516(e)" as referred to herein.

The housing provider in Kennedy challenged the timeliness of the tenant's claim, under § 45-2516(e), asserting that the 1986 adjustment in rent ceiling had occurred more than three years prior to the filing of the tenant petition, or beyond the limitations period, and thus was immune to challenge. *See id.* at 96. The tenants asserted that while § 45-2516(e) limited their recovery to refunds arising from contested adjustments in rents charged within the limitations period, it did not prevent their ability to challenge the validity of other adjustments in rent ceiling and corresponding adjustments in rent charged that occurred beyond the limitations period. *See id.* (emphasis added).

The Commission affirmed the hearing examiner's finding that the tenants' claims were barred by § 45-2516(e). *See* Hampton House Tenants Ass'n v. Shapiro, TP 23,673 (RHC Apr. 24, 1996), *aff'd,* Kennedy, at 94.[22] In affirming the Commission's decision, the DCCA adopted the Commission's holding in Shapiro, that the purpose of § 45-2516(e) was to prohibit petitions against adjustments in rents charged put in place more than three years prior to the date of the filing of the tenant petition, i.e., beyond the limitations period in § 45-2516(e). *See* Kennedy, at 97.

The Commission notes that while there are certain similarities in the respective factual contexts of Kennedy and this case, the DCCA's decision in Kennedy does not undermine the

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[22] In support of its contention that § 42-3502.06(e) contains a limitation on both the right to recover and to a remedy, *see infra* at pp. 45-46, the Housing Provider relies on an extensive quotation from Hampton House Tenants Ass'n v. Shapiro, TP 23,673 (RHC Mar. 8, 1996), which was vacated by a subsequent Order, Hampton House Tenants Ass'n v. Shapiro, TP 23,673(RHC Mar. 21, 1996) (Order). Because the Housing Provider relies on the language of a decision that was vacated shortly after it had been issued, *see supra* Hampton House Tenants Ass'n v. Shapiro, TP 23,673 (RHC Mar. 8, 1996), the Commission is unable to credit the vacated decision as precedent for this case, and thus will not consider the vacated decision as binding in any way upon the Commission in its determination of this case. *See* Housing Provider's Brief at 29-30. *See also* Hampton House Tenants Ass'n v. Shapiro, TP 23,673(RHC Mar. 21, 1996) (Order).

The Commission refers to its decision in Hampton House Tenants Ass'n v. Shapiro, TP 23,673 (RHC Apr. 24, 1996), *aff'd,* Kennedy, at 94, herein as "Shapiro," with appropriate page references as required.

ALJ's interpretation of § 42-3502.06(e) in this case. *See* Kennedy, at 97-100. Regarding the similarities, the Commission recognizes that just as in this case, the tenants in Kennedy contended that the Act's limitations period applies only to adjustments in rent charged, and not to adjustments in rent ceilings. *See id.* at 99. However, unlike this case where the improperly taken and perfected adjustment in rent ceiling was implemented through a corresponding adjustment in rent charged that occurred within the limitations period, both the contested adjustment in rent ceiling and the contested corresponding adjustment in rent charged in Kennedy occurred beyond the limitations period.[23] *See id.* at 95 (emphasis added).

As the critical factor in its determination, the DCCA in Kennedy adopted the following reasoning from the Commission's decision in Shapiro: "[N]ew rent ceilings by themselves are not an adjustment in rent; however, after the rent ceilings are implemented on a specific effective date, the three year statute of limitations begins to run." *See id.* at 99 (quoting Shapiro) (emphasis added). The DCCA rejected the contention (similar to the Housing Provider's herein) that its holding might bar tenants from challenging rent ceilings and rent charged levels more than three years old, "however outlandish and violative of rent control laws." *See id.* (emphasis added). The DCCA observed that the proposition that a tenant might be able to challenge a particular rent charged level – but not the corresponding adjustment in rent ceiling that led to it – "strain[ed] the plain meaning" of § 45-2516(e). *See id.*

Based upon the foregoing analysis of Kennedy, the Commission is unable to support the Housing Provider's contention that the ALJ erred in construing Kennedy in the Final Order because, as the Housing Provider asserts, the DCCA in Kennedy interpreted § 45-2516(e) as applying in the same definitive and unambiguous manner to any adjustment in rent ceiling as to

[23] The Commission observes that based on the facts in Kennedy, the adjustment in rent ceiling at issue would have been barred under either interpretation of the term "effective date" addressed in this case. *See supra* at pp. 16-17.

any corresponding adjustment in rent charged. *See* Kennedy, at 99. Moreover, the Commission concurs with the ALJ that Kennedy does not support the Housing Provider's interpretation of "effective date" under § 42-3502.06(e) – namely, that an adjustment in rent ceiling is effective once it has been taken and perfected under 14 DCMR §§ 4204.9-.10. *See id.*

Rather, the Commission concurs with the ALJ that the critical inquiry under Kennedy is whether the "effective date" of a contested adjustment in rent ceiling under § 42-3502.06(e) – namely, the date of its implementation through a corresponding adjustment in rent charged – is within or beyond the limitations period of § 42-3502.06(e). *See* Final Order at 10; R. at 97. When, as in Kennedy, the "effective date" of a contested adjustment in rent ceiling is beyond the limitations period in § 42-3502.06(e) – because the date of its implementation through a corresponding, contested adjustment in rent charged is also beyond the limitations period – the Commission is satisfied that any claims under the Act regarding either adjustment are barred by § 42-3502.06(e).[24] *See* Kennedy, at 97-99.

As a corollary to Kennedy, when the "effective date" of a contested adjustment in rent ceiling is within the limitations period in § 42-3502.06(e) – and its corresponding, contested adjustment in rent charged also occurs within the limitations period – the Commission observes that any claims under the Act regarding either adjustment are not barred by the limitations period of § 42-3502.06(e). *See* Kennedy, at 97-99. *Cf.* Grant, TP 27,995 (RHC Mar. 30, 2006) (Order on Reconsideration) (hereinafter "Grant Order on Reconsideration") at 10-11.

Finally, the Commission is satisfied with the ALJ's determination in the Final Order with respect to the factual scenario in this case: when a contested adjustment in rent ceiling is beyond the limitations period in § 42-3502.06(e) – but the date of its implementation through a corresponding, contested adjustment in rent charged is within the limitations period – the

[24] *See infra* at pp. 57-58.

"effective date" of the contested adjustment in rent ceiling under § 42-3502.06(e) remains as the date of its implementation through the corresponding adjustment in rent charged, and any claims under the Act regarding either adjustment are permitted under § 42-3502.06(e). *See* Grant Order on Reconsideration, at 10-11. *See also* Kennedy, at 97-99.

2. The Commission's Decision in Grant

The ALJ concluded in the Final Order that Grant was "substantively indistinguishable and controlling" with respect to this case. Final Order at 13; R. at 94. He interpreted Grant to hold that a housing provider is prohibited from utilizing an adjustment in rent ceiling improperly taken and perfected under 14 DCMR §§ 4204.9-.10 to justify an adjustment in rent charged, regardless of when the adjustment in rent ceiling was filed with the Rent Administrator (i.e., even if the adjustment in rent ceiling were improperly taken and perfected beyond the limitations period of § 42-3502.06(e)). *See id.* at 12-13; R. at 94-95.

Upon review of the record, the Commission concurs with the ALJ that the factual scenario in Grant is highly similar to the facts in this case. *See* Grant, at 1-3. In Grant, six tenants of the subject housing accommodation filed individual tenant petitions, with four (4) filed on November 26, 2003, and two (2) filed on December 1, 2003, all of which were later consolidated. *See id.* at 1-3. The hearing examiner denied the consolidated tenant petitions on the grounds that the tenants had failed to prove that they had been overcharged rent. *See id.* at 4. The tenants appealed to the Commission, claiming, *inter alia*,[25] that the housing provider had

[25] Other issues raised on appeal in Grant include, for example:

1. Whether the hearing examiner's decision and order contained an ambiguous statement of allowing for 10 (ten) days for filing and serving of papers but having a date-stamped date of July 29, 2004 for appeal of this decision and order.

2. Whether the lack of preponderance of the evidence and the uniform dismissal of tenant petitioners' arguments and evidence...is due to an ominously strong influence upon the hearing examiner and this decision and order by the law offices of the attorney for the housing provider.

failed to take and perfect certain adjustments in rent ceiling according to 14 DCMR §§ 4204.9-.10 that formed the basis of later adjustments in rent charged. *See id.* at 21. The Commission determined that the DCCA had conclusively decided this issue in Sawyer, at 96.[26] *See* Grant, at 22.

In Grant, the Commission interpreted Sawyer as follows:

> When a housing provider does not...meet the thirty day filing requirement [of 14 DCMR §§ 4103.1, 4204.10(c)],[27] the housing provider fails to perfect the rent ceiling adjustment. Therefore the housing provider forfeits the right to the rent ceiling adjustment, and he cannot utilize the adjustment to increase the tenant's rent [charged].

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3. Whether it was evident throughout the decision and order that the factual calculations regarding the accusation of the rent increases were not taken into account in the decision and order, and the tenant petitioners, in the words of the Hearing Examiner, 'failed [prove] by a preponderance of the evidence that they had been overcharged.' [sic]

See Grant, at 11-19 (citations omitted).

[26] In Sawyer, the DCCA addressed the procedural requirements for adjustments in rent ceiling under the Act at 14 DCMR §§ 4204.9-.10, stating that in order for a housing provider to obtain an upward adjustment in rent ceiling, the housing provider must "take" and "perfect" the adjustment in rent ceiling in compliance with the Act's regulations. *See* Sawyer, at 103. The DCCA held that an adjustment in rent ceiling must be perfected before it can be implemented to support a corresponding adjustment in rent charged. *See id.*

[27] 14 DCMR § 4103.1 provides the following:

> Each housing provider of a rental unit or units covered by the Act shall file an amendment to the Registration/Claim of Exemption form provided by the Rent Administrator in the following circumstances:
>
> (a) Within thirty (30) days after a person becomes the housing provider of a rental unit or housing accommodation covered by the Act;
>
> (b) Within thirty (30) days after the termination of the exempt status of a rental unit or housing accommodation;
>
> (c) Within thirty (30) days after any change in the ownership or management of a registered housing accommodation;
>
> (d) Within thirty (30) days after the implementation of any rent increase or decrease allowed pursuant to §§ 210, 212, 214, or 215 of the Act, or any substantial change in the related services or facilities pursuant to § 211 of the Act; or
>
> (e) Within thirty (30) days after the implementation of any vacant accommodation rent increase pursuant to § 213 or the Act.

See Grant, at 23 (emphasis added). The Commission also interpreted 14 DCMR §§ 4204.10, 4205.7,[28] as requiring that a housing provider take and perfect an adjustment in rent ceiling, or forfeit the ability to utilize the adjustment in rent ceiling as the basis for a later adjustment in rent charged. *See id.* at 24-25 (emphasis added).

The Commission instructed the hearing examiner on remand to disallow the challenged adjustments in rent charged if the hearing examiner found that the housing provider had failed to take and perfect the adjustment in rent ceiling according to 14 DCMR § 4204.10. *See id.* at 25. *See also* 14 DCMR §§ 4101.6, 4103.1, 4204.9-.10. A housing provider's violation of 14 DCMR § 4204.10 would include his failing to file the appropriate document(s) (such as an amended Registration/Claim of Exemption form or a Certificate of Election of Adjustment of General Applicability), his failing to serve the tenants with such document(s), or his failing to file the document(s) with the Rent Administrator within thirty days after the housing provider was first eligible to take the rent ceiling adjustment. *Id. See also* 14 DCMR §§ 4101.6, 4103.1, 4204.9-.10. The Commission concluded the decision in Grant as follows:

> [A] housing provider, who fails to meet the thirty day perfection requirement...fails to perfect the rent ceiling adjustment. A rent ceiling adjustment that is not perfected is forfeited. A rent ceiling adjustment that is forfeited cannot be used to increase a tenant's rent [charged] or rent ceiling.

See id. at 26.

Thereafter, the housing provider filed a motion for reconsideration claiming that the Commission erred by holding that "the hearing examiner shall disallow any rent [charged] increases that implement rent ceiling adjustments that the housing provider did not perfect [according to 14 DCMR § 4204]." *See* Grant Order on Reconsideration at 4. Similar to this

[28] 14 DCMR § 4205.7 provides as follows: "Unless otherwise ordered by the Rent Administrator, each adjustment in rent charged may not exceed the amount of one (1) rent ceiling increase perfected but not implemented by the housing provider."

case, the housing provider contended that the limitations period in § 42-3502.06(e) barred the tenants' claims because the housing provider had increased the rents charged using adjustments in rent ceiling that had been filed with RACD beyond the limitations period of § 42-3502.06(e). *See id.* at 5. The Commission rejected the housing provider's interpretation of § 42-3502.06(e), noting that "[u]nder the housing provider's interpretation of the law, the housing provider can avoid review of its rent [charged] increases and create a statutory bar to a challenge simply by increasing the tenants' rents [charged] using rent ceiling adjustments that are dated more than three years before the effective date of the rent [charged] increase." *See id.* at 10.

Observing that the facts in Grant are very similar to those in this case, the Commission concurs with the ALJ's conclusion that Grant is "substantively indistinguishable and controlling" with respect to this case. Final Order at 13; R. at 94. *See* Grant; Grant Order on Reconsideration. In both cases, the tenants challenged an adjustment in rent charged within the limitations period that implemented a corresponding adjustment in rent ceiling that had been filed beyond the limitations period in § 42-3502.06(e). *See* Grant Order on Reconsideration, at 2-3, 5. Moreover, in both cases, the adjustments in rent ceiling were found to be improperly taken and perfected. *See id. See also* Final Order at 1-3; R. at 104-106. The housing providers in both cases also raised a defense based on the Act's limitations period, claiming that § 42-3502.06(e) barred any review of the adjustments in rent ceiling because they had been filed under 14 DCMR § 4204.10 with the Rent Administrator beyond the limitations period. *See* Grant Order on Reconsideration, at 1; Final Order at 5; R. at 102. *See also supra* p. 8 n.9.

As noted *supra* at pp. 24-26, in Grant, the Commission interpreted the DCCA's decision in Sawyer as determining that, where a housing provider fails to take and perfect an adjustment in rent ceiling in accordance with 14 DCMR §§ 4204.9 -10 regardless of when the adjustment in

rent ceiling was filed, a housing provider cannot thereafter use such adjustment in rent ceiling as the basis for a corresponding adjustment in rent charged. *See* Grant, at 26. Based upon its review of the record and factual circumstances in Grant, the Commission concurs with the ALJ that the operative facts of this case and Grant are substantially similar, if not indistinguishable. Final Order at 13; R. at 94. *See* Grant, at 1-3.

The Commission is also satisfied that the ALJ did not therefore err in interpreting and applying the Commission's decision in Grant as appropriate and controlling precedent in this case for his determination that (1) the adjustment in rent charged in August 2006 implemented an adjustment in rent ceiling from April 2001 that was not properly taken and perfected in accordance with the Act and Sawyer; (2) that § 42-3502.06(e) did not bar the Tenant's claim of an illegal adjustment in rent charged because an adjustment in rent ceiling is not "effective" for purposes of § 42-3502.06(e) until it is implemented through a corresponding adjustment in rent charged; and (3) that the increase in rent charged to the Tenant was thus invalid under the Act and consequently disallowed. Final Order at 20; R. at 87. *See* Grant, at 21-26; Grant Order on Reconsideration, at 6-11.

3. Other Case Precedent

The Commission has reviewed additional cases submitted by the Housing Provider and the Tenant as precedent for their respective contentions in this appeal. The Commission is mindful that the precedential value of any case is predicated on its similarity in factual context and legal issues to those in this case. *See* Cafritz v. D.C. Rental Hous. Comm'n, 615 A.2d 222, 228 n.5 (D.C. 1992) (citing Armour & Co. v. Wantock, 323 U.S. 126, 132-33 (1944)). *See also* Porter v. United States, 37 A.3d 251, 276 (D.C. 2012); Grant Order on Reconsideration, at 8-9; Redmond, TP 23,146.

The Commission's review of the cases presented as precedent by the Housing Provider indicate that their factual contexts and legal issues vary widely and are distinct from those in this case. *See* Housing Provider's Brief at 6-22 (citing Majerle, at 48; Kennedy, at 97-100; Williams; Ayers, at 17-18; Godfrey). Furthermore, the Commission is satisfied that the ALJ properly distinguished cases submitted by the Housing Provider as appropriate precedent in this case. *See* Final Order at 9-13; R. at 94-98. The Commission notes that, because of similarities in the factual contexts or legal issues, a number of the cases cited by the Tenant as precedent are supportive of the ALJ's determinations in the Final Order. *See* Tenant's Brief at 6 (citing Doyle v. Pinnacle Realty Mgmt., TP 27,067 (RHC Aug. 2, 2005) at 8-9; Pinnacle Realty Mgmt. v. Voltz, TP 25,092 (RHC Mar. 4, 2004)).[29] In sum, the Commission's review indicates that, on the basis of similarities in factual and legal context to this case, the cases submitted by the Tenant in support of the ALJ's Final Order serve as considerably more persuasive precedent than those cited by the Housing Provider. *See* Porter, 37 A.3d at 276; Cafritz, 615 A.2d at 228 n.5; Grant Order on Reconsideration, at 8-9; Redmond, TP 23,146. *Compare* Majerle, at 48, Kennedy, at 97-100, *and* Williams, *with* Doyle, at 8-9, *and* Voltz at 9-14.

First, the Housing Provider contends that Godfrey conclusively disposed of the issue of whether § 42-3502.06(e) applied to adjustments in rent ceiling, and asserts that Godfrey held that "the term 'rent adjustment' in the limitations period of § 42-3502.06(e) refers to both adjustments in the rent ceiling and adjustments in the rent charged." *See* Housing Provider's Brief at 6 (citing Godfrey). The Commission notes initially that the legal issues in Godfrey did not arise from § 42-3502.06(e), but rather involved an interpretation of a different section of the Act, namely D.C. OFFICIAL CODE § 42-3502.08(g), which establishes 180 days as the proper

[29] The Commission will refer to its decisions in Doyle, TP 27,067 and Voltz, TP 25,092 herein as "Doyle" and "Voltz," respectively, with appropriate page references as required.

minimum time period between implementing adjustments in rents charged.[30] *See* Godfrey, at 4, 6. Furthermore, consistent with the ALJ's interpretation of the term "rent adjustment" in § 42-3502.06(e) in the Final Order, the Commission in Godfrey interpreted the meaning of the term "adjustment[s] in rent" in § 42-3502.08(g) as "an adjustment in rent charged," and not as "an adjustment in rent ceiling." *See id.* at 8. The Commission's review of its decision in Godfrey does not disclose or provide any persuasive reasons which undermine its support of the ALJ's interpretation of § 42-3502.06(e) in this case. *See* Godfrey, at 4-8.

The Housing Provider next asserts that the Commission's decision in Ayers is similar to this case, since it involved a challenge to a rent ceiling adjustment beyond the limitations period of § 42-3502.06(e) which had been implemented through an adjustment in rent charged within the limitations period.[31] *See* Housing Provider's Brief at 8-9. The Commission observes that this characterization of the factual context in Ayers by the Housing Provider is inaccurate and unsupported by the facts in Ayers. *See* Ayers at 2-3.

In Ayers, the tenant filed a tenant petition on April 17, 1988 challenging the following adjustments in rent charged: (1) on October 1, 1986 from $280 to $320; (2) on July 1, 1987 from $320 to $372; and (3) on April 1, 1988 from $372 to $400. *See id.* at 18. The tenant also challenged the rent ceilings that were in place at the time of each of the above-mentioned adjustments in rent charged, including the $309 rent ceiling in place at the time of the October 1, 1986 adjustment in rent charged. *See id.*

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[30] D.C. OFFICIAL CODE § 42-3502.08(g) provides as follows: "No adjustments in rent under this chapter may be implemented until a full 180 days have elapsed since any prior adjustment."

[31] The Housing Provider described the factual context in Ayers as "[a] rent ceiling increase which pre-dated the three year limitations period [as under § 42-3502.06(e)] and [which was] used...within the three year period to increase the rent charged." *See* Housing Provider's Brief at 8-9.

The hearing examiner found that the housing provider had failed to take and perfect any adjustments in rent ceiling between September 1, 1983 and April 30, 1985, and that the housing provider had increased the tenant's rent on October 1, 1986, July 1, 1987, and April 1, 1988 to amounts greater than the applicable rent ceiling, in violation of D.C. OFFICIAL CODE § 45-2516(a) (1985).[32] *See id.* at 5-6. As a result, the hearing examiner invalidated the $309 rent ceiling in effect at the time of the first challenged adjustment in rent charged. *See id.* at 17.

The Commission in Ayers undertook a review of the timeliness of the tenant's challenges to the rents charged and rent ceilings in his unit, under 14 DCMR § 4214.8 (1986).[33] *See id.* at 17-18. The Commission first confirmed that the three challenged adjustments in rent charged on October 1, 1986, July 1, 1987, and April 1, 1988, respectively, had occurred within three years of the April 17, 1988 tenant petition and were thus within the limitations period. *See id.* at 18. However, the Commission determined that the tenant's challenge to the $309 rent ceiling in place at the time of the October 1, 1986 adjustment in rent charged was beyond the limitations period, because it had been established in 1982, more than three years prior to the filing of the tenant petition. *See id.* at 19.

Following review of Ayers, the Commission observes that its applicability and relevance to the ALJ's interpretation of § 42-3502.06(e) in this case appears questionable at best. Unlike this case, in Ayers, the 1982 adjustment in rent ceiling that was barred from consideration had already been implemented through a corresponding adjustment in rent charged in 1982 – thus,

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[32] The Commission's decision in Ayers refers to a previous, identical codification of D.C. OFFICIAL CODE § 42-3502.06(a) (2001) at D.C. OFFICIAL CODE § 45-2516(a) (1985).

[33] The Commission notes that its decision in Ayers refers to the provision of the regulations governing the limitations period, 14 DCMR § 4214.8 (1986), which states the following: "Except as provided in § 4215 for base rent challenges, a tenant petition filed under this section shall be filed within three (3) years of the effective date of the adjustment." The Commission further notes that the language in the 1986 regulation is identical to the language of the regulation currently in effect, and in effect at the time of the ALJ's decision in this case, 14 DCMR § 4214.08 (2004).

both the adjustment in rent ceiling and its implementation through a corresponding adjustment in rent charged occurred beyond the limitations period in § 45-2516(e) (i.e., § 42-3502.06(e)). *See id.* at 2.

More importantly, the Commission's decision in Ayers pre-dated the adoption of the Unitary Rent Ceiling Adjustment Amendment Act of 1992, codified at § 42-3502.08(h)(1). *See supra* at p. 17 n.18. If § 42-3502.08(h)(1) had applied to Ayers, the 1982 adjustment in rent ceiling in Ayers would have only been authorized to serve as the basis of one corresponding adjustment in rent charged. *See* D.C. OFFICIAL CODE § 42-3502.08(h)(1). Because, in Ayers, the 1982 adjustment in rent ceiling had already been implemented through a corresponding adjustment in rent charged in 1982, *see* Ayers, at 2-3, the 1982 adjustment in rent ceiling would have been prohibited *ab initio* under § 42-3502.08(h)(1) from serving as the basis of the additional 1986 adjustment in rent charged at issue in Ayers. The Commission regards any statute of limitations considerations in Ayers therefore to be of very limited applicability and relevance in this case, because the application of § 42-3502.08(h)(1) (not simply § 42-3502.06(e)) would be dispositive of cases raising the same factual and legal issues as Ayers.[34] For the foregoing reasons, the Commission determines that Ayers is of limited relevance to this case, and does not alter the Commission's support of the ALJ's interpretation of § 42-3502.06(e).[35]

The Housing Provider further asserts that the DCCA in Majerle rejected the conclusion made by the ALJ in this case that a timely challenge under § 42-3502.06(e) to an adjustment in

[34] Although § 42-3502.08(h)(1) pre-dated the tenant petition in Ayers, it applies in this case.

[35] The Commission observes that Ayers did not involve the interpretation and application of the terms "rent adjustment" or "effective date," as used in either 14 DCMR § 4214.8 (1986) or in § 42-3502.06(e). For the text of 14 DCMR § 4214.8, *see supra* at p. 31 n.33.

rent charged could open an inquiry into a corresponding adjustment in rent ceiling that was beyond the limitations period in § 42-3502.06(e).[36] *See* Housing Provider's Brief at 9. In Majerle, on September 1, 1987, the housing provider filed an amended registration form with RACD for an adjustment in rent ceiling from $218 per month to $228 per month for the tenant's unit. *See* Majerle, at 42. The housing provider's filing failed to comply with a number of the Act's requirements, including his failure to identify the section of the Act authorizing the adjustment in rent ceiling, failure to properly reflect the correct number of rental units and correct ownership and failure to provide a housing business license. *Id.* The tenant began paying the corresponding adjustment in rent charged of $228. *Id.*

The housing provider subsequently adjusted the rent charged twice more, first on November 1, 1988 from $228 to $239, and again on September 1, 1989 from $239 to $250, without any corresponding adjustment in rent ceiling filed with RACD. *See id.* at 43. The tenant timely paid all increases in rent charged. *Id.*

On May 31, 1991, the housing provider sent the tenant a notice of an adjustment in rent ceiling from $228 to $240, despite the fact that the rent charged at the time was $250, with the notice also stating that the housing provider may have been overcharging rent to the tenant. *See id.* (emphasis added) On July 1, 1991, the housing provider filed an amended registration form with RACD reflecting an adjustment in the rent ceiling to $240, and later in the same month decreased the tenant's rent charged to $240. *See id.*

On September 22, 1992, the tenant filed a tenant petition claiming that her rent charged exceeded the lawful rent ceiling. *See id.* at 43-44. After a lengthy hearing process, *see supra* at p. 8 n.10, the DCCA affirmed the Commission's award of a rent refund to the tenant and treble

[36] The Commission observes that, as in Kennedy, the applicable codification of § 42-3502.06(e) in Majerle is § 45-2516(e). *See supra* at p. 20 n.21.

damages for the period from September 22, 1989 through March 27, 1996. *Id.* at 44. The DCCA also affirmed the Commission's denial of the housing provider's claim that, because the adjustment in rent charged of $250 per month occurred on September 1, 1989, three years and twenty-one days prior to the filing of the tenant petition, the limitations period under § 45-2516(e) prohibited an examination of this adjustment in rent charged. *See id.* at 44.

Specifically, the DCCA disagreed with the housing provider's contention that the tenant was barred from challenging the $250 rent charged level because she had been paying that amount for a period of time in excess of the limitations period in § 45-2516(e), and that the $250 rent charged became "*ipso facto* the rent ceiling" because the tenant had failed to contest it within the limitations period. *See id.* at 49-50. The DCCA recognized that Majerle presented a "unique factual scenario" with respect to § 45-2516(e), because the housing provider had admitted through filings with RACD in July 1991, and prior notice to the tenant in May 1991, that the correct rent ceiling was in fact $228, not $250, and "implicitly, that [the tenant] had been overcharged rent previously." *See id.* at 50. (emphasis added) The DCCA specifically rejected the housing provider's contention (re-characterized but substantively identical to the Housing Provider's underlying claim in this case) that "the RHC books close after every three year period and any prior adjustments that might make unlawful the rent charged within the three-year period become irrelevant." *See id.* at 46, 50.

The Commission is satisfied that the acknowledged, "unique factual scenario" of Majerle immediately distinguishes it from this case. *See id.* at 46-50. For example, unlike the housing provider in Majerle, the Housing Provider in this case made no admissions of improper adjustments in rent ceilings or in rents charged. Moreover, in Majerle, like Kennedy, both the contested adjustment in rent ceiling and its corresponding contested adjustment in rent charged

occurred beyond the limitations period of § 45-2516(e), whereas in this case the contested adjustment in rent charged occurred within the limitations period. *See id.* at 43-44.

Accordingly, based upon its review of Majerle and for all of the foregoing reasons stated *supra* at 32-34, the Commission is not persuaded that the ALJ erred in his interpretation of § 42-3502.06(e) in this case. *See* Final Order at 13-15; R. at 92-94. *See also* Majerle, at 42-44.

Finally, the Housing Provider cites Williams in support of its interpretation of § 42-3502.06(e), that the "effective date" of an adjustment in rent ceiling is the date when it is taken and perfected by a housing provider in accordance with 14 DCMR §§ 4204.09-.10. *See* Housing Provider's Brief at 10. Specifically, the Housing Provider claims that the Commission in Williams "held [that] a rent ceiling challenge [was] barred [by § 45-2516(e)],[37] stating: '[h]owever, the RACD file was available to the public at all times during the statutory three (3) years for the tenants to file their claims.'" *See id.* (quoting Williams, at 8).

The Commission observes that the Housing Provider's statements in its brief regarding the precedential value of Williams with respect to this case appear inaccurate. *See* Williams, at 7-9. First, the Commission observes that Williams did not involve challenges to rent ceilings, but instead involved challenges only to rents charged. *See id.* at 2-3. Second, the Commission notes that its sole holding in Williams was that the tenants' petitions regarding illegal adjustments in rent charged were barred by § 45-2516(e) because the tenants' claims were filed after expiration of the limitations period in § 45-2516(e). *See id.* at 8-9. Contrary to the Housing Provider's contention, the Commission's review of Williams does not reveal any holding that the tenants' failure to review RACD (or RAD) files during the limitations period would in any way preclude or impair them from bringing any legal claims based upon illegal rent ceiling

[37] The Commission notes that, as in Kennedy and Majerle, its decision in Williams involves the earlier codification of § 42-3502.06(e) at § 45-2516(e). *See supra* at p. 20 n.21 & p. 33 n.36.

adjustments beyond the limitations period under § 45-2516(e), or would otherwise serve to support the application of § 45-2516(e) to bar the tenants' claims. *See id.* at 8.

In Williams, the tenants filed separate tenant petitions (which were later consolidated) on September 24, 1991 and September 26, 1991, respectively. *See* Williams, at 2. The tenants alleged (1) that in 1985 the housing provider had used an incorrect figure as the base rent for their units; and (2) that as a result of the alleged incorrect base rent, the rent increases taken for their units on the day that they signed their leases – June 1, 1986 and September 1, 1987, respectively – exceeded the allowable rent ceiling. *See id.* at 2-3.

The Housing Provider defended against the tenant petitions by contending that the contested increases in rent charged in 1986 and 1987, respectively, had occurred more than three years prior to the filing of the tenant petitions in September 1991, and were therefore barred by § 45-2516(e). *See id.* at 3-4. The hearing examiner in Williams dismissed the tenant petitions, finding that they were barred by § 45-2516(e). *See id.* at 4.

On appeal, the Commission identified a "single legal issue:" whether the hearing examiner erred by concluding that the tenants' claims were barred by § 45-2516(e). *See id.* at 7. The Commission determined that the hearing examiner had not erred, based on the following:

> The rent increases that the...[tenants] have challenged became effective more than four years prior to the filing of these petitions. The rent increase challenged in Tenant Petition 22,814 was effective September 1, 1987, and the petition was filed September 25, 1991. Similarly, the rent increase challenged in Tenant Petition 22,821 became effective June 1, 1986, and the petition was filed September 25, 1991. Thus, the petitions were properly dismissed, because they were barred by the statute of limitations.

See id. at 8.

Having determined that the hearing examiner properly dismissed the tenant petitions, the Commission briefly discussed the tenants' argument that § 45-2516(e) should not apply to their claims because the housing provider had misrepresented information in the RACD files (e.g., by

filing an amount as the base rent for the tenants' units and charging more as reflected on the tenants' lease agreements):

> [W]e appreciate the effect which an incorrect rent figure, used as the base rent in 1985, and subsequently used in 1986 and 1987 in calculating the rent increase, would have on all subsequent rent increases. However, the information on the RACD files was available to the public at all times during the statutory three (3) years for the tenants to file their claims. The tenants have offered no reason for their failure to file their claims during the three years.

See id. at 8-9.

The Commission's review of Williams does not support the Housing Provider's interpretation of Williams that the tenants' failure to review RACD files during the limitations period would preclude or impair them from bringing any legal claims based upon illegal rent ceiling adjustments beyond the limitations period under § 45-2516(e), or would otherwise serve to support the application of § 45-2516(e) to bar the tenants' claims. *See id.* at 8. The Commission's review also does not support a claim that, according to Williams, the tenants' failure to review the RACD files during the limitations period was the source of the Commission's determination that § 45-2516(e) barred the tenants' claims. In Williams the Commission's decision was solely and unambiguously predicated on the application of § 45-2516(e) to the (un)timeliness of the tenants' claims. *See id.* at 8-9. The Commission made no specific findings or other determinations in Williams regarding the tenants' assertion that alleged misrepresentations by the housing provider about rent increases in the RACD files should serve to suspend the operation of § 45-2516(e) as a bar to the tenants' claims. *See id.*

Finally, the Commission is satisfied that the facts of Williams distinguish it from this case: namely, that the tenants in Williams challenged adjustments in rent charged that occurred beyond the limitations period, and that the Commission's decision in Williams makes no mention of rent ceilings. *See* Williams, at 7-9. Accordingly, for the foregoing reasons, the

Commission's review of its decision in Williams does not undermine its support of the ALJ's interpretation of § 42-3502.6(e) in the Final Order. *See id.*

For its contentions, the Tenant primarily relies on the Commission's decisions in Doyle and Voltz as support for the ALJ's interpretation of § 42-3502.06(e) in this case. Both Doyle and Voltz involve claims for a reduction in services and/or facilities relating to the removal of a rooftop deck. *See* Doyle, at 1-2; Voltz, at 1-2. The housing provider claimed that the tenant petitions were barred by the limitations period in § 42-3502.06(e) because the housing provider had closed the roof deck more than three years prior to the dates of the tenant petitions. *See* Doyle, at 3; Voltz, at 10. The Commission disagreed, determining that § 42-3502.06(e) began to run not on the date when the roof deck was closed for repairs, but on the date that the housing provider informed the tenants that the roof deck would not be reopened – a date that was within the limitations period of § 42-3502.06(e). *See* Doyle, at 12; Voltz, at 11.

The Commission notes that the factual context of this case clearly differs from that in Doyle and Voltz. While the Commission's decisions in Doyle and Voltz clearly support a "generous" interpretation of § 42-3502.06(e) in light of the important "remedial purposes" of the Act, *see* Tenant's Brief at 19 (citing Doyle, at 9; Voltz, at 14),[38] the Commission notes that these cases did not involve the interpretation and application of the terms "rent adjustment" or "effective date," as used in § 42-3502.06(e)." *See* Doyle, at 8-12; Voltz at 9-14.

Based upon the foregoing review of the case law cited by both parties, *supra* at pp. 28-37, including the DCCA's decisions in Kennedy and Majerle, as well as the Commissions decisions in Grant, the Grant Order on Reconsideration, Williams, and Ayers, the Commission affirms the Final Order. *See* Majerle, at 42-44; Kennedy, at 97-99; Grant, at 21-27; Grant Order on

[38] The Commission further discusses the applicability of Doyle and Voltz to the Final Order and the remedial purposes of the Act *infra* at p. 55.

Reconsideration, at 6-11; Williams, at 2-9; Ayers, at 17-19. *See also* Doyle, at 8-12; Voltz, at 9-14; Godfrey, at 4-8. The Commission's review and analysis of the cases cited by the Housing Provider reveals that, because of their distinguishing factual circumstances and legal issues under the Act, their legal analysis and holdings do not serve as persuasive precedent which undermines the ALJ's interpretation and application of § 42-3502.06(e) within the factual and legal context of this case. *See* Majerle, at 42-44; Kennedy, at 97-99; Godfrey, at 4-8; Ayers, at 17-19; Williams, at 2-9. *See also* Cafritz, 615 A.2d at 228 n.5 (citing Armour & Co. v. Wantock, 323 U.S. at 132-33); Porter, 37 A.3d at 276. While the cases cited by the Housing Provider may offer different interpretations of § 42-3502.06(e), the Commission is not persuaded that they indicate that the ALJ's interpretation of the Act and cited case law is unreasonable or embodies a material misconception of the law, even if a different interpretation may also be supportable. *See* Dorchester House Assocs. Ltd. P'ship, 938 A.2d at 702 (citing Sawyer, at 102-103). The Commission's review of the Final Order also indicates that the ALJ's interpretation and application of § 42-3502.06(e) flows rationally from the facts and is supported by substantial evidence. 14 DCMR § 3807.1. *See e.g.,* Majerle, at 46; Munchison, 813 A.2d at 205; Ruffin, TP 27,982 at 10.

D. The Purposes of the Act

Having determined that the ALJ's interpretation of § 42-3502.06(e) is supported by the language of the Act, the Act's regulations, and the applicable case precedent, the Commission will next assess the consistency of the ALJ's interpretation of § 42-3502.06(e) in this case with the purposes of the Act. The purposes of the Act are stated as follows:

(1) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;

(2) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;

(3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;

(4) To protect the existing supply of rental housing from conversion to other uses; and

(5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.

D.C. OFFICIAL CODE § 42-3501.02.[39] The Act must be construed to accommodate each of these purposes. *See* Winchester Van Buren Tenants Ass'n, 550 A.2d at 53; Guerra v. D. C. Rental Hous. Comm'n, 501 A.2d 786, 790 (D.C. 1985). The DCCA has explained the overall purpose of the Act as follows:

> [T]he Act represents a comprehensive scheme for the regulation of rental housing in the District. In passing the Act, the Council attempted to avert the economic hardships which tenants would confront in an unregulated housing market while at the same time accommodating the legitimate concerns of landlords.

Winchester Van Buren Tenants Ass'n, 550 A.2d at 53.

The DCCA has noted that the Act intends to balance the economic interests of housing providers and tenants in the context of adjustments in rent ceiling and rent charged respectively, by assuring that any adjustments are authorized by and in full compliance with the Act. *See* Guerra, 501 A.2d at 790. In this regard the DCCA has observed as follows:

> One of the stated purposes of the Rental Housing Act is "to prevent the erosion of moderately priced rental housing while providing landlords and developers with a reasonable rate of return on their investments." D.C. OFFICIAL CODE § 45-1502(5) (1981) [i.e., D.C. OFFICIAL CODE § 42-3501.02(5) (2001)]. This language plainly expresses the intent of the legislature to balance the interests of the landlords and tenants against each other. That purpose would not be served if the Act were construed to provide either the landlord or the tenant with a windfall. For that reason, the rent or rent ceiling may be increased under the Act only when there is an increased cost to the landlord which justifies the increase.

[39] The Commission observes that the ALJ does not specifically address the purposes of the Act in the Final Order.

Id. (citations omitted). *See also* Charles E. Smith Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 492 A.2d 875, 878 (D.C. 1985) (noting that "[t]he Commission is charged with the formidable task of overseeing many aspects of the control of rental housing in the District of Columbia in an attempt to ensure that decent, affordable housing is available for the various sectors of the population, while at the same time landlords are allowed a fair rate of return on their investments.")

Based upon its review of the record, the Commission deems the ALJ's interpretation of § 42-3502.06(e) as consistent with the purposes of protecting and balancing the economic interests of housing providers and tenants under the Act. *Id.* On the one hand, the ALJ's interpretation does not allow housing providers to increase rents charged within the limitations period of § 42-3502.06(e) without assuring that such increases are authorized by corresponding adjustments in rent ceiling that are taken and perfected in full compliance with the Act. *See* Final Order at 20-21; Grant Order on Reconsideration at 9-11. *See also* Sawyer, at 96. A housing provider is thus not provided an opportunity to secure windfall increases in rent charged simply because the housing provider delays the implementation of an adjustment in rent ceiling for more than three years when such adjustment in rent ceiling may not have properly been taken and perfected – intentionally or otherwise – in full compliance with the Act. *See* Grant Order on Reconsideration at 10. On the other hand, a tenant is prevented from avoiding or impairing a housing provider's entitlement to increases in rent charged which are authorized by the Act in the form of corresponding rent ceilings taken and perfected in compliance with the Act.

The Commission is also satisfied that ALJ's interpretation and application of § 42-3502.06(e) in this case is consistent with the remedial purposes of the Act, which are intended to protect low and moderate income tenants from the economic harm of uncontrolled increases in

rents, and to maintain a sufficient stock of affordable rental units for such low and moderate income tenants in the District of Columbia. *See* D.C. OFFICIAL CODE §§ 42-3501.02(1-5). *See, e.g.*, Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1299-1300 (D.C. 1990); Carmel Partners, Inc. v. Levy, RH-TP-06-28,830, RH-TP-06-28,835 (RHC Apr. 18, 2012); 1773 Lanier Place, N.W., Tenants' Ass'n, TP 27,344; Borger Mgmt., Inc. v. Lee, RH-TP-06-28,854. As the DCCA has held, the Act is designed not only to protect the rights of tenants generally, and those of low and moderate income in particular, but also to remedy a critical social evil, namely a severe shortage of rental housing. *See* Goodman, 573 A.2d at 1299-1300; Tenants of 738 Longfellow St., N.W. v. D.C. Rental Hous. Comm'n, 575 A.2d 1205, 1211 (D.C. 1990); Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012). The Act "must be accorded a generous construction" in order that it achieve its remedial purposes. *See* Goodman, 573 A.2d at 1297; Tenants of 738 Longfellow St., N.W., 575 A.2d at 1211; Washington, RH-TP-11-30,151.

The Commission determines that the ALJ's interpretation of § 42-3502.06(e) in this case is consistent with the remedial purposes of the Act because it allows tenants to contest illegal adjustments in rent charged arising from corresponding contested adjustments in rent ceiling that are – intentionally or otherwise – improperly taken and perfected under the Act. *See* 14 DCMR §§ 4204.09-.10. Furthermore, the Commission notes that the ALJ's interpretation protects new tenants from increases in rents charged that implement illegal rent ceiling increases that were taken several years before such new tenants commenced their tenancy. *See* Grant Order on Reconsideration. The Commission is thus satisfied that the ALJ's interpretation of § 42-3502.06 enhances the overall capability of tenants to enforce their rights under the Act, thereby protecting tenants from economic harm and from the loss of affordable dwelling units because of

unreasonable increases in rents charged. *See* Goodman, 573 A.2d at 1299-1300; Tenants of 738 Longfellow St., N.W., 575 A.2d at 1211 Carmel Partners, Inc., RH-TP-06-28,830, RH-TP-06-28,835; 1773 Lanier Place, N.W. Tenants' Ass'n, TP 27,344.

The Commission's review of the Final Order does not reveal that the ALJ's interpretation of § 42-3502.06(e) is incompatible with the Act's goals of more effective resolution of disputes between housing providers and tenants and of assuring the retention and improvement of the current stock of affordable housing units. *See* D.C. OFFICIAL CODE §§ 42-3501.02(2)-(4). Therefore, for the reasons stated *supra,* the Commission determines that the ALJ's interpretation of § 42-3502.06(e) in this case is consistent with the purposes of the Act.[40]

E. Conclusion

As the Commission noted *supra* at p. 10, the Commission will uphold the ALJ's interpretation of the Act unless it is unreasonable or embodies a material misconception of the law, even if a different interpretation may also be supportable. 14 DCMR § 3807.1. *See* Dorchester House Assocs. Ltd. P'ship, 938 A.2d at 702; Majerle, at 46; Hughes, 498 A.2d at 570. Having examined the plain language of the Act, the Act's legislative history, the Act's regulations, case law precedent, and the purposes of the Act, the Commission is satisfied for the foregoing reasons, stated *supra* at pp. 7-42, that the ALJ's interpretation of § 42-3502.06(e) is reasonable and not a "material misconception" of the Act. *See* D.C. OFFICIAL CODE § 42-3502.06(e); 14 DCMR §§ 4204.9-.10. *See also* Kennedy, at 99; Grant, at 21-26; Grant Order on Reconsideration, at 6-11. The Commission's review of the Final Order also indicates that the ALJ's interpretation and application of § 42-3502.06(e) in this case flows rationally from the facts and is supported by substantial evidence. 14 DCMR § 3807.1. *See e.g.,* Majerle, at 46;

[40] The Commission addresses the Housing Provider's contention that the ALJ's interpretation of § 42-3502.06(e) in this case violates the Housing Provider's due process rights under the Act *infra.*

Munchison, 813 A.2d at 205; Ruffin, TP 27,982 at 10. Accordingly, the Commission affirms the ALJ's determination that § 42-3502.06(e) does not bar the Tenant's claims in this case.

5. **Whether the ALJ's Final Order is contrary to the Constitution of the United States, including, without limitation, U.S. Const., Amend 5, as interpreted *inter alia* by the Supreme Court of the United States in William Danzer & Co. v. Gulf & Ship Island R.R. Co., 268 U.S. 633 (1925) and precedents of the D.C. Court of Appeals and this Commission interpreting the statute of limitations in D.C. OFFICIAL CODE §42-3502.06(e).**

The Supreme Court has held that "if a case may be decided on either statutory or constitutional grounds, [the courts], for sound jurisprudential reasons, will inquire first into the statutory question." *See* Int'l Union of Elec., Salaried, Mach., & Furniture Workers v. Taylor, 669 A.2d 699, 700 (D.C. 1995) (citing Harris v. McRae, 448 U.S. 297 (1980)). Accordingly, the Commission will not decide questions of constitutionality unless it is unavoidable. *See* Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ., 536 A.2d 1, 16 (D.C. 1987) ("[I]f there is one doctrine more deeply rooted than any other, it is that we ought not to pass on questions of constitutionality...unless such adjudication is unavoidable"); Harris v. McRae, 448 U.S. at 306-307 ("[W]e ought not to pass on questions of constitutionality...unless such adjudication is unavoidable") (quoting Spector Motor Servs., Inc. v. McLaughlin, 323 U.S. 101, 105 (1944)).

The Commission notes that it has already upheld the ALJ's Final Order in this case on statutory grounds and upon case law precedent interpreting the Act (*see supra* at pp. 7-43). Nonetheless, because the Housing Provider frames this issue in terms of an alleged infirmity in the Final Order arising under the U.S. Constitution, the Commission will address it. *See* Harris v. McRae, 448 U.S. at 306-307; Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ., 536 A.2d at 16.

The Housing Provider asserts that the ALJ's Final Order is unconstitutional because it interprets § 42-3502.06(e) in this case in a way that violates the Due Process Clause of the Fifth Amendment of the Constitution, U.S. Const. amend. V ("[n]o person shall...be deprived of life, liberty, or property, without due process of law. . ."). [41] *See* Housing Provider's Brief at 22. The Housing Provider states that § 42-3502.06(e) is a "statute of repose" that completely extinguishes a cause of action after the expiration of the three year limitations period contained therein, and that the ALJ in the Final Order erroneously allowed the prosecution of claims under the Act that were previously barred under § 42-3502.06(e). *See id.* at 23-25. [42]

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[41] The Fifth Amendment of the U.S. Constitution provides the following:

> [N]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

[42] The Commission notes that the Housing Provider did not provide any case in which the specific term "statute of repose" was used in reference to the Act or § 42-3502.06(e), including Kennedy. As support for its contention that § 42-3502.06(e) is a "statute of repose," the Housing Provider relies on the following *dicta* by the DCCA in Majerle: "[o]nce the possibility is opened that actions taken prior to an uninterrupted three-year period may be examined, the repose that the 1985 amendment [of the Act] sought is put in doubt for the reasons we discussed in *Kennedy* and which the RHC has reflected in its decisions." *See* Majerle, at 48. (emphasis added). The Commission does not regard a single observation by the DCCA as persuasive authority that § 42-3502.06(e) was intended by the legislature, or was interpreted by the DCCA and the Commission, to serve as a "statute of repose." The Commission also was unable to find any other reference in case precedent by the Commission or the DCCA to § 42-3502.06(e) as a "statute of repose," or even the use of the term "repose" by itself in other reference to § 42-3502.06(e). For the foregoing reasons, the Commission does not view the Housing Provider's single citation to Majerle as persuasive authority, by itself, that § 42-3502.06(e) is a "statute of repose." Finally, notwithstanding any ambiguity in the assessment of § 42-3502.06(e) as a "statute of repose," the Commission's affirmance of the Final Order remains unaffected since the Commission concurs with the ALJ that the "effective date" of an adjustment in rent ceiling under § 42-3502.06(e) is the date of its implementation through a corresponding adjustment in rent charged.

In the absence of any precedent from the Commission, DCCA or other local courts that § 42-3502.06(e) is a "statute of repose," the Housing Provider cites Amoco Prod. Co. v. Newton Sheep Co., 85 F.3d 1464, 1472 (10th Cir. 1996) for a definition of a "statute of repose: "[A] statute of repose presents an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *See* Housing Provider's Brief at 23 (quoting Amoco Prod., 85 F.3d at 1472). Amoco Prod. involved a claim for a refund for withheld federal windfall profit taxes which was time-barred by a provision in the U.S. Internal Revenue Code, 26 USCS § 6511(b)(2) (2013), which the court deemed "analogous to" a statute of

The gravamen of the Housing Provider's contention is the following characterization of § 42-3502.06(e) from Kennedy, at 99, which the Housing Provider claims as authoritative with respect to its interpretation of § 42-3502.06(e): "[T]he statute of limitations in the Act [§ 42-3502.06(e)] places a limitation on the tenants' right to recover, as well as, the right to a remedy (refunds)." Housing Provider's Brief at 22 (citing Kennedy, at 99). The Housing Provider notes that the above characterization of § 42-3502.06(e) originated *verbatim* from the Commission's decision that the DCCA affirmed in Kennedy: namely Shapiro, at 9 (citing Strother v. District of Columbia, 372 A.2d 1291, 1297 n.13 (D.C. 1977) (reversing trial court's determination that plaintiff was barred from filing negligence claim by one year statute of limitations provision in the Wrongful Death Act, D.C. OFFICIAL CODE § 16-702 (1973)).[43]

In Shapiro, the Commission granted a housing provider's motion for summary affirmance of the hearing examiner's determination that § 45-2516(e) (i.e., § 42-3502.06(e))[44] barred the tenants' claims on a series of allegedly illegal adjustments in rent ceilings and rents charged, respectively. *See* Shapiro at 8-10.

The Commission observes that the Housing Provider's quotation in its brief from Shapiro, *supra*, is taken out of context. *See* Housing Provider's Brief at 29-30. The relevant quotation from Shapiro states the following:

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repose. Amoco Prod., 85 F.3d at 1472. The Commission notes that, while Amoco Prod., 85 F.3d at 1472, provides a definition of a "statute of repose," such definition of "statute of repose" is informative to, but not binding upon, the Commission. *See* Amoco Prod., 85 F.3d at 1472. Furthermore, the statutory provision at issue in Amoco Prod. was part of the Internal Revenue Code, and related to the time period for filing for a refund from the IRS, an entirely different factual and legal context from this case. Finally, while the court determined that 26 USCS § 6511(b)(2) may serve as an "absolute" bar in the context of the tax refund claims at issue before it, it also acknowledged that, as a statute of repose, it is only "less susceptible to judicial exception." Amoco Prod., 85 F.3d at 1472. (emphasis added).

[43] *See supra* at p. 21 n.22.

[44] *See supra* at p. 20 n. 21.

> [T]he words in the statute of limitations [§ 42-3502.06(e)], "no petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment,..." means that the tenants cannot recover rent refunds based on "rent ceilings" (the adjustment) with "effective dates" for implementing the rent ceilings more than three years before the filing of the tenants' petition. Alternatively stated, new rent ceilings by themselves are not an adjustment in rent: however, after the rent ceilings are implemented on a specific effective date, the three year statute of limitations in the Act begins to run. The statute of limitations in the Act placed a limitation on the tenants' right to recover, as well as, the right to a remedy (refunds).

Shapiro, at 9 (citing Strother, 372 A.2d at 1297 n.13) (emphasis added).

Relying on this characterization of § 42-3502.06(e) in Kennedy and Shapiro as a limitation on a "right" and "remedy," the Housing Provider asserts that the Final Order is contrary to, *inter alia*, the Supreme Court's decision in William Danzer & Co., Inc. v. Gulf & Ship Island R.R. Co., 268 U.S. 633 (1925). *See* Housing Provider's Brief at 25-27. In Danzer, 268 U.S. 633, the Interstate Commerce Commission had interpreted the Transportation Act of 1920 to allow the revival of a plaintiff's claim for damages that was otherwise barred under a state's statute of limitations. *See* Danzer, 268 U.S. at 634-35. The Supreme Court determined that the company's "lapse of time" in filing its claim for damages "not only barred the remedy but also destroyed the liability of defendant to plaintiff." *Id.* at 636. The Court observed that it would be a violation of the Due Process Clause of the Fifth Amendment to interpret a law to create liability that had otherwise been properly barred under a state's statute of limitations. *Id.* at 637. *See generally,* Housing Provider's Brief at 25-29.

The Housing Provider contends that § 42-3502.06(e) "is precisely the category of statute which was before the Supreme Court in Danzer, 268 U.S. 633, as the [DCCA] explained in Kennedy."[45] *See* Housing Provider's Brief at 29. The Housing Provider asserts that Kennedy is

[45] The Commission observes that the DCCA in Kennedy does not rely on, or even cite to, Danzer, 268 U.S. 633. *See generally* Kennedy, at 94.

only one of an "uninterrupted line of cases" where the Commission has interpreted § 42-3502.06(e) as barring claims of illegal adjustments in rent charged either within or beyond the limitations period in § 42-3502.06(e) which implemented corresponding, contested adjustments in rent ceiling that were improperly taken and perfected beyond the limitations period of § 42-3502.06(e).[46] *Id.* at 30-32 (citing Majerle, at 47; Estate of Huang, 644 A.2d at 3-4; Scholz

[46] The Commission's review of the Housing Provider's case law interpreting § 42-3502.06(e) does not manifest an "uninterrupted" line of cases – either arising under the Act or involving § 42-3502.06(e) – where the DCCA or the Commission has barred rent adjustment-based claims under the Act in a situation factually similar to this case. The Commission notes that the Housing Provider offers a number of citations which it asserts constitute such an "uninterrupted line of cases" that were "cited with approval" by the DCCA in Kennedy, including two (2) DCCA cases, and several cases that were decided outside of D.C.'s jurisdiction. *See* Housing Provider's Brief at 30-32.

The two DCCA cases cited by the Housing Provider are Estate of Huang v. D'Albora, 644 A.2d 1, 2-4 (D.C. 1994) (rejecting adoption of Maryland requirement for equitable tolling to permit arbitration of medical malpractice claim on the grounds that arbitration is a procedural, not substantive, requirement under Maryland law) and Scholz P'ship v. Rental Accommodations Comm'n, 427 A.2d 905, 914-15 (D.C. 1981) (determining that, although the cases at issues were filed under the Rental Accommodations Act of 1975, they must be decided under the Rental Accommodations Act of 1977, which was the law in effect at the time of the hearing examiner's decision). The Commission notes that neither of these cases share similar factual and legal contexts with this case, nor therefore, do they serve as precedent for the interpretation of § 42-3502.06(e) that would render the ALJ's interpretation of § 42-3502.06(e) erroneous in this case. *See* Estate of Huang, 644 A.2d at 2-4; Scholz P'ship, 427 A.2d at 914-15. *See also* Cafritz, 615 A.2d at 228 n.5 (citing Armour & Co. v. Wantock, 323 U.S. at 132-33); Porter, 37 A.3d at 276; Grant Order on Reconsideration, at 8-9. *See, e.g., supra* at pp. 28-39.

In addition to the two DCCA cases discussed above, the Housing Provider cited a United States Supreme Court case that originated in the Court of Appeal of California, one case from the Supreme Court of Missouri, and two cases from the Court of Appeals of Maryland. *See* Stogner v. California, 539 U.S. 607 (2003); Doe v. Roman Catholic Diocese of Jefferson City, 862 S.W.2d 338 (Mo. 1993); Smith v. Westinghouse Elec. Corp., 291 A.2d 452 (Md. 1972); Peninsula Produce Exch. v. Philadelphia & Norfolk R.R. Co., 137 A. 350 (Md. 1927). The Commission notes that each of these cases address the constitutionality of statutes of limitation which were amended or newly enacted to extend an existing limitations period whose expiration had already barred the claims at issue in those cases. *See* Stogner, 539 U.S. at 609-610 (finding Cal. Penal Code Ann. § 803(g) (West Supp. 2003), enacted after the expiration of the previously applicable limitations period, violated the Constitution's *Ex Post Facto* Clauses when it revived previously time-barred criminal prosecutions for sex-related child abuse crimes); Doe, 862 S.W.2d at 339 (determining that Missouri's childhood sexual abuse statute was unconstitutional to the extent that it authorized causes of action that were previously time-barred prior to the statute's enactment); Smith, 291 A.2d at 455 (holding that an amendment to Maryland's wrongful death statute, extending the limitations period from two years to three years, was unconstitutional insofar as it purported to give retroactive effect to the amendment); Peninsula Produce Exch., 137 A. at 595-96 (concluding that an extension of the two-year limitations period in the United States Interstate Commerce Act, passed after a claim had been barred under the previous limitations period, was an unconstitutional deprivation of property). The Commission observes that, like Estate of Huang, 644 A.2d at 2-4; Scholz P'ship, 427 A.2d at 914-15, the factual and statutory contexts of these cases differ substantially, if not completely, from those at issue in this case under the Act and § 42-3502.06(e), and that these cases thus do not serve as persuasive precedent for the Commission to withdraw its support of the ALJ's interpretation of § 42-3502.06(e) in this case. *See* Cafritz, 615 A.2d at 228 n.5 (citing Armour & Co., 323 U.S. at 132-3); Porter, 37 A.3d at 276; Grant Order on Reconsideration, at 8-9. *See, e.g., supra* at pp. 28-39.

P'ship, 427 A.2d at 914-15; Peninsula Produce Exch., 137 A. at 350; Doe, 862 S.W.2d at 342; Smith, 291 A.2d at 455). Predicated upon its assertion that § 42-3502.06(e) is a "statute of repose," the Housing Provider asserts as follows:

> [U]nder this statute of limitations [§ 42-3502.06(e)], a challenge to a rent ceiling adjustment or a rent charged adjustment is completely prohibited three years after it first becomes effective. This is so even if no required filing was made with the Rent Administrator (or if the filing made was wrong) and even if the housing provider is not registered.

Id. at 25 (citing Kennedy, at 97-98; Majerle, at 47). *See supra* at 18.

The Commission is not persuaded by the Housing Provider's contentions for a number of reasons. First, as noted *supra* at p. 48 n.46, the Commission does not concur with the Housing Provider's contention that "an uninterrupted line of cases" in this jurisdiction serve as clear precedent that § 42-3502.06(e) bars the Tenant's claims in this case and that the ALJ thus erred in his interpretation of § 42-3502.06(e). *See infra* at p. 47-52. *See., e.g.*, Kennedy, at 99; Estate of Huang, 644 A.2d at 3-4; Scholz P'ship, 427 A.2d at 914-15; Peninsula Produce Exch., 137 A. at 350; Doe, 862 S.W.2d at 342; Smith, 291 A.2d at 455. Second, the Housing Provider's reliance on Kennedy as the source of its Constitutional challenge to the Final Order is misplaced. While the DCCA in Kennedy did assert that § 42-3502.06(e) placed a limitation on a tenant's right to recover and right to a remedy, the Commission does not agree that the DCCA made any specific conclusion in Kennedy, as claimed by the Housing Provider, that § 42-3502.06(e) constituted a "statute of repose" equivalent in nature and effect to the statute of limitations at issue in Danzer, 268 U.S. 633. *Compare* Kennedy, at 99, *with* Danzer, 268 U.S. at 636-37.

Furthermore, the Commission notes that Housing Provider cites to "the Opinion of the Office of Attorney General," a document attached to the Housing Provider's Brief. *See* Housing Provider's Brief at 24. The Commission notes that this document was not introduced as evidence before the ALJ, and therefore is new evidence that the Commission cannot consider on appeal. *See* 14 DCMR § 3807.5 ("The Commission shall not receive new evidence on appeal.").

Furthermore, the Housing Provider's contention that the ALJ erred in deciding that § 42-3502.06(e) is not a "statute of repose" barring the Tenant's claims in this case fails to address the meaning of the term "effective date" in § 42-3502.06(e) – whether or not it can even be arguably characterized as a "statute of repose" – as it applies to the specific adjustments in rent charged and adjustments in rent ceiling in this case. *See supra* at pp. 16-17. Based upon the Commission's review of the case law provided by the Housing Provider, neither Kennedy nor other cited cases serve as clear, conclusive precedent for the Housing Provider's apparent contention that the "effective date" for an adjustment in rent ceiling under § 42-3502.06(e) is the date when an adjustment in rent ceiling is "filed" or "taken and perfected" under 14 DCMR §§ 4204.9-.10 and not the date when it is implemented through a corresponding adjustment in rent charged.[47] *See, e.g.,* Danzer, 268 U.S. at 634-35; Stogner, 539 U.S. at 607; Amoco Prod., 85 F.3d at 1472; Majerle, at 47; Kennedy, at 99; Estate of Huang, 644 A.2d at 3-4; Scholz P'ship, 427 A.2d at 914-15; Peninsula Produce Exch., 137 A. at 350; Doe, 862 S.W.2d at 342; Smith, 291 A.2d at 455). *See also, supra* at pp. 16-39.

The Commission's review of the record suggests that the Housing Provider's failure to directly address and support with relevant case law his interpretation of the term "effective date" in § 42-3502.06(e) is particularly problematic in the specific factual circumstances of this case: when the date that a contested adjustment in rent ceiling was improperly "taken and perfected" is beyond the limitations period of § 42-3502.06(e), and the date of its implementation through a corresponding adjustment in rent charged (i.e., rent increase) is within the limitations period of § 42-3502.06(e). *See* Final Order at 2-3; R. at 104-105. As the Commission discussed *supra* at pp. 16-19, if, as the Housing Provider suggests, the "effective date" of an adjustment in rent ceiling

[47] For the text of 14 DCMR §§ 4204.9-.10, s*ee supra* at p. 17 n.17.

is the date when it is taken and perfected, then the adjustment in rent ceiling in this case could not have had an "effective date" because it was "forfeited" under the Act when the Housing Provider failed to take and perfect it in accordance with 14 DCMR §§ 4204.9-.10. *See* Sawyer, at 96; Grant, at 2-3. In this scenario, the Housing Provider's interpretation of § 42-3502.06(e) would render the limitations period unenforceable, since there can be no "effective date" for an adjustment in rent ceiling that is "forfeited" because it is not properly taken and perfected under 14 DCMR §§ 4204.9-.10. *See* Sawyer, at 96; Grant, at 2-3. *See also supra* at pp. 24-26.

Finally, contrary to the Housing Provider's assertion, the Commission is unable to find any legal error in the Final Order with respect to the ALJ's interpretation of either § 42-3502.06(e) or the DCCA's decision in Kennedy based upon the Housing Provider's claim of an "uninterrupted line of cases" which interpreted § 42-3502.06(e) to bar the claims in this case. *See supra* at pp. 20-39. *See also* p. 48 n.46. The Commission notes that the factual scenarios in all of the cases cited by the Housing Provider in support of his contention that § 42-3502.06(e) is a statute of repose, including Kennedy, differ from this case in such a significant manner as to render them inapplicable as precedent. *See* Majerle, at 43-44; Kennedy, at 98-99; Williams, at 7-9; Ayers, at 15-19; Godfrey, at 1-13. *See e.g.,* cases at p. 47 n.46. *See also* Cafritz , 615 A.2d at 228 n.5 (citing Armour & Co., 323 U.S. at 132-3); Porter, 37 A.3d at 276; Grant Order on Reconsideration, at 8-9. In the Housing Provider's cited cases, the "effective date" of the contested adjustment in rent ceiling occurred beyond the limitations period of § 42-3502.06(e) regardless of whether the term "effective date" is interpreted as the date when an adjustment in rent ceiling is taken and perfected under 14 DCMR §§ 4204.9-.10 or as the date of its implementation through a corresponding adjustment in rent charged. *See, e.g.,* Majerle, at 43-44; Kennedy, at 98-99; Williams, at 7-9; Ayers, at 15-19. Therefore, based upon the Commission's

review of the application of § 42-3502.06(e) in the major cases cited by the Housing Provider, the Commission does not consider the outcome of those cases to be inconsistent with, or to undermine, the ALJ's interpretation and application of § 42-3502.06(e) in this case: the "effective date" of a rent ceiling adjustment is the date of its implementation through a corresponding adjustment in rent charged. *See, e.g.,* Majerle, at 43-44; Kennedy, at 98-99. *See* Cafritz, 615 A.2d at 228 n.5 (citing Armour & Co., 323 U.S. at 132-3); Porter, 37 A.3d at 276; Grant Order on Reconsideration, at 8-9. Moreover, even if the Housing Provider's interpretation of those cases may be supportable, the Commission is satisfied that the ALJ's interpretation of § 42-3502.06(e) in this case is neither unreasonable nor embodies a material misconception of the Act. *See* Dorchester House Assocs. Ltd. P'ship, 938 A.2d at 702 (citing Sawyer, at 102-103). *See, e.g.,* Majerle, at 43-44; Kennedy, at 98-99; Grant Order on Reconsideration.

In opposition to the Housing Provider's due process claims, the Tenant maintains that the Final Order does not impair the Housing Provider's Constitutional rights. *See* Tenant's Brief at 17. The Tenant bases this contention on a number of grounds: (1) § 42-3502.06(e) is not a statute of repose, especially when its language is compared to that in an acknowledged statute of repose, such as D.C. OFFICIAL CODE § 12-310(a)(1),[48] *see id.* at 17-18; (2) there is ample

[48] D.C. OFFICIAL CODE § 12-310(a) provides the following:

> (a) (1) Except as provided in subsection (b), any action –
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> (A) to recover damages for –
>
> (i) personal injury,
>
> (ii) injury to real or personal property, or
>
> (iii) wrongful death,
>
> resulting from the defective or unsafe condition of an improvement to real property, and
>
> (B) for contribution or indemnity which is brought as a result of such injury or death, shall be barred unless in the case where injury is the basis of such action, such injury occurs within the ten-

Commission precedent that § 42-3502.06(e) only begins to run when a tenant-petitioner has actual knowledge of a cause of action or is otherwise charged with such knowledge, i.e., when an adjustment in rent charged (like a rent increase) is implemented, *see id.* at 24-25 (citing Doyle at 8-9; Voltz at 13-14); (3) the major Supreme Court and federal cases cited by the Housing Provider for support involve factual scenarios and legal issues that are completely inapposite with respect to this case, *see id.* at 20-24 (citing Danzer, 268 U.S. 633 (whether a legislature may re-open claims arising from the interstate commerce laws previously foreclosed by the expiration of a statute of limitations), Stogner, 539 U.S. at 607 (addressing the constitutionality under *Ex Post Facto* Clause of U.S. Constitution of new California statute of limitations allowing revival of time-barred child sex abuse claims), Amoco Prod., 85 F.3d at 1472 (*see supra* p. 45, n. 42); (4) contrary to the Housing Provider's claims, framing § 42-3502.06(e) as a statute of repose violates the fundamental statutory and remedial purposes of the Act and does not afford a requisite "generous" construction of the Act, since it would arbitrarily terminate, or substantially impair, the capability of tenants to enforce all of their rights under the Act, *see id.* at 18-20 (citing Goodman, 573 A.2d at 1297; Wilson v. Iseminger, 185 U.S. 55, 60-63 (1902)) (*see also supra* at 41-43); (5) the DCCA's decisions in Kennedy and Shapiro, support the ALJ's determination in this case that § 42-3502.06(e) does not bar a claim based upon a contested adjustment in rent ceiling beyond the limitations period when the contested adjustment in rent ceiling is implemented through a corresponding adjustment in rent charged within the limitations period under § 42-3502.06(e), *see id.* at 22-24; (6) although the Act contains mandatory requirements for the taking and perfecting of rent ceilings, *see* 14 DCMR §§ 4204.9-.10, the Housing Provider's contention regarding § 42-3502.06(e) would render these requirements

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year period beginning on the date the improvement was substantially completed, or in the case where death is the basis of such action, either such death or the injury resulting in such death occurs within such ten-year period.

meaningless under the Act, and deprive tenants from pursuing legitimate causes of action regarding adjustments in rents charged, *see id.* at 28-30; and (7) the Housing Provider's interpretation of § 42-3502.06(e) raises significant Constitutional issues with respect to due process and equal protection for Tenants under the Act, and the rational relationship of § 42-3502.06(e) if interpreted as a "statute of repose" to the express purposes of the Act.[49] *See id.* at 26-27, 31-33.

While the Commission does not find the Housing Provider's contentions persuasive, the Commission finds merit in certain claims by the Tenant. First, the Commission shares the Tenant's concern that an interpretation of § 42-3502.06(e) as a statute of repose in this case would undermine the "remedial purposes" of the Act and impair a tenant's ability to enforce his/her rights under the Act. *See* Goodman, 573 A.2d at 1297. *See also supra* at pp. 41-43. On the one hand, the Commission recognizes that any limitations period "places a burden on the party seeking relief to be vigilant in the protection of his own interests." *See* Kennedy, at 100. However, on the other hand, the Commission observes that the Housing Provider's interpretation of § 42-3502.06(e) would work special hardships on tenants attempting to contest a current

[49] The Commission observes that the Tenant's brief presented additional grounds for rejecting the Housing Provider's interpretation of § 42-3502.06(e), including, for example, that § 42-3502.06(e) is not an evidentiary rule, and that the Housing Provider's interpretation of § 42-3502.06(e) would violate the Tenant's equal protection rights by treating similarly situated tenants differently, particularly in the context of vacancy rent ceiling adjustments. The Tenant summarizes the equal protection issue as follows:

> Under Housing Provider's interpretation, if a tenant rents a unit that has had a vacancy rent ceiling adjustment pursuant to 14 DCMR § 4207.2(a) [(a 12% increase)], the tenant has three years from the effective date of the rent adjustment to challenge that rent adjustment (and rent ceiling adjustment), but if a tenant rents a unit that has had a vacancy rent ceiling adjustment pursuant to [14 DCMR] § 4207.2(b) [(based on a substantially identical unit)] that used a comparable unit that last had a rent ceiling adjustment more than three years ago, he has no right to challenge the rent adjustment based on the validity of the rent ceiling being improperly calculate *at all*.... Both tenants are similarly situated – both have a rent ceiling adjustment and a rent adjustment at the exact same time. However, Housing Provider's interpretation of § 42-3502.06(e) would deny one tenant the ability to challenge the rent adjustment for no rational reason.

Tenant's Brief at 31-32 (emphasis in original). The Commission does not have to address these issues in arriving at its decision in this appeal. Nonetheless, the Commission observes that the Tenant's contentions are not without, at least, arguable merit.

adjustment in rent charged, when the corresponding, contested adjustment in rent ceiling (especially those challenged based on violations of 14 DCMR §§ 4204.9-.10) occurred sometime before a tenant commenced his/her tenancy. *See supra* at pp. 42-43. Under such circumstances, the Commission regards the vigilance requirement for tenants necessitated by the Housing Provider's interpretation of § 42-3502.06(e) as unreasonably burdensome, if not impossible, to meet. The Commission deems such a result as contrary to the remedial and other purposes of the Act and inconsistent with the enforcement of the Act by any existing or future tenant(s) under circumstances similar to this case.[50] *See* Goodman, 573 A.2d at 1299. *See supra* at pp. 39-43.

Second, as noted by the Tenant, Commission precedent indicates that the Act be given a "liberal" or "generous" construction because of its remedial nature. *Id. See supra* at pp. 39-43. This orientation has extended to the Commission's interpretation of § 42-3502.06(e) for claims related to the elimination of related services and facilities under D.C. OFFICIAL CODE § 42-3502.11. *See* Doyle, at 9; Voltz, at 9-14. In both Doyle and Voltz, the Commission used a similar rationale in rejecting assertions made by the housing provider that tenants' claims were barred by § 42-3502.06(e):

> The statute of limitations begins to run when a plaintiff either has actual knowledge of a cause of action or is charged with knowledge of that cause of action. Cevenini v. Archbishop of Washington, 707 A.2d 768, 771 (D.C. 1998) (citations omitted).... Where two constructions as to the limitations period are possible, the courts prefer the one which gives the longer period in which to prosecute the action....' If there is any reasonable doubt in a statute of limitations problem, the court will resolve the question in favor of the complaint standing and against the challenge. Simpson v. District of Columbia Office of Human Rights, 597 A.2d 392, 401 (D.C. 1991) (citations omitted).

See Doyle, at 8-9; Voltz, at 13-14 (emphasis added).

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[50] As noted by the DCCA in Goodman: "[A] tenant who litigates a meritorious claim under [the Act] acts not only on his own behalf, but also as a private attorney general vindicating the rights of persons of low or moderate income to afford remedial housing." *See* Goodman, 573 A.2d at 1299.

Contrary to this prior Commission precedent, the Housing Provider interprets § 42-3502.06(e) as an absolute bar to the Tenant's claims in this case, even when the term "effective date" in § 42-3502.06(e) can be given two divergent constructions leading to two different interpretations of the limitations period. *See* Doyle, at 8-9; Voltz, at 13-14 (emphasis added). *Compare* Final Order at 9-10 *with* Housing Provider's Brief at 8-10. The Commission concurs with the Tenant that the ALJ's interpretation of § 42-3502.06(e) in the Final Order is consistent with Commission precedent in Doyle and Voltz. *See* Doyle, at 9; Voltz, at 13-14.

Third, the Housing Provider makes the following assertion in support of his interpretation of § 42-3502.06(e):

> Under this statute of limitations [§ 42-3502.06(e)], a challenge to a rent ceiling adjustment or a rent charged adjustment is completely prohibited three years after it first becomes effective. This is so even if no required filing was made with the Rent Administrator (or if the filing made was wrong) and even if the housing provider is not registered.

Housing Provider's Brief at 25. *See supra* at pp. 18, 49. The Commission interprets this assertion by the Housing Provider to suggest that § 42-3502.06(e) operates as an absolute bar to a tenant petition predicated upon a contested adjustment in rent ceiling, despite a failure of a housing provider to comply with the Act's mandatory taking and perfection requirements under 14 DCMR §§ 4204.9-.10, so long as the limitations period has expired, even when the corresponding adjustment in rent charged is within the limitations period. *See, e.g., supra* at pp. 49-51. Under this interpretation of § 42-3502.06(e), a tenant would be deprived of an otherwise timely and compliant cause of action under the Act for an illegal adjustment in rent charged simply because a housing provider waited three years to implement a corresponding adjustment in rent ceiling that violated mandatory taking and perfection requirements under the Act. *See*

Housing Provider's Brief at 25. *See supra* at pp. 41-42. *See also* Grant Order on Reconsideration at 10.

The Commission notes that an adjustment in rent ceiling authorized and otherwise in compliance with the Act is the sole source of any corresponding adjustment in rent charged under D.C. OFFICIAL CODE § 42-3502.08(h). *See* Kennedy, at 99. *See also supra* at p. 17 n.18. The Commission thus finds merit in the Tenant's claim that, because the Act inextricably links an adjustment in rent ceiling to a corresponding adjustment in rent charged, it would be inconsistent with the purposes of the Act to deprive a tenant of judicial review of a contested adjustment in rent charged filed within the limitations period of § 42-3502.06(e) that implements any allegedly illegal adjustment in rent ceiling under the Act. D.C. OFFICIAL CODE § 42-3502.08(h). *See also* Tenant's Brief at 6. *See supra* at pp. 12-15.

Furthermore, under the Housing Provider's interpretation of § 42-3502.06(e), a housing provider could avoid compliance with the Act's mandatory requirements for rent ceilings under 14 DCMR §§ 4204.9-.10 by merely delaying implementation of an adjustment in rent charged for the duration of the limitations period under § 42-3502.06(e) to avoid judicial review of the corresponding adjustment in rent ceiling under § 42-3502.06(e), even when a housing provider's failure to comply with the Act's requirements under 14 DCMR §§ 4204.9-.10 was intentional or in bad faith. *See* D.C. OFFICIAL CODE § 42-3509.01(a)-(b).[51] *See supra* at pp. 41-42. *See also*

[51] The penalties provision of the Act provides heightened consequences for violations committed intentionally ("willfully") or in bad faith, as follows:

> (a) Any person who knowingly (1) 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, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent charged 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 Rental Housing Commission determines.
>
> (b) Any person who willfully (1) collects a rent increase after it has been disapproved under this chapter,

Grant Order on Reconsideration at 10. The Commission agrees with the Tenant that serious due process issues arise from the Housing Provider's interpretation of § 42-3502.06(e) which would render unreviewable even intentional and substantial violations of the mandatory provisions of the Act in 14 DCMR §§ 4204.9-.10 for adjustments in rent ceilings (including, for example, the requirement that a tenant be given notice of an adjustment in rent ceiling) despite a timely-filed tenant petition under § 42-3502.06(e) contesting the corresponding adjustments in rent charged. *See supra* at pp. 41-42. *See also* Grant Order on Reconsideration at 10.

The Commission is further satisfied that the ALJ's interpretation of § 42-3502.06(e) in the Final Order is rationally related to the purposes of the Act, *see supra* at pp. 39-43, and is consistent with the due process requirements of the Fifth Amendment of the Constitution. *See supra* at pp. 44-52. *See also* U.S. Const. amend. V. The ALJ's interpretation of the term "effective date" in § 42-3502.06(e) in this case does not alter the limitations period contained in § 42-3502.06(e).

Moreover, the ALJ's interpretation of the term "effective date" in § 42-3502.06(e) in this case is consistent with the case precedent cited by the Housing Provider contesting the Final Order. *See supra* at p. 51. When both the adjustment in rent ceiling and its implementation through a corresponding adjustment in rent charged occur beyond the limitations period, claims related to either adjustment will be barred. *See, e.g.,* Majerle, at 43-44; Kennedy, at 98-99; Williams, at 7-9; Ayers, at 15-19; Godfrey, at 1-13. When both the adjustment in rent ceiling and its implementation through a corresponding adjustment in rent charged occur within the

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> 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(a)-(b) (emphasis added).

limitations period, claims related to either adjustment will not be barred. However, in the limited situation that occurred in this case, where an adjustment in rent ceiling that was improperly taken and perfected under 14 DCMR § 4204 beyond the limitations period of § 42-3502.06(e) is implemented through a corresponding adjustment in rent charged that occurs within the limitations period, claims related to the adjustment in rent ceiling will not be barred. *See* Grant, Grant Order on Reconsideration.

For the foregoing reasons, the Commission is satisfied that the ALJ's interpretation of § 42-3502.06(e) in the Final Order does not constitute a departure from relevant precedent such that it violates the Housing Provider's rights under the Due Process Clause of the Fifth Amendment. In accordance with the foregoing, the Commission affirms the ALJ on this issue. *See* 14 DCMR § 3807.1.

6. Whether the Final Order and its application of Grant is unconstitutional and violates the Civil Rights of Appellant to due process of law and violates 42 U.S.C. §1983 (2006).[52]

In the instant case, the Housing Provider's Notice of Appeal asserts that the Final Order is unconstitutional and violates 42 U.S.C. § 1983. *See* Notice of Appeal at 3. The Commission observes that the Housing Provider does not identify the specific findings or conclusions of the ALJ that violate 42 U.S.C. § 1983, nor does the Housing Provider explain why the ALJ's Final

[52] 42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Order is contrary to 42 U.S.C. § 1983. *See generally* Notice of Appeal; Housing Provider's Brief. The Tenant does not address this issue in his brief. *See generally* Tenant's Brief.

The DCCA has stated that there are two components to a violation actionable under 42 U.S.C. § 1983: first, a state must deprive a person of a right, and second, the state must fail to provide due process in relation to such deprivation. *See* Nelson v. District of Columbia, 772 A.2d 1154, 1155 (D.C. 2001). When evaluating a due process claim brought under 42 U.S.C. § 1983, the DCCA directs that "it is necessary to ask what process the State provided, and whether it was constitutionally adequate." *See* Agomo v. Fenty, 916 A.2d 181, 192 (D.C. 2007) (quoting Zinermon v. Burch, 494 U.S. 113, 126 (1990)). *See also* Potomac Dev. Corp. v. District of Columbia, 28 A.3d 531 (D.C. 2011).

The Commission is unable to discern from the Housing Provider's Notice of Appeal any of the necessary information for the evaluation of a claim under 42 U.S.C. § 1983. *See generally* Notice of Appeal. For example, the Commission notes that the Housing Provider has not identified the right that it was deprived of, the process that it was due prior to the deprivation of such a right, or how the District failed to provide due process. *See id. See also* Agomo, 916 A.2d at 192. The Notice of Appeal contains merely a single declarative statement that the Final Order violates 42 U.S.C. § 1983. *See* Notice of Appeal at 3.

The Commission's regulations require that a notice of appeal contain a "clear and concise statement of the alleged error." 14 DCMR § 3802.5(b).[53] The Commission has repeatedly held

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[53] 14 DCMR § 3802.5(b) provides as follows:

> The notice of appeal shall contain the following:
>
> ...
>
> (b) The Rental Accommodations and Conversion Division (RACD) case number, the date of the Rent Administrator's decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator.

that it cannot review issues on appeal that do not contain a clear and concise statement of alleged error in the ALJ's decision. *See, e.g.*, Sellers v. Lawson, TP 29,437 (RHC Dec. 6, 2012); Hawkins v. Jackson, TP 29,201 (RHC Aug. 31, 2009). The Commission has also held that when an appeal fails to provide the Commission with a clear and concise statement of the alleged error in the ALJ's decision it will be dismissed. *See* Bedell v. Clarke, TP 24,979 (RHC Apr. 19, 2006) (denying appeal issue for failing to specify erroneous statements of counsel which were basis of issue on appeal); Tenants of 1460 Irving St., N.W. v. 1460 Irving St., L.P., CIs 20,760-20,763 (RHC April 5, 2005) (denying appeal issue where tenants failed to refer to any record evidence to reverse the challenged finding of fact of fact); Norwood v. Peters, TP 27,678 (RHC Feb. 3, 2005) (denying appeal issues as too vague: (1) "[t]he findings of fact are not supported or logically related to the evidence" and (2) "[t]he conclusions of law . . . are completely misapplied in this case.").

The Commission is satisfied that the Housing Provider's statement in its Notice of Appeal regarding 42 U.S.C. § 1983 does not clearly and concisely allege an error on the part of the ALJ, as required by 14 DCMR § 3802.5(b), and accordingly the Commission dismisses this issue on appeal. *See e.g.*, Bedell, TP 24,979; Tenants of 1460 Irving St., N.W., CIs 20,760-20,763; Norwood, TP 27,678.[54]

7. Whether the Final Order is erroneous as a matter of law in that it retroactively applies the Decision and Order in Grant to the March 1, 2001 rent ceiling adjustment at issue in this proceeding.

The Housing Provider contends that the ALJ erred in his decision to retroactively apply Grant to the rent ceiling adjustment filed on March 1, 2001. *See* Notice of Appeal at 3. Aside

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(emphasis added).

[54] If the Housing Provider is merely attempting to restate its due process claim under U.S. Const. amend. V in the context of 42 U.S.C. § 1983, the Commission has already addressed this issue *supra* at pp. 44-59.

from the statement of the issue in the Notice of Appeal, reiterated above using the Housing Provider's language, the Housing Provider offers no additional argument in support of this issue. *See generally* Housing Provider's Brief. Similarly, the Tenant does not address this issue in his brief. *See generally* Tenant's Brief.

The Commission's standard of review is contained at 14 DCMR § 3807.1. In the Final Order, the ALJ concluded that Grant was not limited to prospective application because it was not a case where the Commission was changing an established rule. *See* Final Order at 13-14; R. at 93-94.

The Commission notes that it is a general rule of administrative law that an agency must apply changes in its practices and regulations in a prospective manner, and that such changes cannot be applied to petitions filed prior to the policy change. *See* Columbia Plaza Ltd. P'ship v. Tenants of 500 23rd St. N.W., CI 20,266 (RHC Nov. 9, 1989) at 14 (citing Tenants of 1709 Capitol Ave., N.E. v. 17th & L St. Props., HP 20,328 (RHC Dec. 15, 1987)); Tenants of 1709 Capitol Ave., N.E, HP 20,328 at 8 (citing K. Davis, Administrative Law Treatise, § 5.08 at 341 (1958); Boston Edison Co. v. Fed. Power Comm'n, 557 F.2d 845 (D.C. Cir. 1977). However, the DCCA has explained that the requirement that new rules be applied prospectively does not apply where an agency's decision does not change an established rule or does not constitute an unexpected departure from prior law. *See* Tenants of 2301 E St., N.W. v. D.C. Rental Hous. Comm'n, 580 A.2d 622, 627 (D.C. 1990) (finding that rule that was not an unexpected departure from prior law could be applied retroactively); Reichley v. D.C. Dep't of Emp't Servs., 531 A.2d 244, 249 (D.C. 1987).

Following its review of the record and the merits of this claim, the Commission concurs with the ALJ's observation in the Final Order that Grant was not announcing a change in practice

or procedure, as discussed at length throughout this decision, and therefore the rules regarding prospective application are inapplicable. *See* Tenants of 2301 E St., N.W., 580 A.2d at 627; Reichley, 531 A.2d at 249. *See also* Final Order at 13-14; R. at 93-94. The Commission has in numerous cases, prior to both the date of the filing of the Tenant Petition in this case and the contested adjustment in rent ceiling in March 2001, construed § 42-3502.06(e) as applying to adjustments in rents charged implementing rent ceiling adjustments. *See e.g.*, Shapiro; Chin Kim, TP, 23,260; Williams; Sendar, HP 20,213 & TP 20,772; Jenkins, TP 23,410. The Commission is satisfied that the ALJ's conclusion on this issue is in accordance with provisions of the Act and is not unreasonable or a material misconception of the Act. *See* 14 DCMR § 3807.1. *See, e.g.*, Dorchester House Assocs. Ltd. P'ship, 938 A.2d at 702 (citing Sawyer, at 102-103). Accordingly, the Commission affirms the ALJ on this issue.

IV. CONCLUSION

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

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD YOUNG, COMMISSIONER

MARTA W. BERKLEY, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR §3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in RH-TP-06-28,728 was mailed, postage prepaid, by first class U.S. mail on this **5th day** of **June, 2013** to:

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