DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,833

In re: 907 6th Street, S.W., Unit 208

Ward Six (6)

UNITED DOMINION MANAGEMENT COMPANY
Housing Provider/Appellant

v.

MARY COLEMAN
Tenant/Appellee

DECISION AND ORDER

September 27, 2013

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

---

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

I. PROCEDURAL HISTORY

On November 9, 2006, Tenant/Appellee Mary Coleman (Tenant), residing in Unit 208 of 907 6th Street, S.W. (Housing Accommodation), filed Tenant Petition RH-TP-06-28,833 (Tenant Petition) with DCRA, claiming that the Housing Provider/Appellant, United Dominion Management Company (Housing Provider), violated the Act as follows:

1. The rent being charged exceeds the legally calculated rent ceiling for my/our unit(s).

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

Tenant Petition at 1-3; Record (R.) at 27-29.

On March 12, 2007, Administrative Law Judge Claudia Barber (ALJ) issued a Case Management Order (CMO) that set a hearing date for April 18, 2007. *See* CMO at 1-7; R. at 32-38. A hearing was held in this matter on April 18, 2007. R. at 44. On December 13, 2007, the ALJ issued a final order, Coleman v. United Dominion Management Company, RH-TP-06-28,833 (OAH Dec. 13, 2007) (Final Order). R. at 51-65. The ALJ made the following findings of fact in the Final Order: [2]

1. On November 9, 2006, Tenant filed Tenant Petition 28,833 with the Rent Administrator.

2. Tenant raises only two claims in her petition: (1) [t]he rent being charged exceeds the legally calculated rent ceiling for her unit; and (2) [t]he rent ceiling filed with the RACD for her unit is improper. In a footnote, she adds: "According to the "Amended Registration Form" [sic] attached, the rent ceiling notice was not legally filed (should have been by January 31, 2000). It was filed on February 28, 2000."

3. At all relevant times, Petitioner Mary Coleman has been a tenant at 907 Sixth Street, S.E., Apartment #208.

[2] The ALJ's findings of fact are recited and numbered in this Decision and Order as they appear in the Final Order.

4. The rent ceiling for Tenant's apartment before January 1, 2000, was $791. Petitioner's Exhibit "PX" 100.

5. On February 28, 2000, Respondent filed an Amended Registration Form with RACD indicating the current rent ceiling for Apartment No. 208 was $930, and the increase represented a percentage of increase of 17 2/3% as of January 1, 2000, pursuant to Section 213(a) of the Act, D.C. OFFICIAL CODE § 42-3502.13(a). PX 100.

6. There was no evidence of any rent ceiling adjustments made between February 28, 2000, and the date of the hearing.

7. Petitioner entered into a residential lease agreement with the Housing Provider United Dominion Realty Trust dated August 20, 2004. Petitioner's Exhibit "PX" 102.

8. Under the terms of the residential lease agreement, Petitioner paid monthly rent beginning August 2004 of $1,140. PX 102.

9. At the time the Tenant/Petitioner signed her lease agreement on August 20, 2004, the rent ceiling for her apartment was $930. PX 100.

10. During the term of the lease, Petitioner's rent was increased as follows: [b]eginning September 1, 2005, Petitioner's rent increased from $1140 to $1171. Beginning August 1, 2006, Petitioner's rent increased from $1171 to $1305. PX 101, Respondent's Exhibit "RX"200 [sic].

11. Neither party provided evidence of filing of a Notice of Increase in Rent Charged for 2005 or the filing of a Certificate of Election of Adjustment of General Applicability for 2005 at RACD.

12. Neither party provided evidence that a Notice of Increase in Rent Charged was delivered to the Tenant for any 2005 rent increase.

13. Neither party provided evidence that an amended registration statement or form was filed with RACD after February 28, 2000 through the date of the hearing.

14. Respondent admits rent increases occurred annually for Petitioner's apartment unit, but provided no evidence to document the increases other than a Notice of Increase dated June 28, 2006. RX 200.

15. The residential lease agreement has a rent control provision, which provides as follows:

This property is subject to rent control __X__ Yes ___ No. If Yes, the Tenant agrees and recognizes that the Legal Ceiling on the premises, which is the Current Allowable Rent, in accordance with D.C. Law 6-10 of the District of Columbia Rental Housing Act of 1985[, is] $1515.00. Effective August 1, 2004 the agreed upon the [sic] level set forth in this Lease can be modified upon appropriate notice at the expiration of the term set forth herein. If not, the exemption no. is ____. PX102 [sic].

16. On June 28, 2006, a Notice of Increase in Rent Charged was forwarded to Petitioner Mary Coleman. Respondent's Exhibit "RX" 200.

17. The effective date of the rent ceiling increase identified in the Notice of Increase in Rent Charged, RX 200, was January 1, 2000. The increase in the rent ceiling was attributed to a 12 percent vacancy, and taken pursuant to Section 213(a) of the Act.

18. The Notice of Increase in Rent Charged identified Petitioner Mary Coleman's current rent charged as $1,171 and her new rent to be charged effective August 1, 2006 as $1,305, an increase of $134. RX 200.

Final Order at 2-4; R. at 62-64. The ALJ made the following conclusions of law in the Final Order:[3]

1. This matter is governed by the Rental Housing Act of 1985, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 [(2001)]), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 [(2001)], the District of Columbia Municipal Regulations (DCMR), 1 DCMR [§§] 2800-2899 [(2004)], 1 DCMR [§§] 2920-2941 [(2004)], and 14 DCMR [§§] 4100-4399 [(2004)]. OAH assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1).

2. The tenant did not claim in her tenant petition that the rent increase was larger than the amount of increase, which was allowed by the Act. Neither did she allege that a proper thirty day notice of rent increase was not provided before the rent increase became effective. Finally, the Tenant did not allege that the Housing Provider failed to file the proper rent increase forms with RACD. Therefore, this administrative court will only address and rule on the Tenant's allegations made in her petition and will not address claims not stated in her petition.

[3] The ALJ's conclusions of law appear in this decision using the language contained in the Final Order, except that the Commission has numbered the conclusions of law for ease of reference.

3. This case raises two central questions: 1) [w]hether Petitioner's claim that the rent ceiling filed with RACD is improper is time barred as it relates to Respondent's unperfected rent ceiling increase in 2000, and 2) [w]hether Petitioner has proven that the rent she was charged exceeds the legal rent ceiling for her rental unit.

A. Whether Petitioner's Challenge to the Respondent's Unperfected Rent Ceiling Increase is Time Barred.

4. The tenant petition asserts that the rent ceiling filed with RACD for her unit is improper. The last rent ceiling increase documented in this record was filed with the RACD on February 28, 2000, PX 100, more than 30 days after the effective date of January 1, 2000. The rent ceiling increase was therefore improper, but the tenant is barred from challenging the rent ceiling increase because it occurred more than three years before the tenant petition was filed.

5. The Rental Housing Act of 1985, prior to its revisions in 2006 are controlling since the lease at issue is dated August 2004 and the rent ceiling adjustments at issue are pertaining to rent paid in August 2004, and rent increases made September 1, 2005 and August 1, 2006.

6. D.C. OFFICIAL CODE § 42-3502.05 [(2001)] states in pertinent part:

> (g) An amended registration statement shall be filed by each housing provider whose rental units are subject to registration under this chapter within 30 days of any event which changes or substantially affects the rents including vacant unit rent increases under § 42-3502.13, services, facilities, or the housing provider or management of any rental unit in a registered housing accommodation . . .

7. Also, 14 DCMR [§] 4103.1(d) [(2004)] provides:

> 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:
>
> [. . .]
>
> (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 of the Act.

8. It is undisputed that the Petitioner filed her tenant petition on November 9, 2006. It is undisputed that the Respondent did not file with the Rent Administrator an amended registration statement for the Petitioner's Unit 208 until February 28, 2000, which is more than 30 days beyond January 1, 2000, the date of the last change. PX 100. It is undisputed that the Respondent received rent increases from the Petitioner in September 1, 2005 from $1140 to $1171, and another rent increase effective August 1, 2006 from $1171 to $1305. However, the Tenant's claim that the rent ceiling was improper is time barred. D. C. [sic] OFFICIAL CODE § 3502.06(e) [(2001)] is controlling in this instance, which states:

> 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.

9. Since Tenant is challenging a rent adjustment implemented under this section more than 3 years after February 28, 2000, the challenge to the rent adjustment is time barred. This administrative court follows the D. C. [sic] Court of Appeals holding in *Kennedy v. [D.C.] Rental Housing Commission* [sic], 709 A.2d 94, 97 (D.C. 1998). In *Kennedy v. [D.C.] Rental Housing Commission* [sic], *supra*, the D.C. Court of Appeals dealt with the proper application of the statute of limitations to tenant challenges of rents charged by their landlords. Specifically, the court determined that tenants could not challenge rent charges where they claimed to exceed the lawful rent ceiling based solely on an improper ceiling adjustment made some eight years previously and therefore, not itself subject to direct attack because of the three-year statute of limitations contained in the Act. In applying this ruling to the case at bar, the Tenant filed her petition on November 9, 2006. The Tenant in the case *sub judice* cannot challenge events occurring prior to November 9, 2003. The challenge to the rent ceiling dated February 28, 2000 is time barred for the reasons set forth in *Kennedy v. [D.C.] Rental Housing Commission* [sic], *and* [sic] D.C. OFFICIAL CODE § 42-3502.06(e) *supra*. Therefore, the rent ceiling adjustment to $930 stands as the only rent ceiling existing through the date the Tenant's petition was filed. PX 100.

B. Whether the Housing Provider Charged Petitioner a Rent That Exceeded The Legal Rent Ceiling.

10. Petitioner does have a valid claim for a rent refund based on the initial rent charged of $1140, even though it is what she contractually agreed to, because

the Act prohibits charging a rent in excess of the rent ceiling, which was $930. D.C. OFFICIAL CODE § 42-.3502.06(a). There is no evidence in this record of any properly perfected rent ceiling adjustments from February 28, 2000 through the date of the hearing. The last rent ceiling on file with the Rent Administrator was $930. PX 100. Tenant's initial $1,140 rent as well as the 2005 increase to $1171, and the 2006 increase to $1305 exceed the $930 rent ceiling. It does not matter that a different rent ceiling of $1515 was identified in the lease agreement because the lease agreement cannot be a substitute for a proper rent ceiling adjustment filing with RACD.

11. D.C. OFFICIAL CODE § 42-3502.06 is controlling, which states:

> (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 . . .

The rent increase from $930 to $1140, which the Housing Provider took to commence the lease with the Tenant/Petitioner in August 2004, was in excess of the amount authorized. Therefore, Tenant/Petitioner is entitled to relief and a refund for any rents paid beyond the rent ceiling of $930.

C. Tenant's Award

12. Finally the penalty provision of the Act governs the Tenant/Petitioner's entitlement to relief in this case. D.C. OFFICIAL CODE § 42-3509.01 states:

> (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 . . . 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 ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

13. It is settled law that if a housing provider fails to take and perfect a rent ceiling adjustment properly, a subsequent rent increase resulting from that adjustment is invalid and must be refunded to the tenant through the date of the hearing. *Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 46. Tenant paid an invalid $210 per month rent increase from August 1, 2004 through August 31, 2005, and then paid an invalid $241 per

month rent increase from September 1, 2005 through July 30, 2006, and finally an invalid $341 per month rent increase from August 1, 2006 through the date of the hearing April 18, 2007. Accordingly, Petitioner is entitled to the following adjustments to her rent . . . .[4] The total rent refund for Tenant/Petitioner is $8,470.52 plus interest as discussed below.

14. In addition, the Rental Housing Act provides for a roll back of illegal rent increases. D.C. OFFICIAL CODE § 42-3509.01(a); *Sawyer v. Mitchell* at 2, 23 (affirming roll back imposed by hearing examiner); *Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 48. Accordingly, I direct a roll back of Tenant's rent to $930 per month, the amount Tenant paid before the illegal rent increase, effective as of the month of the hearing, April, 2007.

15. Tenant did not offer exhibits of other rent ceiling adjustments that were improperly perfected to demonstrate a "pattern and practice" of non-compliance with the filing requirements of the Act and the accompanying regulations. There is no evidence that would demonstrate the culpable motive or intentional violation of law that is required to support an award of treble damages for bad faith violations under the Act. *See* D.C. OFFICIAL CODE § 41-3509.01(a); *Vicente v. Jackson*, TP 27,614 (RHC Sept. 19, 2005) at 12 (a finding of bad faith to justify treble damages requires "egregious conduct, dishonest intent, sinister motive, or a heedless disregard of duty," [sic] [)] [(]citing *Quality Mgmt. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 75 (D.C. 1986) and *Third Jones Corp. v. Young*, TP 20,300 (RHC Mar. 22, 1990)). I, therefore, find that Tenant has not proved any "willful" violation that would justify imposition of a fine under the Act. D.C. OFFICIAL CODE § 42-3509.01(b); *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005) (holding that a fine may be imposed where the housing provider "intended to violate or was aware that it was violating a provision of the Rental Housing Act"); *Quality Mgmt.*, 505 A.2d at 76 ("willfully" implies intent to violate the law and a culpable mental state). In the absence of any evidence of bad faith or willfulness, I will not award treble damages or impose any fine.

Final Order at 4-10; R. at 56-62 (footnotes omitted).

On January 3, 2008, the Housing Provider filed an appeal (Notice of Appeal) with the Commission, in which it raises the following issues:[5]

---

[4] The Commission omits from its recitation of the Conclusions of Law a table showing the ALJ's calculation of the rent refund. *See* Final Order at 9; R. at 57.

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

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. Code ¶ [sic] 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. Code ¶ [sic] 42-3502.06(e).

3. The Final Order is erroneous as a matter of law in that the issue of the initial lease rent and subsequent rent increases other than the August 2006 increase were not raised in the tenant petition and their consideration violated the decision of the District of Columbia Court of Appeals in Parreco v. District of Columbia Rental Housing Commission [sic], 885 A.2d 327 (D.C. 2005).

4. The Final Order is erroneous because it disallowed rent increases other than the specific rent increase identified in the Tenant Petition.

Notice of Appeal at 2. The Housing Provider filed "Housing Provider/Appellant's Brief on Appeal" (Housing Provider's Brief) on February 7, 2008; the Tenant filed "Tenant/Appellee's Opposition to Housing Provider/Appellant's Brief on Appeal" (Tenant's Brief) on February 25, 2008. The Commission held a hearing in this matter on April 8, 2008.

II. ISSUES ON APPEAL

A. Whether the Final Order is erroneous as a matter of law in that the Tenant's claim is barred by the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e) (2001).

B. 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).

C. Whether the Final Order is erroneous as a matter of law in that the issue of the initial lease rent and subsequent rent increases other than the August 2006 increase were not raised in the tenant petition and their consideration violated the decision of the District of Columbia Court of Appeals in Parreco v. D.C. Rental Hous. Comm'n, 885 A.2d 327 (D.C. 2005).

D. Whether the Final Order is erroneous because it disallowed rent increases other than the specific rent increase identified in the Tenant Petition.

III. DISCUSSION OF ISSUES ON APPEAL

A. Whether the Final Order is erroneous as a matter of law in that the Tenant's claim is barred by the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e) (2001).

B. 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).[6]

The Housing Provider asserts, in issues A and B on appeal, that the ALJ erred by failing to determine that the Tenant's claim that the August 2006 rent increase was invalid, was barred by the Act's statute of limitations at D.C. OFFICIAL CODE § 42-3502.06(e) (2001).[7] *See* Notice of Appeal at 2; Housing Provider's Brief at 3-4. In support of these issues in its brief, the Housing Provider further states the following: "[t]he ALJ therefore correctly concluded that any analysis of the vacancy rent [ceiling] adjustment (which was filed in 2000 and was the basis for the 2006 rent increase) is barred as a matter of law by the statute of limitations." *See* Housing Provider's Brief at 4.

The Commission has repeatedly held that it cannot review issues on appeal that do not contain a clear and concise statement of alleged error in the ALJ's decision. *See* 14 DCMR §§ 3802.5(b), 3802.13 (2004).[8] *See, e.g.*, Sellers v. Lawson, RH-TP-08-29,437 (RHC Nov. 16,

---

[6] The Commission combines its discussion of Issues A and B, because both issues allege that the Tenant's claims related to a 2006 rent increase were barred by the Act's statute of limitations.

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

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

[8] 14 DCMR § 3802.5(b) (2004) provides, in relevant part, as follows: "[t]he notice of appeal shall contain the following: . . . (b) . . . a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator [or ALJ]."

2012); Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012); Tenants of 1460 Irving St., N.W. v. 1460 Irving St., L.P., CIs 20,760-20,763 (RHC Apr. 5, 2005); Norwood v. Peters, TP 27,678 (RHC Feb. 3, 2005). Based on its review of the record, the Commission observes that issues A and B fail to sufficiently allege an error on the part of the ALJ in the Final Order. *See* Notice of Appeal at 2. Specifically, the Commission observes that the ALJ ruled in favor of the Housing Provider on the statute of limitations issue when she concluded that the Tenant's challenge to the 2006 rent adjustment, based on a 2000 rent ceiling adjustment, was time barred under § 42-3502.06(e).[9] *See* Final Order at 5-7; R. at 59-61. Accordingly, the Commission dismisses issues A and B on appeal. *See* 14 DCMR §§ 3802.5(b), 3802.13 (2004); Sellers, RH-TP-08-29,437; Levy, RH-TP-06-28,830; RH-TP-06-28,835; Tenants of 1460 Irving St., N.W., CIs 20,760-20,763; Norwood, TP 27,678.

Nevertheless, the Commission determines that the ALJ's determination of the statute of limitations issue in this case constituted plain error. The Commission's regulations provide that: "[r]eview by the Commission shall be limited to the issues raised in the notice of appeal; provided, that the Commission may correct plain error." 14 DCMR § 3807.4 (2004); Munonye v. Hercules Real Estate Servs., RH-TP-07-29,164 (RHC July 7, 2011). *See* Lenkin Co. Mgmt., Inc. v. D. C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994); Proctor v. D.C. Rental Hous. Comm'n., 484 A.2d 542, 550 (D.C. 1984) (holding that the Commission has discretion to consider issues not raised in notice of appeal that constitute "plain error"); 1773 Lanier Place,

---

14 DCMR § 3802.13 (2004) provides as follows: "[t]he Commission may dismiss the appeal for failure to comply with the requirements of § 3802.5."

[9] The ALJ's conclusions of law related to her determination on the statute of limitations issue are recited herein, *supra* at 5-6.

N.W., Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009) (the Commission found "plain error" in ALJ's failure to make sufficient findings of fact to support an imposition of fines).

The Commission observes that the factual context in this case is identical to that in United Dominion Mgmt. Co. v. Hinman, RH-TP-06-28,728 (RHC June 5, 2013).[10] *See also* United Dominion Mgmt. Co. v. Kelly, RH-TP-06-28,707 (RHC Aug. 15, 2013); United Dominion Mgmt. Co. v. Rice, RH-TP-06-28,749 (RHC Aug. 15, 2013).[11] In each case, a tenant is contesting an adjustment in rent charged that has occurred within three years of the date of filing of the respective tenant petition at issue, thereby within the limitations period of § 42-3502.06(e). *See* Hinman, RH-TP-06-28,728 at 3; Final Order at 4; R. at 62. In each case, the tenant's legal challenge is based upon the failure of the housing provider to comply with the Act's requirements for taking and perfecting an adjustment in the rent ceiling upon which the corresponding, contested adjustment in rent charged is based. *See* Hinman, RH-TP-06-28,728 at 3; Final Order at 2; R. at 64. In each case, the contested rent ceiling adjustment occurred more than three years before the filing of the respective tenant petition at issue, thereby beyond the limitations period of § 42-3502.06(e). *See* Hinman, RH-TP-06-28,728 at 3; Final Order at 2; R. at 64. In each case, the housing provider claimed that, because the contested rent ceiling adjustment occurred beyond the three-year limitations period of § 42-3502.06(e), the tenant's claim of an illegal adjustment in the corresponding rent charged was barred by § 42-3502.06(e), even though the allegedly improper adjustment in rent charged occurred within the limitations

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

[11] The Commission similarly observes that the factual context of this case is nearly identical to the factual contexts in Kelly, RH-TP-06-28,707 and Rice, RH-TP-06-28,749.

period of § 42-3502.06(e). *See* Hinman, RH-TP-06-28,728 at 4; Notice of Appeal at 2; Housing Provider's Brief at 3-4; Final Order at 5-7; R. at 59-61.

Specifically, in this case, the Tenant is challenging a 2006 adjustment in rent charged that implements a 2000 adjustment in rent ceiling that was found by the ALJ to be improper under D.C. OFFICIAL CODE § 42-3502.05(g) (2001) and 14 DCMR § 4103.1(d) (2004).[12] *See* Final Order at 4-7; R. at 59-62. In Hinman, RH-TP-06-28,728, the tenant challenged a 2006 adjustment in rent charged that implemented a 2001 adjustment in rent ceiling that was not properly taken and perfected in violation of 14 DCMR §§ 4204.9, -.10 (2004).[13] Hinman, RH-TP-06-28,728 at 7-8. *See also* Kelly, RH-TP-06-28,707 at 8; Rice, RH-TP-06-28,749 at 9.

---

[12] D.C. OFFICIAL CODE § 42-3502.05(g) (2001) provides the following:

> An amended registration statement shall be filed by each housing provider whose rental units are subject to registration under this chapter within 30 days of any event which changes or substantially affects the rents including vacant unit rent increases under § 42-3502.13, services, facilities, or the housing provider or management of any rental unit in a registered housing accommodation. No amended registration statement shall be required for a change in rent under § 42-3502.06(b).

14 DCMR § 4103.1(d) (2004) 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: . . . (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 . . . .

The Commission observes that previous, identical versions of 14 DCMR § 4103.1(d) (2001) was in effect at the time of the 2000 adjustment in rent ceiling at issue in this case – 14 DCMR § 4103.1(d) (1991).

[13] 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

Having noted an identical factual context in this case and Hinman, RH-TP-06-28,728, the Commission also observes that the over-arching legal issue raised in this case is identical to the issue addressed and determined by the Commission in Hinman, RH-TP-06-28,728: whether § 42-3502.06(e), as a matter of law, bars a tenant's claim of an improper adjustment in rent charged that occurs within the three-year limitations period of § 42-3502.06(e), when the allegedly improper corresponding adjustment in rent ceiling upon which the tenant's claim is based occurred beyond the three-year limitations period of § 42-3502.06(e). *See* Hinman, RH-TP-06-28,728 at 4; Notice of Appeal at 2; Final Order at 5-7; R. at 59-61.

Based upon the foregoing analysis, the Commission is satisfied that the relevant factual contexts in this case and in Hinman, RH-TP-06-28,728, are substantially similar, if not identical,[14] s*ee supra* at 12-13, and that the major legal issues implicated by the ALJ's analysis of § 42-3502.06(e) in the Final Order in this case, and the issue asserted by the housing provider on appeal in Hinman, RH-TP-06-28,728,[15] regarding the interpretation and application of § 42-

---

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.

[14] The Commission is satisfied that the ALJ's reliance in this case upon D.C. OFFICIAL CODE § 42-3502.05(g) (2001) and 14 DCMR § 4103.1(d) (2004) in determining that the 2000 adjustment in rent ceiling was improper, is not a meaningful distinction from Hinman, RH-TP-06-28,728, where the ALJ relied upon 14 DCMR §§ 4204.9, -.10 (2004) in determining that the adjustment in rent ceiling at issue in that case was improper. *See* Hinman, RH-TP-06-28,728 at 7-8; Final Order at 4-7; R. at 59-62. The Commission observes that D.C. OFFICIAL CODE § 42-3502.05(g) (2001) and 14 DCMR §§ 4103.1(d), 4204.9, -.10 (2004) all relate to the requirement that a housing provider file an amended registration form indicating an adjustment in the rent ceiling within thirty (30) days after the unit first becomes vacant. *See* D.C. OFFICIAL CODE § 42-3502.05(g) (2001); 14 DCMR §§ 4103.1(d), 4204.9, -.10 (2004).

[15] The Commission notes that the housing provider in Hinman, RH-TP-06-28,728, raised six (6) issues on appeal, as follows:

3502.06(e) with respect to such similar factual contexts, are also substantially similar, if not identical. *See supra* at 14. Due to the similarity of factual contexts and legal issues regarding the interpretation and application of § 42-3502.06(e) in this case and in Hinman, RH-TP-06-28,728, the Commission determines that its decision in Hinman, RH-TP-06-28,728, serves as appropriate and controlling legal precedent for its decision and order in this case. The Commission thus determines that the ALJ committed plain error in the Final Order in her interpretation and application of § 42-3502.06(e), based on the legal authority, grounds, and analysis as contained and elaborated in detail in its decision and order in Hinman, RH-TP-06-28,728. *See also* Kelly, RH-TP-06-28,707 at 9-12; Rice, RH-TP-06-28,749 at 10-13.

---

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

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

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

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

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

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

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

In Hinman, RH-TP-06-28,728, the Commission determined that the "effective date" of an adjustment in rent ceiling is the date that it is implemented through a corresponding adjustment in rent charged, and not the date when it is "taken and perfected" through the filing of an amended registration form by a housing provider pursuant to 14 DCMR §§ 4204.9-.10 (2004). Hinman (RHC) at 23-24. *See also* Kelly, RH-TP-06-28,707 at 13; Rice, RH-TP-06-28,749 at 14. The Commission further concluded that, just as in this case, when a contested adjustment in rent ceiling is beyond the three-year limitations period in § 42-3502.06(e), but the date of its implementation through a corresponding adjustment in rent charged is within the limitations period, any claims under the Act regarding an alleged impropriety in either the adjustment in rent charged or the adjustment in rent ceiling are not barred by § 42-3502.06(e).[16] Hinman, RH-TP-06-28,728 at 23-24. *See also* Kelly, RH-TP-06-28,707 at 14; Rice, RH-TP-06-28,749 at 14-15.

---

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

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

Hinman, RH-TP-06-28,728 at 23-24 (citing Kennedy, 709 A.2d at 97-99) (emphasis in original).

The Commission notes that in the Final Order the ALJ relied on Kennedy, 709 A.2d at 97 to support the erroneous proposition that tenants cannot challenge a rent charged based solely on an improper rent ceiling that occurred beyond the limitations period in § 42-3502.06(e). *See* Final Order at 7; R. at 59. 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. *See* Kennedy, 709 A.2d at 95; Hinman, RH-TP-06-28,728 at 22. *See also* Kelly, RH-TP-06-28,707 at 13; Rice, RH-TP-06-28,749 at 14. The Commission in Hinman, RH-TP-06-28,728 at 22 summarized the DCCA's holding in Kennedy, 709 A.2d at 99, as follows:

> As the critical factor in its determination, the DCCA in Kennedy adopted the following reasoning from the Commission's decision in [Hampton House Tenants Ass'n v.]Shapiro[,TP 23,673 (RHC Apr. 24, 1996), *aff'd,* Kennedy, 709 A.2d at 94]: "[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." The DCCA rejected the contention . . . 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." 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).

Hinman, RH-TP-06-28,728 at 22 (citations omitted) (emphasis in original). Based on the foregoing language, the Commission determines that the ALJ's interpretation of Kennedy, 709 A.2d at 97-99, was incorrect, insofar as the ALJ relied upon Kennedy, 709 A.2d at 97-99, to support her conclusion that the Tenant was barred from challenging a 2006 rent charged increase where it was based on an improper 2000 rent ceiling increase. *See* Final Order at 7; R. at 59. *See also* Kennedy, 709 A.2d at 97-99; Kelly, RH-TP-06-28,707 at 12-15; Rice, RH-TP-06-28,749 at 13-15; Hinman, RH-TP-06-28,728 at 20-24.

For the foregoing reasons, and on the basis of the legal standards and holdings on the same issues addressed by the Commission in Hinman, RH-TP-06-28,728, the Commission determines that the ALJ's conclusion that the Tenant's challenge to the 2006 rent charged increase, based on an improper 2000 rent ceiling increase, was barred by § 42-3502.06(e) constitutes plain error. *See* 14 DCMR § 3807.4 (2004); Lenkin Co. Mgmt., Inc., 642 A.2d at 1286; Proctor, 484 A.2d at 550; Munonye, RH-TP-07-29,164; Drell, TP 27,344. The Commission thus reverses the ALJ's determination on this issue, and remands to the ALJ for further findings of fact and conclusions of law, limited to whether the Tenant is entitled to any further damages as a result of the Commission's decision on this issue.

C. Whether the Final Order is erroneous as a matter of law in that the issue of the initial lease rent and subsequent rent increases other than the August 2006 increase were not raised in the tenant petition and their consideration violated the decision of the District of Columbia Court of Appeals in Parreco v. D.C. Rental Hous. Comm'n, 885 A.2d 327 (D.C. 2005).

D. Whether the Final Order is erroneous because it disallowed rent increases other than the specific rent increase identified in the Tenant Petition.[17]

The Housing Provider contends on appeal that the ALJ erred by considering the validity of the increases in the Tenant's rent charged in 2004 and 2005, because the only claim made in the Tenant Petition related to the validity of the 2006 increase in rent charged. *See* Notice of Appeal at 2; Housing Provider's Brief at 5-6. In support of this assertion, the Housing Provider states in its Brief that it was only on notice of the single challenge to the 2006 increase in the rent charged, and that if it had been on notice that the Tenant intended to challenge other rent charged levels, the Housing Provider would have submitted additional evidence at the hearing to rebut the Tenant's claims regarding the validity of the 2004 and 2005 increases in rent charged. *See*

[17] The Commission combines its discussion of issues C and D because both issues allege that the ALJ erred by addressing in the Final Order increases in rent charged that were not raised in the Tenant Petition.

Housing Provider's Brief at 5-6 (citing Parreco v. D.C. Rental Hous. Comm'n, 885 A.2d 327 (D.C. 2005)).

The ALJ made the following finding of fact in the Final Order regarding the claims in the Tenant Petition:

> "Tenant raises only two claims in her petition: (1) [t]he rent being charged exceeds the legally calculated rent ceiling for her unit; and (2) [t]he rent ceiling filed with the RACD for her unit is improper. In a footnote, she adds: "According to the "Amended Registration Form" [sic] attached, the rent ceiling notice was not legally filed (should have been by January 31, 2000). It was filed on February 28, 2000."

See Final Order at 2; R. at 64. The Commission's review of the Final Order reveals that the ALJ does not address the Housing Provider's contention that the Tenant failed to challenge any rent charged increases other than the 2006 increase. *See generally, id.* at 1-10; R. at 56-65.

The Commission observes that Superior Court Civil Rule 15(b) (2013)[18] (hereinafter "Rule 15(b)") allows pleadings to be amended at any time to ensure that they conform to the evidence that was actually presented at the hearing, when issues not raised in the pleadings are tried by the "express or implied consent of the parties." *See* Rule 15(b).[19] *See, e.g.*, Charlery v.

---

[18] The Commission notes that the D.C. Superior Court Rules are applicable to the OAH proceedings in accordance with 1 DCMR § 2801.2 (2004), which provides the following:

> Where a procedural issue coming before this administrative court is not specifically addressed in these Rules, this administrative court may rely upon the District of Columbia Superior Court Rules of Civil Procedure as persuasive authority.

Furthermore, the Commission notes that the D.C. Superior Court rules are applicable to this Decision and Order in accordance with 14 DCMR § 3828.1 (2004), which provides the following:

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

[19] Rule 15(b) provides the following:

> Amendments to conform to the evidence. -- When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been

D.C. Dep't of Consumer & Regulatory Affairs, 970 A.2d 280, 284 (D.C. 2009) (citing Rule 15(b)) (holding that petitioner impliedly consented to litigating an issue not raised in the pleadings when the parties presented evidence on that issue at the hearing without a timely objection from the petitioner); Burton v. District of Columbia, 835 A.2d 1076, 1080 (D.C. 2003) (determining that appellant's statement on the record expressly consenting to litigation of an issue not raised in the pleadings prevented him from arguing on appeal that the trial court erred by amending the pleadings to include that issue). The DCCA has described Rule 15(b) as "'an attempt to favor substance over form . . . and thus promote the resolution of cases on their merits'. . . ." Parreco, 885 A.2d at 334 (quoting Moore v. Moore, 391 A.2d 762, 768 (D.C. 1978)).

The DCCA has further elaborated on the importance of express or implied consent to the amendment of the pleadings in accordance with Super. Ct. Civ. R. 15(b), as follows:

> [W]hether parties recognize that an issue not stated by the pleadings entered the case . . . is determined by searching the trial record for indications that the party contesting the amendment received actual notice of the injection of the unpleaded matters, as well as an adequate opportunity to litigate such matters and to cure any surprise from their introduction . . . . If a party does not receive, either before or during trial, timely notice that a matter is being litigated, he or she can justifiably assert prejudicial deprivation of a "day in court," should the matter be decided. The clearest indications of a party's implied consent to try an issue lie in the failure to object to evidence, or in the introduction of evidence which is clearly apposite to the new issue but not to other matters specified in the pleadings.

---

raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

Moore, 391 A.2d at 768 (citing Wasik v. Borg, 423 F.2d 44 (2d. Cir. 1970); Seek v. Edgar, 293 A.2d 474, 476-77 (D.C. 1972); WRIGHT & MILLER, FED. PRAC. & PROC., CIVIL § 1493) (emphasis added).

The Commission's review of the record reveals that the Housing Provider did not expressly consent to the litigation of the validity of the 2004 and 2005 increases in rent charged. *See generally* Hearing CD (OAH Apr. 18, 2007). Moreover, the Commission's review of the record reveals that the Housing Provider did not impliedly consent to the litigation of the validity of the 2004 and 2005 rent increases, because the Housing Provider objected at the OAH hearing to the admission of evidence related to additional rent increases beyond the 2006 rent charged increase mentioned in the Tenant Petition. *See* Hearing CD (OAH Apr. 18, 2007) at 12:32.

In accordance with Rule 15(b), therefore, the Commission determines that the ALJ erred by considering the Tenant's claims related to the 2004 and 2005 increases in rent charged, over the Housing Provider's objection at the OAH hearing due to the lack of an adequate opportunity to prepare its defense against such claims. *See* Super. Ct. Civ. Rule 15(b) (2013); Charlery, 970 A.2d at 284; Parreco, 885 A.2d at 334; Burton, 835 A.2d at 1080; Moore, 391 A.2d at 768. Because the DCCA has stated that the purpose of Rule 15(b) is to "promote the resolution of cases on their merits," *see* Parreco, 885 A.2d at 334, the Commission observes that the ALJ's proper application of Rule 15(b) in this case would have allowed the Tenant to amend the Tenant Petition to include claims relating to the validity of the 2004 and 2005 increases in rent charged. *See* Super. Ct. Civ. Rule 15(b) (2013); Charlery, 970 A.2d at 284; Burton, 835 A.2d at 1080; Moore, 391 A.2d at 768. However, in the absence of any amendment to the Tenant Petition by the Tenant under Rule 15(b), upon the Housing Provider's objection to the additional claims, compliance with Rule 15(b) required the ALJ to continue the hearing to ensure that the Housing

Provider had received adequate notice of, and had been granted the opportunity to prepare any defenses to, the claims that were raised for the first time at the OAH hearing. *See* Super. Ct. Civ. Rule 15(b) (2013); Charlery, 970 A.2d at 284; Parreco, 885 A.2d at 334; Burton, 835 A.2d at 1080; Moore, 391 A.2d at 768.

Therefore, the Commission vacates the ALJ's Final Order as it relates to the validity of the 2004 and 2005 rent charged increases, and remands for a hearing de novo strictly limited to the Tenant's claims that the 2004 and 2005 rent increases exceeded the authorized rent ceiling for her unit. The Commission further instructs the ALJ to thereafter amend the Final Order with additional findings of fact and conclusions of law with respect to the Tenant's claims of illegal increases in rent charged in 2004 and 2005 on the same, or related, legal grounds as the claimed illegal increase in rent charged in 2006.

IV. CONCLUSION

For the foregoing reasons, the Commission reverses the ALJ's determination that the Tenant's challenge to the validity of the 2006 increase in rent charged, arising out of an improper 2000 adjustment in rent ceiling, is barred by the statute of limitations, and remands for further findings of fact and conclusions of law regarding whether the Tenant is entitled to any damages arising out of the Commission's determination of this issue.

The Commission vacates the ALJ's Final Order as it relates to the validity of the 2004 and 2005 rent charged increases, and remands for a hearing de novo strictly limited to the Tenant's claims that the 2004 and 2005 rent increases exceeded the authorized rent ceiling for her unit. The Commission further instructs the ALJ to thereafter amend the Final Order with

additional findings of fact and conclusions of law with respect to the Tenant's claims of illegal increases in rent charged in 2004 and 2005 on the same, or related, legal grounds as the claimed illegal increase in rent charged in 2006.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD YOUNG, COMMISSIONER

MARTA W. BERKLEY, COMMISSIONER

MOTIONS FOR RECONSIDERATION

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

JUDICIAL REVIEW

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

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** was mailed, postage prepaid, by first class U.S. mail on this **27th day** of **September, 2013** to:

Richard W. Luchs
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, DC 20036-5605

John Logan
1725 I Street, NW
Number 300
Washington, DC 20006

Mary Coleman
907 6th Street, SW, Apt. 208
Washington, DC 20024

LaTonya Miles
Clerk of the Court
(442-8949)