

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-07-29,040

In re: 3636 16<sup>th</sup> Street, N.W., Unit A868

Ward One (1)

**THE WOODNER APARTMENTS**  
Housing Provider/Appellant/Cross-Appellee

v.

**GLORIA TAYLOR**  
Tenant/Appellee/Cross-Appellant

**ORDER ON MOTION FOR ATTORNEY'S FEES**

November 2, 2015

**SZEGEDY-MASZAK, CHAIRMAN.** This case is on appeal to the Rental Housing Commission (Commission) from a Final Order issued by the Office of Administrative Hearings (OAH),<sup>1</sup> based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 - 510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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<sup>1</sup> OAH assumed jurisdiction over petitions arising under the Act from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to DHCD by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

## I. PROCEDURAL HISTORY<sup>2</sup>

On August 10, 2007, Tenant/Appellee/Cross-Appellant, Gloria Taylor (Tenant), residing in Unit A868 of 3636 16<sup>th</sup> Street, N.W. (Housing Accommodation), filed tenant petition RH-TP-07-29,040 (Tenant Petition) with the RACD, claiming that the Housing Provider/Appellant/Cross-Appellee, The Woodner Apartments (Housing Provider), violated the Act as follows: (1) the rent increase was larger than the amount of the increase which was allowed by any applicable provision of the Rental Housing Act of 1985; (2) the rent ceiling filed with the Rental Accommodations and Conversion Division is improper; (3) a rent increase was taken while the unit was not in substantial compliance with the D.C. Housing Regulations; (4) services and/or facilities provided in connection with the rental of the unit have been substantially reduced; and (5) retaliatory action has been directed against me by the Housing Provider, manager or other agent for exercising our rights in violation of Section 502 of the Rental Housing Act of 1985. Tenant Petition at 1-12; Record for RH-TP-07-29,040 (R.) at 19-30.

On September 16, 2008, Administrative Law Judge Erika L. Pierson (ALJ) issued a final order: Taylor v. Woodner Apartments, RH-TP-07-29,040 (OAH Sept. 16, 2008) (Final Order). R. at 137-92. The ALJ ruled in favor of the Tenant on all five issues raised in the Tenant Petition, and ordered a rent refund of \$6,763.66, and fined the Housing Provider \$500 for willfully retaliating against the Tenant. Final Order at 43-49; R. at 145-51.

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<sup>2</sup> A detailed factual background prior to this Order on Motion for Attorney's Fees is set forth in the Commission's Decision and Order in Woodner Apartments v. Taylor, RH-TP-07-29,040 (RHC Sept. 1, 2015) (Decision and Order). The Commission sets forth in this decision only the facts relevant to the issues that arise from the Tenant's Motion for Attorney's Fees.

On October 2, 2008, the Housing Provider filed a timely notice of appeal (Notice of Appeal) with the Commission, and on October 20, 2008, the Tenant filed a notice of appeal with the Commission (Cross-Appeal).<sup>3</sup> On September 1, 2015, the Commission issued its Decision and Order affirming the ALJ's Final Order in part, and remanding for the ALJ make further findings of fact and conclusions of law regarding whether the Housing Provider had provided clear and convincing evidence to rebut the presumption of retaliation. Decision and Order at 38-49.

On September 16, 2015, the Tenant filed a Motion for Attorney's Fees with the Commission, and a supporting "Memorandum of Points and Authorities in Support of Appellee/Tenant's Motion for Reasonable Attorney's Fees" (Memorandum), seeking compensation for a total of 38.3 hours of work performed before the Commission, between October 17, 2008, and December 17, 2009, by Tenant's counsel, Beth Mellen Harrison (Tenant's Counsel), employed by the Legal Aid Society of D.C. (Legal Aid). See Motion for Attorney's Fees, Exhibit B at 3. See *infra* at 7-8. The Motion for Attorney's Fees indicated that the Tenant is requesting a rate of \$270 per hour, based on the Laffey Matrix rate for a Legal Aid attorney with four to seven years of experience.<sup>4</sup> See *id.* at 2-3; see also, Laffey Matrix Fee Schedule at

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<sup>3</sup> The Commission dismissed the Tenant's Cross-Appeal as untimely. Decision and Order at 32-33.

<sup>4</sup> The Laffey Matrix begins with rates from 1981-1982 allowed and established by the U.S. District Court for the District of Columbia in the case of Laffey v. Northwest Airlines, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is a matrix form comprised of hourly rates for attorneys of varying experience levels and paralegals/law clerks, which has been compiled by the Civil Division of the United States Attorney's Office for the District of Columbia. It has been used since then by courts in the District to reflect billing rates for attorneys in the Washington, D.C. area with various degrees of experience. See, e.g., Heller v. District of Columbia, 832 F. Supp. 2d 32, 40 (D.D.C. 2011). The Laffey Matrix is intended to be used in cases where a fee shifting statute permits a prevailing party to recover "reasonable" attorney's fees. In that regard, it is similar to Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(k), the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(E) and the EAJA, 28 U.S.C. §2412(b). Rates for subsequent years after 1981-1982 are adjusted annually based on cost of living increases for the Washington, D.C. area. The Commission has awarded legal fees to *pro bono* attorneys on the basis of the Laffey Matrix. See, e.g., Caesar Arms,

Laffey Matrix 2003-2014, [www.justice.gov/sites/default/files/usao-dc/legacy/2013/09/09/Laffey\\_Matrix%202014.pdf](http://www.justice.gov/sites/default/files/usao-dc/legacy/2013/09/09/Laffey_Matrix%202014.pdf) (last visited Oct. 27, 2015). *See infra* at 7-8.

On September 28, 2015, the Housing Provider filed “Appellant’s Opposition to Appellee’s Motion for and Award of Attorney’s Fees” (Opposition). The Opposition primarily contends that the Motion for Attorney’s Fees is premature, because the “prevailing party” cannot be determined until after the proceedings on remand have concluded. Opposition at 1-4. Additionally, the Housing Provider asserts that the amount requested by the Tenant is too high, given that this case involved a “challenge to a rent increase, which did not raise a novel or difficult question of law.” *Id.* at 4-6.

### **III. DISCUSSION**

Under D.C. OFFICIAL CODE § 42-3509.02 (2001),<sup>5</sup> the Commission may award reasonable attorney’s fees to the prevailing party in an action before the Commission. This provision creates a presumptive award of attorney’s fees for prevailing tenants in both tenant-initiated and landlord-initiated proceedings. *See, e.g., Loney v. D.C. Rental Hous. Comm’n*, 11 A.3d 753, 759 (D.C. 2010); *Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm’n*, 677 A.2d 46, 47 (D.C. 1996); *Hampton Courts Tenants’ Ass’n v. D.C. Rental Hous. Comm’n*, 573 A.2d 10 (D.C. 1990); *Cascade Park Apts. v. Walker*, TP 26,197 (RHC Mar. 18, 2005). A prevailing party “is ‘a party in whose favor a judgment is rendered, regardless of the amount of damages awarded.’”

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LLC v. Lizama, RH-TP-07-29,063 (RHC Feb. 28, 2014) (awarding hourly rates lower than applicable Laffey Matrix rates to supervising attorneys and student attorneys from the University of the District of Columbia David A. Clark School of Law); Loney v. Tenants of 710 Jefferson St., N.W., SR 20,089 (RHC Jan. 29, 2013) (awarding hourly rates lower than applicable Laffey Matrix rates for counsel from the Legal Aid Society of Washington, D.C.).

<sup>5</sup> D.C. OFFICIAL CODE § 42-3509.02 provides the following: “The Rent Administrator, Rental Housing Commission, or a court of competent jurisdiction may award reasonable attorney’s fees to the prevailing party in any action under this chapter, except actions for eviction authorized under § 42-3505.01.”

