

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-07-29,045

In re: 1344 Fort Stevens Drive, N.W., Unit 102

Ward Four (4)

**ERROL S. WATKIS**  
Housing Provider/Appellant

v.

**MARIETTA L. FARMER**  
Tenant/Appellee

**ORDER ON MOTION FOR RECONSIDERATION**

**SEPTEMBER 11, 2013**

**SZEGEDY-MASZAK, CHAIRMAN.** This case is on appeal to the Rental Housing Commission (Commission) from a decision and 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).<sup>1</sup> The applicable provisions of the Rental Housing Act of 1985 (the Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (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> The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversions Division (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 Rental Accommodations and Conversion Division (RACD) of DCRA 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**<sup>2</sup>

On August 16, 2007, Tenant/Appellee Marietta L. Farmer (Tenant), residing in Unit 102 at 1344 Fort Stevens Drive, N.W. (Housing Accommodation), filed Tenant Petition 29,045 (Tenant Petition) with the HRA, claiming that the Housing Provider/Appellant Errol S. Watkis (Housing Provider) violated the Act as follows: (1) the Housing Provider improperly claimed an exemption from rent control; (2) the Housing Provider took a rent increase larger than the increase allowed by law; and (3) the Housing Provider failed to file proper rent increase forms. Tenant Petition at 3; Record (R.) at 41.

On March 4, 2009, the ALJ issued a final order, Marietta L. Farmer v. Errol S. Watkis, RH-TP-07-29,045 (OAH Mar. 12, 2007) (Final Order). Final Order at 1-11; R. at 72-82. In the Final Order, the ALJ determined that, because there was no evidence introduced at the hearing to show that the Tenant was given notice of the Housing Accommodation's exempt status at the time that she signed her lease, the Housing Provider was not entitled to rely on a claim of exemption when he increased the Tenant's rent on August 1, 2007. See Final Order at 5-6; R. at 77-78 (citing D.C. OFFICIAL CODE §§ 42-3502.05(d), -3502.08(a)(1)(B) (2001);<sup>3</sup> Butler v. Toye,

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<sup>2</sup> The complete procedural history of this case prior to the filing of the Housing Provider's Motion for Reconsideration, is recited in the Commission's Decision and Order in Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) (hereinafter "Decision and Order").

<sup>3</sup> D.C. OFFICIAL CODE § 42-3502.05(d) (2001) provides the following:

Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program.

TP 27,262 (RHC Dec. 2, 2004)). The ALJ concluded that the August 1, 2007 rent increase was unlawful, and ordered a rent refund totaling \$1,546.10. *See* Final Order at 7; R. at 76.

On April 24, 2009, the Housing Provider filed a Notice of Appeal with the Commission, raising the following issue on appeal: whether the ALJ erred by determining that the Housing Provider had failed to provide the Tenant with the required notice of the Housing Accommodation's exemption from the Act.<sup>4</sup> *See* Decision and Order at 9; Notice of Appeal at 1-3. The Commission held a hearing on August 20, 2009, and issued its Decision and Order on August 15, 2013, determining that the ALJ's Final Order as supported by substantial evidence in the record.<sup>5</sup> *See* Decision and Order at 1-16 (citing D.C. OFFICIAL CODE § 42-3502.05(d) (2001); 14 DCMR §§ 3807.1, 4106.8 (2004)).<sup>6</sup>

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D.C. OFFICIAL CODE § 42-3502.08(a)(1)(B) (2001) provides the following: "Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless: . . . (B) The housing accommodation is registered in accordance with § 42-3502.05."

<sup>4</sup> In its discretion, the Commission interpreted the Housing Provider's narrative statement in the Notice of Appeal to raise the following allegation of error by the ALJ: whether the ALJ erred by determining that the Housing Provider had failed to provide the Tenant with the required notice of the Housing Accommodation's exemption from the Act. Decision and Order at 9 n.7. *See* Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012) at n.8; Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012) at n.9. For the complete language of the Housing Provider's Notice of Appeal, *see* Decision and Order at 7-8.

<sup>5</sup> The complete holding from the Commission's Decision and Order was as follows:

The Commission is satisfied, based on its review of the record, that the ALJ made findings of fact regarding whether the Housing Provider gave the Tenant proper notice of the claim of exemption, that such findings were based on substantial evidence in the record, including the exhibits submitted by both parties and the testimony given at the OAH hearing, and that the ALJ's conclusions of law flow rationally from the findings of fact and are in accordance with the provisions of the Act. 14 DCMR § 3807.1 (2004). *See* Final Order at 5-6; R. at 77-78. *See also* D.C. OFFICIAL CODE § 42-3502.05(d) (2001); 14 DCMR § 4106.8 (2004); Levy, RH-TP-06-28,830; RH-TP-06-28,835; Daly, TP 27,728; Smith, TP 27,661; Butler, TP 27,262; Kornblum, TP 24,338; Stets, TP 24,480; Young, TP 21,976; Chaney, TP 20,247. Accordingly, the Commission affirms the ALJ on this issue.

*See* Decision and Order at 15-16.

<sup>6</sup> The Commission's standard of review is contained at 14 DCMR § 3807.1 (2004), and provides as follows:

On August 30, 2013, the Housing Provider filed a timely Motion for Reconsideration with the Commission in which he stated the following:<sup>7</sup>

1. The Administrative Law Judge's (ALJ) decision is flawed in that it asserts that I the [H]ousing [P]rovider failed to present evidence that the [T]enant was informed of the property's claim of exemption on file at the Department of Consumer and Regulatory Affairs (DCRA). The ALJ ignored evidence certified by the Rent Administrator (RA) that the property's registration which was filed and approved by the DCRA in 1985, was missing from the DCRA's records due to an "administrative error" on the part of his office. The ALJ further ignores the RA's prescribed remediation for informing the tenants of the property's registered exemption status (exhibit 200). The ADJ [sic] conclusions and order [sic] do not flow rationally from the undisputed testimony or evidence submitted at the original hearing because at the time the [T]enant's lease was executed the DCRA's records were certified to be in error by the RA. The ALJ ignored my undisputed testimony that the errors in the DCRA's records were not corrected until I requested an administrative opinion in my letter to the DCRA Commissioner [sic]. I also testified and presented undisputed evidence in the original hearing that the RA corrected the errors in the DCRA records and prescribed a remedy which included a letter to the [T]enant explaining the DCRA errors and the RA's remedy. The letter which was filed with the DCRA also served as the [T]enant's notice of the exemption status of the property, which was prescribed by the RA (exhibits 106 and 200). In the discussion during the appeal hearing before the Rental Housing Commission and in the [C]ommission's order, the Commissioners assert that a housing provider must be able to reasonably rely on the advice of the RA to determine whether or not rental housing is in compliance with DCRA regulations. By setting aside and refusing to make a decision on the property's certified registration status, which was the subject of the [T]enant's original complaint, and by not considering the evidence certified by the RA regarding the errors in the DCRA records, and the RA's remedy for informing the [T]enant of the property's restored exemption status, the ALJ

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[T]he 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.

14 DCMR § 4106.8 (2004) provides as follows:

Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit exempted under §205(a) of the Act shall receive from the housing provider a written notice advising the prospective tenant that the rent increases for the housing accommodation are not regulated by the rent stabilization program.

<sup>7</sup> The Commission recites the Housing Provider's statements herein exactly as they appear in the Motion for Reconsideration, except that the Commission has numbered the Housing Provider's paragraphs for purposes of clarity and efficiency.

ignores the remedy officially prescribed by the RA that I relied on and entered into evidence (exhibit 200).

2. In summation, as in my previous pleadings, I maintain that I properly informed the [T]enant of the exempt status of the [H]ousing [Accommodation] prior to the execution of her lease according to D[.]C[.] [OFFICIAL] CODE § 42-3502.05(d) [(2001)]. Additionally, I fully complied with the remedy prescribed by the RA to notify the [T]enant of the property's exemption status after he discovered "administrative errors" in the maintenance of DCRA records. As such, I respectfully ask that the Commission reconsider their decision and affirm the remedy certified by the RA that was entered into evidence before the ALJ at the original January 28, 2008 hearing, or remand the case back to the Office of Administrative Hearings.

*See* Motion for Reconsideration at 1-2.

## **II. MOTION FOR RECONSIDERATION**

In the Motion for Reconsideration, the Commission observes that the Housing Provider reiterates many of the same contentions raised in his April 24, 2009 Notice of Appeal: namely that the Tenant was properly notified of the Housing Accommodation's exempt status, and that any questions regarding the validity of the Housing Accommodation's exempt status arose as a result of missing registration records on file with DCRA. *Compare* Motion for Reconsideration at 1-2, *with* Notice of Appeal at 1-3.

The Commission's relevant regulations governing motions for reconsideration provide the following:

Any 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; provided, that an order issued on reconsideration is not subject to reconsideration.

14 DCMR § 3823.1 (2004).

The motion for reconsideration or modification shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful.

14 DCMR § 3823.2 (2004).

The Commission has consistently held that denial of a motion for reconsideration will result from a party's failure to set forth such specific grounds of error or illegality in the Commission's decision. *See, e.g., Jackson v. Peters*, RH-TP-07-28,898 (RHC Sept. 21, 2011); McCaster v. Capital Park Towers Co., RH-TP-07-29,043 (RHC Mar. 24, 2009); Stone v. Keller, TP 27,033 (RHC Mar. 24, 2009).

In his Motion for Reconsideration, the Housing Provider fails to contest or challenge the specific legal grounds that the Commission used to dismiss the issue in his appeal: namely, that the ALJ's determination that the Housing Provider failed to sustain his burden of proof that he provided the Tenant with notice regarding the Housing Accommodation's exempt status prior to the execution of her lease, in accordance with D.C. OFFICIAL CODE § 42-3502.05(d) (2001), was supported by substantial evidence in the record. *See* Decision and Order at 9-12; Motion for Reconsideration at 1-2. To avoid denial of a motion for reconsideration, it was incumbent upon the Housing Provider to identify and set forth the specific grounds for the Commission's error in, or the unlawful basis of, its decision to affirm the ALJ's decision in the Final Order, rather than merely reiterating his assertions regarding the alleged errors made by the ALJ. 14 DCMR § 3823.2 (2004). *See Jackson*, RH-TP-07-28,898; McCaster, RH-TP-07-29,043; Stone, TP 27,033.

Because the Housing Provider failed to set forth such specific grounds of error or illegality in the Commission's decision, the Commission denies his motion for reconsideration.

14 DCMR § 3823.2 (2004). See Jackson, RH-TP-07-28,898; McCaster, RH-TP-07-29,043; Stone, TP 27,033.

#### IV. CONCLUSION

For the reasons stated herein, the Housing Provider's Motion for Reconsideration is denied.<sup>8</sup>

SO ORDERED

  
\_\_\_\_\_  
PETER SZEGEDY-MASZAK, CHAIRMAN

  
\_\_\_\_\_  
MARTA BERKLEY, COMMISSIONER

#### CERTIFICATE OF SERVICE

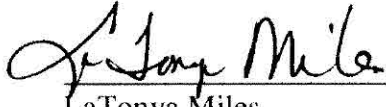
I certify that a copy of the foregoing **ORDER ON MOTION FOR RECONSIDERATION** was mailed, postage prepaid, by first class U.S. mail on this 11<sup>th</sup> day of **September, 2013** to:

Marietta L. Farmer  
1344 Fort Stevens Drive, NW  
Unit #102  
Washington, DC 20011

<sup>8</sup> The Commission is troubled in this case by the apparent and undisputed lapses of DCRA in its record keeping, its advice to the Housing Provider to adopt procedures applicable to non-exempt properties until DCRA corrected its record keeping, and DCRA's "delay in bringing the matter to a close." See Final Order at 2-4; R. at 78-81. However, the Commission observes that its review of the substantial evidence in the record does not support the Housing Provider's contention that DCRA's administrative lapses had a material, determinative impact on his inability or failure to provide the requisite notice of the exempt status of the Housing Accommodation to the Tenant at the commencement of her tenancy in 2000 as required by D.C. OFFICIAL CODE § 42-3502.05(d) (2001). Furthermore, where substantial evidence exists to support a hearing examiner's findings, even if substantial evidence to the contrary were to exist, the reviewing agency may not substitute its judgment for that of the examiner. See generally, Boyd v. Warren, RH-TP-10-29,816 (RHC June 5, 2013); Hago v. Gewirz, TP 11,552 (RHC Aug. 4, 2011).

Errol S. Watkis  
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A handwritten signature in black ink, appearing to read "LaTonya Miles". The signature is written in a cursive style and is positioned above a horizontal line.

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LaTonya Miles  
Clerk of the Court  
(202) 442-8949