DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,063

In re: 3435 Holmead Place, N.W., Unit 609

Ward One (1)

CAESAR ARMS, LLC
Housing Provider/Appellant

v.

JUANA LIZAMA, et al.
Tenants/Appellees

DECISION AND ORDER

September 27, 2013

BERKLEY, COMMISSIONER. 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 and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversions Division (RACD).[1] The applicable provisions of the Rental Housing Act of 1985 (Rental Housing 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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[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 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

On September 13, 2007, Tenants/Appellees Juana Lizama and Jose Hernandez (Tenants), residing at unit 609 of 3435 Holmead Place, N.W. (Housing Accommodation), filed Tenant Petition (TP) RH-TP-07-29,063 with the RACD, claiming that the Housing Provider/Appellant, Caesar Arms, LLC (Housing Provider), violated the Act as follows: (1) a rent increase was taken while the Housing Accommodation was not in substantial compliance with the D.C. Housing Regulations, and (2) services and/or facilities provided to the Housing Accommodation have been substantially reduced. Petition at 3-4; Record for TP 29,063 (R.) at 28 – 27.

On October 26, 2007, Administrative Law Judge, Claudia Barber (ALJ) issued a Case Management Order which set a hearing date for December 17, 2007. R. at 42-36. On March 20, 2008, the Tenants filed an Amended Tenant Petition. R. at 86-75. On March 25, 2008, the Housing Provider filed a Motion to Strike the Amended Tenant Petition on the ground that it did not comply with D.C. Superior Court Rule of Civil Procedure 15(a). R. at 93-88. On April 4, 2008, the Tenants filed an Opposition to Respondent's Motion to Strike the Amended Tenant Petition stating that they had adhered to Rule 15(a) and that Housing Provider would not be prejudiced by the Amended Tenant Petition. R. at 108-103. On April 7, 2008, the ALJ held a hearing on the Housing Provider's Motion to Strike the Amended Tenant Petition. R. at 278. The ALJ admitted the Amended Tenant Petition into evidence. R. at 278.

The ALJ held further hearings on May 7, 8, and June 4, 2008. On April 13, 2010, the ALJ issued a final order on TP 29,063. The ALJ issued an amended final order the next day to correct typographical errors. On April 30, 2010, the Tenants filed a Motion for Attorney's Fees. R. at 234-201. On May 6, 2010, the Tenants filed a Motion for Reconsideration of the ALJ's

Amended Final Order. R. at 235-38. The Motion asserts that "the evidence supports an award of a rent reduction for each month from September 2004 through June 2008." See R. at 285.

On May 27, 2010, the ALJ issued three orders. First, the ALJ issued an Order Granting Reconsideration for the purpose of "amending the final order to include an award for substantial reduction in services from September 2004 through the date of the hearing." R. at 285. Second, the ALJ issued a second amended final order (Final Order).[2] Juana Lizama and Jose Hernandez v. Caesar Arms, LLC, RH-TP-07-29,063 (OAH May 27, 2010) (Final Order); R. at 240 - 281.[3] Third, the ALJ granted the Tenant's Motion for Attorney's Fees (Order for Attorney's Fees). R. at 296-286.

The ALJ made the following findings of fact in the Final Order:

1. On September 13, 2007, Juana Lizama and Jose Hernandez filed Tenant Petition 29,063, alleging, *inter alia*, rent increases were taken while their unit was not in substantial compliance with the D.C. Housing Regulations, and services and facilities had been substantially reduced in violation of the Act. The petition was amended on March 20, 2008.

2. Tenants/Petitioners reside at 3435 Holmead Place N.W., in Unit 609. The housing accommodation is six floors. The rental unit is an efficiency apartment and Tenants moved into the rental unit in 1987.

3. On June 26, 1997, Tenants signed a one-year lease with an effective date of July 1, 1997. Tenants did not sign another lease after this one and have

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[2] The ALJ also stated in the Final Order that:

> This [ ] Final Order is issued to change the calculation of the reduction in services claim from the time period October 2004 through the final date of the hearing June 4, 2008, instead of September 2007 through June 1, 2008. This [ ] Final Order also eliminates the rollback of rent for reduction in services because it would be duplicative relief. Finally, this [ ] Final Order further clarifies the award of treble damages and credibility analysis of Collins Elevator. *See* 1 DCMR 2832.2.

Final Order at 1; R. at 281.

[3] The Commission notes that the Final Order contains over twenty-five pages of factual findings and legal conclusions. In the interests of clarity and efficiency, the Commission recites in this Decision and Order only those factual findings and conclusions of law from the Final Order that are addressed in any way by the parties in the Notice of Appeal.

been month-to-month tenants since July 1, 1998. Tenants have not attempted to terminate the lease.

4. Tenant Hernandez is the president of the housing accommodation's tenant association. The tenant association was formed in February of 2008. The association was formed as a result of a meeting that Housing Providers held with the tenants in the building on February 8, 2008, where tenants were offered several options including the option to convert the housing accommodation to condominiums. None of the tenants decided to convert the housing accommodation to condominiums.

5. Caesar Arms, LLC is the owner of the housing accommodation at 3435 Holmead Place, N.W. Tenacity is the asset manager for Caesar Arms, LLC. Cap City Management is the property manager for the housing accommodation and has been the property manager since August or September of 2007. Before Cap City Management, Dreyfuss Management managed the housing accommodation starting in June or July of 2006. Prior to that, Fleetwood Management managed the Property. Kim Sperling is employed by Tenacity and started as asset manager in June or July of 2006.

6. Daisy Delcid was the property manager at the housing accommodation until January 2007. Kim Sperling confirmed that Daisy Delcid worked for Dreyfuss, but she is not certain how long Ms. Delcid worked for both Dreyfuss and Fleetwood Management.

7. Tom Chapman has been the regional property manager for the Property since June 2007.

8. Hugo Aleman resides on the property and is the property manager.

9. On or about May 12, 2004, Housing Provider served Tenants with a Notice of Increase in Rent Charged. The rent was increased from $429.00 to $441.00. The basis of this increase was the annual CPI-W and had an effective date of July 1, 2004. The notice also states that the effective date of the ceiling increase was July 1, 2004.

10. On or about May 28, 2005, Housing Provider served Tenants with a Notice of Change in Rent Ceiling. The rent ceiling was increased from $441.00 to $453.00. The basis of this increase was the annual CPI-W and had an effective date of July 1, 2005.

11. On or about May 28, 2005, Housing Provider served Tenants with a Notice of Increase in Rent Charged. The rent was increased from $441.00 to $453.00. The basis of this increase was the annual CPI-W and had an effective date of July 1, 2005.

12. On or about May 24, 2006, Housing Provider served Tenants with a Notice of Change in Rent Ceiling. The rent ceiling was increased from $453.00 to $472.00. The basis of this increase was the annual CPI-W and had an effective date of July 1, 2006.

13. On or about May 24, 2006, Housing Provider served Tenants with a Notice of Increase in Rent Charged. The rent was increased from $453.00 to $472.00. The basis of this increase was the annual CPI-W and had an effective date of July 1, 2006.

14. On or about May 21, 2007, Housing Provider served Tenants with a Notice of Increase in Rent Charged. The rent was increased from $472.00 to $498.00. The basis of this increase was the annual CPI-W and had an effective date of July 1, 2007.

15. Tenants have experienced problems with mice in their rental unit since 2004 and through the date of the first hearing in this matter. In 2004, Tenants saw mice several times a day on several days of the week in their rental unit. Tenants saw mice at the same frequency in 2005. This has been a prolonged condition that has not been addressed by the Housing Provider.

16. Tenants/Petitioners provided graphic photographs taken in September 2007 of dead mice found in their Unit 609 and mice chewing through a cup.

17. In 2006, Tenants saw mice in their rental unit more often. Tenants saw mice several times a day on several days of the week in 2006.

18. On September 7, 2007, Tenants/Petitioners forwarded correspondence to Housing Provider advising the Housing Provider of the rodent and insect infestation in the unit that existed since they moved in the unit. PX 116A. The letter also references another letter sent to the Housing Provider dated August 22, 2007, requesting the same problems and repairs needed.

19. Tenants had a continuing problem with mice in 2007. In September of 2007, Tenant Hernandez took pictures of the mice in the rental unit. These pictures reflect the type of problems that Tenants have had in the rental unit since 2004.

20. From 2004 up to the final hearing date, Tenants saw the mice during the day and heard the mice running in the kitchen of the rental unit at night.

21. Mice have eaten Tenants' food and have made Tenants embarrassed to have visitors in their rental unit. Tenants have purchased mouse traps,

white dust, and glue pads to catch mice in their rental unit. Tenants use approximately four mouse traps a week.

22. Tenants clean their rental unit every evening and do not leave food or crumbs around the kitchen.

23. Tenants constantly complained to Ms. Delcid about the problems with mice in their rental unit. In 2004, Tenant Lizama complained to Ms. Delcid about the mice approximately four times a month. In 2005 and 2006, Tenants continued to tell Ms. Delcid about the mice problem, at least five times a year.

24. Tenants complained to Ms. Delcid until January 2007 when she stopped working as the property manager at the housing accommodation.

25. In August of 2007, Housing Provider instituted a phone line, First Line Maintenance, to receive maintenance requests from tenants in the housing accommodation. The system takes the requests from tenants and then puts it into a computer database. The information about the phone line was placed under each tenant's door and common areas around the housing accommodation including near mailboxes, in the laundry room, and in the rental office.

26. The phone line is a bilingual service and is available 24 hours a day, 7 days a week. The line allows callers to leave a message with their maintenance requests and it is possible for tenants to reach a live person. The property manager or asset manager is able to go into the database to see what requests come in and then the maintenance director gives the requests to maintenance staff. The system tracks requests according to rental unit number.

27. Tenants have had problems with roaches in their rental unit. The roaches crawl up and down the walls and across Tenants' floor. They have seen roaches in their rental unit everyday in 2004, 2005, 2006, 2007 and 2008.

28. Tenants have constantly complained about the roaches in their rental unit. Tenants have complained to Ms. Delcid. Sometimes Ms. Delcid would respond to Tenants' request for extermination but other times no extermination services were provided. After the extermination, the roaches were still a problem.

29. Housing Provider did not receive any request calls on First Line for extermination service from Tenants' unit.

30. Housing Provider has a contract with Ehrlich Pest Control to provide extermination services for mice and roaches at the housing

accommodation. Ehrlich has serviced the building since January of 2007. The contract allows for tenants to call and request service. The company comes to the housing accommodation two times a month to do calls requested, common areas, and the trash rooms.

31. Every three months, Ehrlich Pest Control attempts to exterminate each rental unit in the building. The exterminations happen on each floor and tenants are provided notice that their particular floor is being exterminated on that date. On some occasions, Ehrlich is not able to get into each rental unit to exterminate and Housing Provider does not keep an exact record of which rental units are actually exterminated.

32. Tenants have had problems with a leaking ceiling in their rental unit. In 2004, water would come through the hole in the ceiling when it rained. The water would come down the wall and wet the corner of Tenants' bed. This condition remained the same in 2005, 2006 and 2007. The problem was temporarily fixed at some point in 2007, but the hole became a problem again.

33. Tenants told Ms. Delcid about the problem several times in 2004 and every time it rained in 2005. Tenants complained in 2006 and in 2007 until the time Ms. Delcid stopped working as the property manager.

34. On August 22, 2007, Tenants sent a letter to Housing Provider complaining about the conditions in their rental unit. Tenant Lizama went to CARCEN, a tenant advocate organization, to assist her in writing the letter. The letter included complaints about rodent and insect infestation along with other problems.

35. Tenants' rental unit was inspected twice in March of 2007. The first inspection took place on March 29, 2007. Tenant Hernandez was present at this inspection and told the inspector about problems in his rental unit, including problems with peeling paint, tiles, the bathtub, the sink, and the mirror. The Notice of Violation for that inspection reflects three entries for Tenants' rental unit: (1) ceiling has loose or peeling paint or covering which shall be removed and the surface so exposed shall be repainted or recovered; (2) door frame is defective; and (3) floor has loose part(s). Although roaches and mice were a problem at Tenants' rental unit on the day of the inspection, Tenant Hernandez doesn't remember if he mentioned these problems to the inspector. Within eight to fifteen days after the inspection, Housing Provider repaired the violations found during the inspection.

36. Tenants' rental unit was inspected again on March 30, 2007. The same violations noted in the March 29th inspection were noted in the Notice of Violation for this second inspection.

Final Order at 5 - 15; R. at 107 – 106 (emphasis in original).

The ALJ's conclusions of law in the Final Order are summarized as follows:

1. The ALJ concluded that the Tenants/Petitioners proved by a preponderance of evidence that the Housing Provider increased Tenants/Petitioners' rent in 2005, 2006 and 2007, while their unit was not in substantial compliance with the housing regulations. Based on the available evidence in this case, Housing Provider was placed on notice through Tenants/Petitioners' contacts with Daisey Delcid. The ALJ gave little weight to the testimony of Kim Sperling on this issue, who was not a property manager, but served in the capacity of asset manager. Ms. Sperling did not explain what Daisey Delcid told her about Tenants' unit needing extermination services. The ALJ also gave little weight to the testimony of Tom Chapman, regional property manager, who never visited Unit 609 and did not provide evidence of pest control receipts for Unit 609.

2. The ALJ concluded that there is an abundance of evidence that rent increases were taken in 2005, 2006 and 2007, PX 106-113, when there was an infestation of mice and cockroaches. Tenants/Petitioners' testimony of rodents existing inside their apartment continuously clearly established unsanitary conditions at the Property. There was no indication that the necessary aggressive pest control services were ever rendered because the problem was ongoing.

3. According to the testimony of the Tenants/Petitioners, which the ALJ gave great weight because they live daily in these conditions, the mice and cockroach problems were never abated, and still exist at the Property. The infestation problem alone was a violation of 14 DCMR 4216.2. The mice infestation problem was chronic and constitutes a prolonged violation of the housing regulations involving the health, safety and security of the tenants, as well as habitability of the premises.

4. The testimony of the Tenants/Petitioners supported a finding and conclusion that the photographs, PX 100 a, b, c, d, e, f, and g, reflect the conditions inside the Property more than a year and a half ago before the hearing dates. Therefore, these conditions existed at the time of the 2005, 2006, and 2007 rent increases. Tenants/Petitioners also reported these incidents to the property manager's employee Daisey Delcid from 2004 through 2007, but they were not abated.

5. Tenants/Petitioners are entitled to rent refunds for 2005, 2006 and 2007. Tenants/Petitioners' refunds for the illegal rent increases taken in 2005, 2006 and 2007 total $1,200, plus $107.91 in interest. The ALJ trebled these damages because of the prolonged mice problem. Therefore, the

award of treble damages totals $3,600 and interest is calculated through the date of the decision.

6. Tenants/Petitioners met their burden of proof by a preponderance of evidence that services and facilities were reduced because of the rodent infestation problem, but not because of the out-of-service elevator. The ALJ assigned a value of $100 per month for the mice and cockroach infestation problems. These are clearly prolonged conditions that have never been fully eradicated by the Housing Provider. The ALJ did not credit Mr. Chapman's testimony that extermination services were provided regularly for the Property because there was no proof of exterminator receipts for mice extermination. Tenants/Petitioners testified that Housing Provider only provided limited extermination services, which did not address the rodent and cockroach problems. Since the Housing Provider was placed on notice of the rodent problem prior to when the Housing Provider received the written letter in 2007, PX 116A, the ALJ awarded a reduction in rent of $100 for the month of October 2004 through the final date of the hearing June 4, 2008, for the chronic and prolonged mice problem. Since Tenants/Petitioners filed this petition back in September 2007, the ALJ only allowed a reduction of services beginning in October 2004, recognizing that the Tenants/Petitioners did notify Housing Provider of the rodent problem in September 2004, as they did every month, and gave the Housing Provider a reasonable period of time until October 1, 2004 to correct the problem, which did not happen. Refunds total $4,413.33. The ALJ trebled these damages because Housing Provider's conduct in failing to address the rodent problem for a prolonged period of time by not taking aggressive steps to abate the problem from 2004-2007 was inexcusable and a heedless disregard for the health and safety of the tenants. In sum, there was no testimony that Housing Provider provided rat or mice traps, treated the exterior of the building by eliminating rodent burrows, or used any other aggressive treatment measure against rodents. Total rent refund for reduction in services based on trebled award is $13,200.

7. In order to subject a Housing Provider to penalties under the Act, there must first be a finding that the Housing Provider's conduct was knowing and willful in nature. The ALJ reached this conclusion of knowing and willful conduct on behalf of the Housing Provider because the Housing Provider was placed on notice of the unsanitary conditions at the Property in 2004, when Tenants/Petitioners complained to Daisey Delcid. This is when the building required aggressive mice extermination treatment. The ALJ credited Tenants/Petitioners' testimony that the rodents never disappeared. They also provided graphic photographs of dead mice found in the unit in September 2007, along with a letter sent to the Housing Provider in September 2007 complaining of rodent infestation. PX 116A.

8. It is obvious that the Housing Provider was taking insufficient steps to eradicate the mice and cockroach problems by periodically bringing in an exterminator who was clearly not addressing the problem. The ALJ concluded that Housing Provider willfully violated the Act after being placed on notice of the chronic mice problem and not fully eradicating the problem in September 2004. The Housing Provider's actions in failing to fully eradicate the problem since 2004 did rise to the level of being willful, and in bad faith because it was egregious and a reckless disregard for maintaining and leasing an apartment in sanitary condition, *i.e.* intentional violation of the law, deliberate and the product of a conscious choice. *Borger Mgmt, Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004).

9. Tenants/Petitioners met their burden of proof by a preponderance of evidence that the rent increases taken in 2005, 2006 and 2007 were in violation of the Act. D.C. Official Code § 42-3502.08. Tenants/Petitioners also met their burden of proof that services and facilities were reduced in violation of the Act.

10. A finding of bad faith requires the Administrative Law Judge to impose treble damages. D.C. Official Code § 42-3509.01(a). As for the treble damages awarded, the ALJ believed an award of treble damages is justified given the evidence of mice infestation, which has lasted for a prolonged period of time and never disappeared. *Chancellor Brokerage Co. v. Calloway*, TP 4219-4327 (RHC Sept. 13, 1982) (evidence of rat infestation for two-month and four-month periods justified rollback of rent to base rent for period of violations and refund of rent collected above base rent, trebled, with interest). D.C. Official Code § 42-3509.01(a). Therefore, Tenants/Petitioners' treble damages were awarded as set forth in Section C above.

11. The ALJ concluded that the evidence here supports a finding of bad faith by Housing Provider. The record shows that Housing Provider rented Tenants an apartment that Housing Provider knew or should have known the Property required immediate extermination for rodents, and ignored Tenants' repeated requests to provide necessary extermination services to fully eradicate the rodent infestation problem that occurred daily.

12. The ALJ also imposed a civil fine of $5,000 for the substantial reduction in services due to the chronic mice problem that remains a problem in Tenants/Petitioners' unit, and imposed another $15,000 in fines for taking the illegal rent increases in 2005, 2006 and 2007, when the Property was not in substantial compliance with D.C. housing regulations.). D.C. Official Code §§ 42-3502.08(a)(2) and 42-3509.02(a)(2) and (b)(4).

13. Housing Provider's behavior in allowing Tenants/Petitioners to live daily in a rodent infested apartment was an affront to the standards of decency that are necessary to a civil society. Rodent infestation is a serious unsanitary condition, which poses a serious threat to the public safety and health of human beings because some rodents are rabid. Just as rodent infestation is taken seriously as a public health concern when found in restaurants as food code violations, rodent infestation is also taken seriously when found in residential premises for a prolonged period of time without abatement because it is a public health concern.

14. In sum, the chronic mice and cockroach problems are inexcusable and unsanitary conditions, which the Housing Provider did not take seriously. In accordance with the Act, total fines of $20,000 will be imposed. *See Borger Mgmt., Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004). D.C. Official Code §§ 42-3502.08(a)(2) and 42-3509.02(a)(2) and (b)(4).

Final Order at 3 – 6; R. at 106 – 103.

With regard to the Order for Attorney's Fees, the ALJ held the following:

1. Under the Rental Housing Act of 1985, as amended, D.C. Official Code §§ 42-3501.01-3509.07 (the "Act"), the D.C. legislature has carved out an exception to the American Rule and has enacted the following provision pertaining to attorney's fees, D.C. Official Code § 42-3509.02:

> The Rent Administrator [now Administrative Law Judge], 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.

2. Based on the precise language of the Act, as set forth above, the decision to award reasonable attorney's fees to the prevailing party is discretionary. It is clear based on the [ ] Final Order entered on May 27, 2010, that the Tenants/Petitioners are the prevailing parties on most of their claims.

3. The rental housing regulations in Title 14, Chapter 38 of the District of Columbia Municipal Regulations ("DCMR" and hereinafter "Regulations"), also provide a basis for an award of attorney's fees to a prevailing tenant.

4. It cannot be disputed that Tenants/Petitioners are the prevailing parties on a significant portion of their claims because they obtained substantial relief on the merits as set forth in the Final Order. D.C. Official Code § 42-3509.02 also provides that the Rent Administrator [now Administrative

Law Judge], 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.

5. The ALJ held that to be deemed a prevailing party "it is necessary only that the [party] succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit." *District of Columbia v. Jerry M*, 580 A.2d 1270, 1274 (D.C. 1990) (quoting *Hensley v. Eckhart*, 461 U.S. 424, 433 (1983) (*quoted in Slaby v. Bumper*, TP 21,518 (RHC Sep. 21, 1995) at 14). In this case, Tenants prevailed on the majority on three major issues—1) their claim of illegal rent increases; 2) their claim that the 2007 rent increase was invalid because it was not properly filed with the Rental Accommodations Division; and 3) their claim of a substantial reduction in services. Thus, a decision was entered in their favor and against the Housing Provider after a full hearing on the merits. The ALJ found that the hours expended by Tenants' counsel and the hourly rates counsel seeks are reasonable for the work that was done. Counsel seeks compensation for a total of 21.7 hours of attorney time and 43.8 hours of student attorney time spent preparing for the scheduled hearings, including preparation of pleadings, trial preparation and communication with clients, working on direct and cross examination questions, and preparing witnesses for testimony. Supervising counsel also spent time attending mediation, editing and commenting on motion drafts, attending evidentiary [hearings], and preparing an Attorney's Fee Petition. The ALJ did not adjust the fees in the petition.

6. In applying the Laffey Matrix to this case, Tenants' counsel, Alysia Robben, a 2007 graduate of the University of the District of Columbia School of Law, and supervising attorney since 2008, should be compensated at a rate of $200 per hour, and her student co-counsel, who had not completed law school, should be compensated at a rate of $95 per hour. The ALJ found these rates are appropriate for attorneys with the years of experience of Ms. Robben, especially in light of the fact that her requested rate of $200 per hour is 12 percent less than the Laffey Matrix rate, which suggests, Ms. Robben should be billing at $225 per hour. Ms. Robben has also represented clients in at least eleven rental housing cases before the Office of Administrative Hearings ("OAH"). *See* Aff. of Alysia Robben. The Laffey Matrix rates as updated for 2010, are also consistent with rates that the Rental Housing Commission has approved for other attorneys practicing in the field.

7. The student attorneys Julie Akemann and Darren Schultz's rates are also reasonable because [they are] at least 30 percent less than the Laffey Matrix rate for comparable work based on their experience. The attorney's

fees are also reasonable because the amount of hours was based on counsel's contemporaneous timesheets kept while litigating the petition and was based on reasonable related tasks identified in his affidavit.

8. Having established the lodestar, the ALJ next considered whether the lodestar should be increased or reduced in consideration of the thirteen factors enumerated in 14 DCMR 3825.8(b).

9. In analyzing factor one, the ALJ concluded that the time and labor required should not be reduced below the 21.7 hours of attorney time and 43.8 hours of student attorney time. Tenants' secured legal representation on February 1, 2008. Tenants' counsel expended time interviewing their clients and witnesses and also prepared a listing of documents and witnesses in compliance with the Case Management Order. For these reasons, 21.7 hours of attorney time and 43.8 hours of student attorney time is reasonable to accomplish all of these tasks.

10. In assessing factor two, the lodestar remains at 21.7 hours of attorney time because the ALJ did not find this case to involve complex legal issues or questions of law. The simple issues at hand were whether or not there was a reduction in services and facilities, invalid rent increases, and prolonged violations. The ALJ concluded in assessing factor three, that this case did not require great skill to perform the legal services provided.

11. When assessing factor four, the preclusion of other employment by the attorney, due to acceptance of the case, the ALJ concluded that the 21.7 hours is still reasonable because it required no more than three to six court appearances of counsel. Factor five, assessing the customary fee or prevailing rate in the community for attorneys with similar experience has previously been addressed in the discussion explaining use of the Laffey Matrix. Also, based on the affidavit of Tenants/Petitioners' counsel, this was a fixed hourly rate case, not a contingent case. Therefore, the hourly assessment of 21.7 hours of counsel time and 43.8 hours of student attorney time was reasonable and will not be increased or reduced further. Since Tenants' counsel did not explain any time limitations imposed by the client or circumstances, the ALJ did not find a reasonable basis to increase the lodestar based on factor seven.

12. In assessing factor eight, the results obtained, Respondent was clearly successful in this regard; therefore, the 21.7 hours and 43.8 hours of student counsel time was reasonable. In assessing factor nine, the experience, reputation, and ability of the attorney, the ALJ did not adjust the lodestar. Tenants' counsel presented their arguments with competence and knowledge of the subject area. The ALJ did not reduce the lodestar based on factor ten, the undesirability of the case, because Tenants'

counsel did not address any undesirability of the case. Nor did Tenants' counsel discuss the nature and length of their professional relationship with their client in order to assess factor eleven. Tenants' counsel did not request any enhancement of the award based on any of these factors.

13. In assessing factor 12, the award is comparable to awards established in similar cases. *See, e.g., Dey v. L.J. Development, Inc.*, TP 26,119 (RHC Nov. 17, 2003) (awarding fees at a rate of $305 per hour in 2003); *Carter v. Davis*, TP 23,535 (RHC Dec. 11, 1998) at 7-8 (awarding attorney's fees of $115 per hour in 1998 for attorneys with less than five years of practice and $280 per hour for a senior supervising attorney). Finally, addressing factor 13, assessing the results obtained when the moving party did not prevail on all the issues, the ALJ concluded that this factor is applicable but no adjustment will be made because Tenants obtained substantial results in that it was successful on most of its claims. The lodestar should be supported and not increased or decreased based on factors 12 and 13.

14. In light of all of the aforementioned factors, the ALJ found that it is appropriate to maintain the lodestar amount in consideration of factors (1) through (13) of 14 DCMR 3825.8(b). Counsel vigorously and successfully pursued the claims in good faith, obtained a decision in their client's favor on the majority of their issues. Therefore, the ALJ awarded attorney's fees in the total amount of $9,951.00. This represents 10 hours at $345 per hour, 11.7 hours at $200 per hour for co-counsel's work, and 43.8 hours at $95 per hour for student attorney work. The ALJ found this to be a reasonable fee in consideration of the results obtained.

Order for Attorney's Fees at 1-9; R. at 288-96. Therefore, the ALJ granted the Tenant's Motion for Attorney's Fees and awarded attorney's fees in the amount of $9,951.00. Order for Attorney's Fees at 9; R. at 288.

II. ISSUES ON APPEAL

On June 9, 2010, the Housing Provider filed a timely notice of appeal with the Commission (First Notice of Appeal),[4] in which the Housing Provider raised the following issues concerning the Final Order:

1. In her [Final Order] Judge Barber found that Petitioners' unit has been subject to a continued infestation of rodents and cockroaches and as such held that Respondent improperly increased Tenants/Petitioners' rent in 2005, 2006, and 2007 and that Petitioners' suffered from a reduction in services and facilities from October, 2004 to June, 2008. The basis for Judge Barber's findings was the testimony of the Petitioners that Respondent did not address Petitioners' complaints as well as photographs of the Petitioners' unit. In reaching her findings Judge Barber held that the "inaction on the part of the Housing Provider was willful and egregious because these unsanitary conditions were never abated." ([Final Order], May 27, 2010, Pages 8 and 10). Judge Barber reached her findings despite the fact that Respondent introduced evidence that refuted Petitioner's testimony. Among other things, the evidence shows that while the District of Columbia Department of Regulatory and Consumer Affairs ("DCRA") issued violations with respect to the Petitioners' unit, the violations did not cite Respondent for the presence of rodents and cockroaches and that no enforcement actions were ever undertaken by DCRA against Respondent with respect to any rodent and/or cockroach infections within unit 609. In addition, the evidence showed that Respondent took efforts on numerous occasions to eradicate any presence of rodents and cockroaches from Petitioners unit above and beyond the normal course of pest control treatments each unit in the building received even though Respondent's pest control company did not find any presence of rodents and cockroaches in Petitioners' unit. In fact, the evidence introduced by Respondent clearly refuted Petitioners contention that Petitioner's unit suffers from an infestation of rodents and cockroaches. Accordingly, Judge Barber's finding of illegal rent increases and a reduction in services was not substantially supported by findings of facts or conclusions of law. Consequently, Judge Barber's refunding of rent and awarding a reduction in rent was arbitrary, capricious and legally erroneous.

2. Rather than just refunding Petitioners' rent and awarding a reduction in Petitioner's rent due to a purported reduction of services, Judge Barber improperly awarded treble damages. Section 42-3509.01(a) of the DC

[4] The Housing Provider also filed notices of appeal after the ALJ issued her first final order and her amended final order. See R. at 124-200. Because the operative decision in the case is the Final Order, the Commission will only address the issues raised in the appeals filed by the Housing Provider from the Final Order.

Code only permits an award of treble damages upon a finding of bad faith. The record does not contain evidence which reflects the culpable motive or intentional violation of law that is required to support an award of treble damages for bad faith violations under the District of Columbia Rental Housing Act. *See Vicente v. Jackson*, TP 27,616 (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," 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)). In fact, the record shows that Respondent undertook efforts on numerous occasions to address Petitioners' complaints. Accordingly, the finding by Judge Barber that Respondent acted in bad faith (and therefore subject to treble damages) was not supported by the evidence, findings of fact or conclusions of law. Consequently, Judge Barber's award of treble damages against the Respondent was arbitrary, legally erroneous and therefore should be reversed.

3. Judge Barber also imposed a civil fine of $20,000 ($5,000 for the finding of a reduction of services, $5,000 for the finding of an illegal rent increase in 2005, $5,000 for the finding of an illegal rent increase in 2006 and $5,000 for the finding of an illegal rent increase in 2007). Section 42-3509.01(b) of the DC Code permits the award of a civil fine of not more than $5,000 for each violation with respect to any person that is found to have willfully violated the District of Columbia Rental Housing Act. *Quality Mgmt. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 75 (D.C. 1986), explores the vast difference between knowing and willful conduct and states "it is clear that word 'willfully' as it is used in [§ 42-3509.01(b) of the DC Code] demands a more culpable mental state than the word 'knowingly' as used in [§ 42-3509.01(a) of the DC Code] .... There is a difference. 'Willfully' goes to intent to violate the law." As further discussed in *Ratner Mgmt. v. Tenants of Shipley Park*, TP 11,613 (RHC Nov. 4, 1988), findings of intent and conscious choice are necessary to meet the heavy burden imposed by [§ 42-3509.01(b) of the DC Code] and sustain a finding of willfulness. In sum, "a fine may be imposed under § 42-3509.01(b) only where the housing provider intended to violate or was aware that it was violating a provision of the Rental Housing Act." *Miller v. District of Columbia Rental Housing Comm'n*, 870 A.2d 556, 559 (D.C[.] 2005). There is nothing in Judge Barber's Final Order that suggests that she took into account the definitional distinction between "knowing" and "willful" acts. Judge Barber's findings that the Respondent's conduct was willful, a condition precedent before the imposition of statutory penalties under § 42-3509.01(b) of the DC Code, was not substantially supported by the evidence, findings of fact or conclusions of law.

Consequently, Judge Barber's assessment of a fine against the Respondent was arbitrary, capricious and legally erroneous.

4. Additionally, DC Official Code §42-3509.01(b) provides the trier of fact with discretion as to the amount of the statutory fine, up to $5,000.00. The fines imposed against the Respondent in the instant matter total $20,000.00, $5,000.00 for the reduction in services and facilities by failing to remedy the pest infestation and $15,000.00 for illegal rent increases in 2005, 2006, and 2007 while the Petitioners' unit was not in compliance with DC housing regulations. In the event that the court declines to reverse its improper imposition of the excessive statutory fines, the Respondent respectfully requests that the court, in light of the absence of any findings of bad faith, coupled with the evidence propounded by the Respondent of that it took efforts to ameliorate the conditions in question, substantially reduce the amount of the fine.

First Notice of Appeal at 1-4.[5]

On the same day, the Housing Provider filed another timely notice of appeal with the Commission (Second Notice of Appeal), in which the Housing Provider raised the following issues concerning the Order for Attorney's Fees:

1. On April 30, 2010 Petitioners' counsel filed a Motion for Attorney's Fees (the "Motion"). Neither Respondent or Respondent's counsel received a copy of the Motion and did not have the opportunity to file an opposition to the Motion.

2. On April 26, 2010, Respondent filed an appeal with respect to the Amended Order issues [sic] by Judge Barber. Judge Barber issued [sic] a [ ] Final Order on May 27, 2010 and on the date hereof the Respondent has filed an appeal of the [ ] Final Order. Attorney's fees, if warranted, may only be issued to a party that succeeds on any significant issues in litigation. In addition, the amount of attorneys fees that are awarded should be proportional (based on the total amount of hours of legal work) to the percentage of success. Until a decision is rendered in connection with the Appeal with respect to the [ ] Final

[5] The issues are stated in the same language as they appear in the First Notice of Appeal. See First Notice of Appeal at 1-4. The Commission in its discretion interprets the issues as follows: whether the ALJ's findings of illegal rent increases and a reduction in services were substantially supported by findings of fact or conclusions of law; whether the ALJ erred in determining that the Housing Provider acted in bad faith and is liable for treble damages; whether the ALJ erred in determining that the Housing Provider wilfully violated the Act under D.C. OFFICIAL CODE § 42-3509.01(b) (2001); whether the Commission, in the event that it declines to reverse the fines imposed pursuant to D.C. OFFICIAL CODE § 42-3509.01(b) (2001), may substantially reduce the amount of the fines.

Order, Petitioners' cannot be deemed to have succeeded with respect to any of the significant issues which are the subject of the complaint pursuant to which the [ ] Final Order was issued. Accordingly a decision as to appropriateness of attorneys' fees and the number of hours of legal work for which an award is made is premature.

3. The attorneys representing the Petitions in this matter are [two] supervising attorneys with the University of the District of Columbia and [two] law students. The amounts of hours for which Petitioners' counsel were awarded fees (21.7 hours for the supervising attorneys and 43.8 hours for the law students) is excessive. The representation of the Petitioners was, in part, a learning exercise. In making her award of attorney's fees, Judge Barber should have based the award on a reduced number of hours to account for the additional amount of time that was expended due to the make-up and nature of Petitioners' legal team. Judge Barber's failure to do so renders the amount of the award arbitrary, capricious and legally erroneous.

Second Notice of Appeal at 1-2.[6]

The Commission held a hearing on October 19, 2011.

III. DISCUSSION OF THE ISSUES

A. Whether the ALJ erred in determining that the Housing Provider had illegally raised the Tenants rent while substantial housing code violations existed and that the Housing Provider substantially reduced the Tenants' services.

The ALJ held that the Housing Provider illegally raised the Tenants' rent while substantial housing code violations existed and the Housing Provider also substantially reduced the Tenants' services. Final Order at 25, 28; R. at 257, 254. The Housing Provider argues on appeal that there is insufficient evidence to support the ALJ's findings of fact on these issues,

[6] The issues are stated in the same language as they appear in the Second Notice of Appeal. See Second Notice of Appeal at 1-2. The Commission in its discretion interprets the issues as follows: whether the ALJ committed error because neither Respondent nor Respondent's counsel received a copy of the Motion for Attorneys' Fees; whether the ALJ erred when she deemed the Tenants to have prevailed on issues that are still pending on appeal; and whether the amount of hours for which Tenant's counsel were awarded fees was excessive because the ALJ failed to base the award on a reduced number of hours to account for the additional amount of time that was expended due to the make-up and nature of Tenant's legal team.

and further, that the ALJ erred in concluding that the Housing Provider illegally raised the rent or that there was a reduction of services. See First Notice of Appeal at 1.

"We will defer to a hearing examiner's decision so long as it flows rationally from the facts and is supported by substantial evidence." 1773 Lanier Place, N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009) at 58 (citing Majerle Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 866 A.2d 41, 46 (D.C. 2004)). Moreover, "[t]he Commission will sustain a hearing examiner's interpretation of the Act unless it is unreasonable or embodies a material misconception of the law even if a different interpretation also may be supportable." Id. (citing Dorchester House Assocs. Ltd. P'ship v. D.C. Rental Hous. Comm'n, 938 A.2d 696, 702 (D.C. 2007)).[7] The Commission will address the claims of illegal rent increases and reduction in services separately.

1. Illegal Rent Increases

The rent stabilization provision of the Act provides, in relevant part, that:

> Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:
>
> (A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulations violation notices issued by the District of Columbia Department of

[7] The Commission's standard of review is well-established:

> [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 contains 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 § 3807.1 (2004).

> Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures . . . .[8]

D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A) (2001). The District's regulations define "'substantial compliance with the housing code'" as "the absence of any substantial housing violations as defined in § 103(35) of the Act,[9] including" the "[i]nfestations of insects or rodents . . . ." 14 DCMR § 4216.2(i) (2004).[10]

The Commission has held that "the crucial inquiry" for purposes of D.C. OFFICIAL CODE § 42-3502.08(a)(1) (2001) "is whether . . . [the] alleged substantial housing code violation exists at the time the rent increase is taken." Hamlin v. Daniel, TP 27,626 (RHC June 10, 2005) at 9 (quoting Hutchinson v. Home Realty, Inc., TP 20,523 (RHC Sept. 5, 1989) at 6); see also Stancil v. Carter, TP 23,265 (RHC July 31, 1997); Nwanko v. William J. Davis, Inc., TP 11,728 (RHC Aug. 6, 1986). Unsuccessful efforts to abate a violation do not legitimize a subsequent rent increase. See Jonathan Woodner Co. v. Enobakhare, TP 27,730 (RHC Feb. 3, 2005) at 5-6 (citing Hutchinson, TP 20,523) (noting that "a housing provider may not implement a rent increase for a rental unit in which substantial housing code violations exist, even where the

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[8] The ALJ also may hear testimonial evidence on substantial housing code violations pursuant to 14 DCMR § 4216.5 (2004) which provides:

> Evidence of substantial violations of the housing code may be presented to a hearing examiner by the testimony of parties, except that no tenant complaints of substantial violations shall be received in evidence in any hearing if the conditions giving rise to the complaint occurred and were abated more than twelve (12) months previously.

[9] The Act defines "substantial violation" as "the presence of any housing condition, the existence of which violates the housing regulations, or any other statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property." D.C. OFFICIAL CODE § 42-3501.03(35) (2001)

[10] "A tenant is not required to show that housing code violations listed . . . in 14 DCMR § 4216.2 (2004) threaten the tenant's health, safety or welfare." Drell, TP 27,344 at 40 (citing Covington v. Foley Props., Inc., TP 27,985 (RHC June 21, 2006) at 6; Vicente v. Jackson, TP 27,614 (RHC Sept. 19, 2005) at 17). "A tenant only has to present evidence that violations in the tenant's rental unit are also listed in 14 DCMR § 4216.2 (2004) to show that they are 'substantial.'" Drell, TP 27,344 at 40 (citing Covington, TP 27,985 at 6; Vicente, TP 27,614 at 17). "The housing code violations listed in 14 DCMR § 4216.2 (2004) 'are considered to be, in and of themselves, substantial.'" Drell, TP 27,344 at 44 (citing Covington, TP 27,985 at 6; Vicente, TP 27,614 at 17).

housing provider has made substantial, but unsuccessful, efforts to abate the violations"); see also Hutchinson, TP 20,523 (observing that "[it] is commendable if a housing provider makes efforts to abate a substantial violation, but efforts, alone, do not suffice"); Stancil, TP 23,265. However, a housing provider must have notice of the violation prior to the increase. See H.G. Smithy Co. v. Alston, TP 25,033 (RHC Sept. 30, 2003) at 10 (citing Gavin v. Fred A. Smith Co., TP 21,918 (RHC Nov. 18, 1992) at 4) (noting that "[a]lthough a housing provider may not raise rent for a rental unit if it and the common elements are not in substantial compliance with the housing regulations, this is only so if the housing provider has notice of the existing housing code violations"). As the Commission noted in similar circumstances, "[i]f the housing provider was first notified of the violations after the effective date of the rent increase, the rent increase is valid." H.G. Smithy Co., TP 25,033 at 7.

In the instant case, the ALJ made several critical factual findings relating to her holding that the Housing Provider illegally raised the Tenants' rent. The ALJ found in Findings of Fact 15-21 that the Housing Accommodation was infested with mice since 2004 and the infestation was not addressed by the Housing Provider. Final Order at 7-9; R. at 273-75. The ALJ found in Finding of Fact 27 that the Housing Accommodation was infested with roaches since 2004 and that extermination attempts were unsuccessful. Final Order at 10; R. at 272. The ALJ further found in Findings of Fact 23, 24, and 28 that the Tenants complained to a property manager for the Housing Provider about these problems multiple times, starting in 2004. Final Order at 9-10; R. 272-73. Based on these factual findings, the ALJ concluded that rent increases taken in 2005, 2006 and 2007, occurred when there was an infestation of mice and cockroaches. Final Order at 25; R. at 257. Accordingly, the ALJ held that the rent increases were illegal and ordered a refund. Final Order at 25-26; R. at 256-57. Because the Housing Provider has challenged the

factual support for these findings, the Commission will first review the record to determine if the findings are supported by substantial evidence in the record. See 14 DCMR § 3807.1 (2004).

The Commission determines that the record contains substantial undisputed evidence to support the foregoing factual determinations by the ALJ. Tenant Juana Lizama testified at the hearing held on May 7, 2008, that she saw approximately six to seven mice in her apartment every week. Hearing CD (OAH May 7, 2008). Her testimony included the following: (1) she has heard mice in her apartment every night since in 2004; (2) she saw many mice in her apartment starting in 2004; (3) she observed mice in her apartment in 2008 about as much as in 2004; (4) she saw an equal amount of mice in 2005; (5) she saw six to seven mice in her apartment every day in 2006; (6) she used four mouse traps per week; (7) she could not leave any food on the kitchen table and had to put all of her food in the refrigerator; (8) she saw roaches in her apartment every day; and (9) she saw roaches in her apartment every day from 2004 through the date of the hearing. Hearing CD (OAH May 7, 2008).

Ms. Lizama also testified as follows: (1) she told the property manager, Daisy Delcid, about the mice in 2004; (2) she told Delcid about the mice approximately four times per month in 2004; (3) she told Delcid about the mice each time she paid the rent; (4) she also told Delcid about the presence of mice in 2005 and 2006; (5) she told Delcid about the presence of cockroaches in the apartment in 2004; (6) she again told Delcid about the roaches in another unspecified year; and (7) she told Delcid that the people who fumigated the apartment building sometimes did not come to the unit and that the chemicals they used to fumigate were not working.[11] Hearing CD (OAH May 7, 2008).

[11] According to the DCAPA, "[a]ny oral and any documentary evidence" may be admissible as evidence so long as it is not "irrelevant, immaterial, and unduly repetitious." D.C. OFFICIAL CODE § 2-509(b) (2001). Hearsay can be

Tenant Jose Hernandez testified as follows: (1) he saw approximately ten cockroaches in his apartment every day; (2) he purchased approximately four cockroach traps per week; (3) there were a lot of cockroaches in the apartment in 2004; (4) he would see cockroaches in the apartment every day in 2004; (5) he would see cockroaches in the apartment all the time between 2005 and 2007; (6) he would see cockroaches whenever he was in the apartment in 2008; (7) he told Delcid about the cockroaches five or six times in 2004; (8) he told Delcid about the cockroaches four or five times in 2005; (9) he told Delcid about the cockroaches five or six times in 2006; (10) his apartment was treated once a year for cockroaches; and (11) he had seen cockroaches in the apartment on the day of the hearing. Hearing CD (OAH May 8, 2008).

Mr. Hernandez further testified: (1) mice had eaten food in the apartment several times; (2) he heard mice every night in the apartment; (3) he saw mice in the apartment two or three times per day when he was there during the weekends; (4) he saw mice in the apartment four to five times per week in 2004; (5) he saw mice in the apartment two times per week in 2005, 2006, and 2007; (6) he saw mice in the apartment three times per week, so far, in 2008; (7) he has heard mice in the apartment since 2005; (8) he told Delcid about the mice approximately five or six times in 2004 and 2005; (9) he told Delcid about the mice seven times in 2006; and (10) he last told someone about the presence of mice on January 2, 2007. Hearing CD (OAH May 8, 2008).

The Tenants submitted six photographs into the record depicting mice in the apartment. R. at 302-307. The Tenants also submitted into the record a letter they sent to the Housing Provider, dated August 22, 2007, concerning the rodent infestation in the Housing Accommodation. R. at 322-23.

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relied upon as "'substantial evidence' on which to base a finding of fact." Wisconsin Ave. Nursing Home v. D.C. Human Rights Comm'n. 527 A.2d 282 (D.C. 1987).

Based on the substantial undisputed evidence in the record, the Commission is satisfied that the ALJ properly found that the Housing Accommodation was infested with mice from 2004 through the date of the hearing and the Housing Provider has not abated the violation. See Final Order at 7; R. at 275; see also Woodner Co., TP 27,730; Hutchinson, TP 20,523. The Commission observes that the ALJ also properly found that, based on the substantial evidence in the record, the Housing Accommodation was infested with roaches since 2004 and that all extermination attempts had been unsuccessful. See Final Order at 10; R. at 272; see also Woodner Co., TP 27,730; Hutchinson, TP 20. Finally, the Commission notes that the ALJ properly found that, based on the substantial evidence in the record, the Tenants complained to the Housing Provider's property manager about these infestations starting in 2004 and, consequently, the Housing Provider had appropriate notice of the housing code violations. See Final Order at 9-10; R. at 272-73; see also Alston, TP 25,033. Accordingly, the Commission determines that substantial evidence in the record supports the ALJ's factual findings in the Final Order, regarding the substantial violations of the housing regulations during the period at issue in RH-TP-29,063, because they are supported by substantial evidence in the record. See 14 DCMR 3807.1 (2004).

In addition to challenging the factual findings in the Final Order, the Housing Provider asserts that the ALJ could not conclude, as a matter of law, that the Housing Provider illegally raised the rent in violation of D.C. OFFICIAL CODE § 42-3502.08 (a)(1) (2001). See First Notice of Appeal at 1. However, as discussed supra at sec. III(A)(1)., there is substantial evidence in the record in support of the ALJ's factual determination of an unabated mice and roach infestation in the Housing Accommodation since approximately 2004. Also, there is substantial record evidence in support of the ALJ's determination that the Housing Provider increased the Tenants'

rent in 2005, 2006 and 2007. R. at 314, 317-18, 320-21. Finally, there is substantial record evidence in support of the ALJ's determination that the Housing Provider was notified about the infestation before the rent increases occurred. See supra, at sec. III(A)(1). Based on the Commission's review of the substantial evidence in the record, see 14 DCMR 3807.1 (2004), the Commission is satisfied that the ALJ reasonably concluded that the Housing Provider illegally raised the Tenants' rent because substantial housing code violations existed at the time the rent increases were implemented and the Housing Provider had sufficient notice of the violations. See Final Order at 25-26; R. at 256-57; see also Hamlin, TP 27,626 at 9; Woodner, TP 27,730 at 5-6 (citing Hutchinson, TP 20,523); Stancil, TP 23,265; Alston, TP 25,033 at 10 (citing Gavin, TP 21,918 at 4).

Accordingly, the Commission affirms the Final Order.

2. Reduction of Services

The services and facilities provision of the Act currently provides:

> If the Rent Administrator determines that the related services[12] or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities.

D.C. OFFICIAL CODE § 42-3502.11 (2001).

For a tenant to successfully pursue a reduction or elimination of services claim, the Commission applies a three-prong test:

> First the tenant must provide evidence of a reduction and/or elimination of services, and the fact-finder must find that the housing provider eliminated or

[12] The Act defines "related services" as "services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse." D.C. OFFICIAL CODE § 42-3501.03(27) (2001).

> substantially reduced a service or services at the tenant's rental unit. Lustine Realty v. Pinson, TP 20,117 (RHC Jan. 13, 1989). Second, the tenant must establish the duration of the reduction in services, and present evidence to support his allegations. Daro Realty, Inc. v. 1600 16th St. Tenants' Ass'n, TP 4,637 (RHC Oct. 20, 1988) (*cited* in Cobb v. Charles E. Smith Mgmt., Co., TP 23,889 (RHC July 21, 1998). Third, the tenant must show that the housing provider had knowledge of the alleged reduction of services. Gelman Co. v. Jolly, TP 21,451 (RHC Oct. 25, 1990).

Drell, TP 27,344 at 40-41; see also Ruffin v. Sherman Arms, LLC, TP 27,982 (RHC July 29, 2005) at 9 (citing Ford v. Dudley, TP 23,973 (RHC June 3, 1999) at 5-6).

"The Commission has held that failure to provide services required by the housing code constitutes a reduction in services under the Act." Kuratu v. Ahmed, Inc., TP 28,985 (RHC Dec. 27, 2012) (citing Hemby v. Residential Rescue, Inc., TP 27,887 (RHC Apr. 16, 2004); Shapiro v. Comer, TP 21,742 (RHC Aug. 19, 1993)); see also Cascade Park Apts v. Walker, TP 26,197 (RHC Jan. 14, 2005) at 22 (quoting Shapiro v. Comer, TP 21,742 (RHC Aug. 19, 1993) at 20) ("[t]he reduction in services provision of the Act 'was drafted to ensure that housing providers provide services required by [the] D.C. Housing Code'."). Infestation of rodents or insects is a violation of the housing code, see 14 DCMR § 4216.2(i) (2004) (substantial compliance with the housing code means the absence of any substantial housing violations including rodent and insect infestation), and thus it constitutes a reduction of services. See Walker, TP 26,197 at 23 ("unabated rodent infestation constituted a reduction in services, because the housing provider did not provide services required by the housing code").

In the instant case, the ALJ concluded that the "Tenants/Petitioners met their burden of proof by a preponderance of evidence that services and facilities were reduced because of the rodent infestation problem . . . ." Final Order at 28; R. at 254. The ALJ held "that the Tenants/Petitioners did notify Housing Provider of the rodent problem in September 2004, as they did every month, and gave the Housing Provider a reasonable period of time until October

1, 2004 to correct the problem, which did not happen." Final Order at 31; R. at 251. The ALJ therefore awarded "a reduction in rent of $100 for the month of October 2004 through the final date of the hearing June 4, 2008, for the chronic and prolonged mice problem." Final Order at 31; R. at 251.

As discussed, supra, at sec. III(A)(1), there is substantial evidence in the record to support the ALJ's finding that there was an unabated rodent infestation, of which the Housing Provider had knowledge from 2004 through the date of the 2008 hearing which the Housing Provider knew about in 2004. The Commission is satisfied that there is substantial evidence in the record to support the ALJ's determination that a reduction in services occurred with respect to the rodent infestation of the Housing Accommodation, the duration of such reduction, and that the Housing Provider had been made aware of the reduction. See Smith v. Christian, TP 27,661 (RHC Sept. 23, 2005); Walker, TP 26,197 at 23-24; see also Drell, TP 27,344 at 40-41. The Commission thus determines that, based on the substantial evidence in the record, the ALJ reasonably concluded that the Tenants suffered a reduction of services. See Smith v. Christian, TP 27,661 at Walker, TP 26,197 at 23-24; see also Drell, TP 27,344 at 40-41.

Accordingly, the Commission affirms the Final Order on this issue.[13]

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[13] In opposition to the ALJ's conclusions that the Housing Provider illegally raised the Tenants' rent and substantially reduced their services, the Housing Provider asserts that it "introduced evidence that refuted the [Tenants'] testimony" and thus the conclusions were "not substantially supported by findings of facts or conclusions of law." First Notice of Appeal at 2. The Housing Provider specifically contends that DCRA issued violations that "did not cite [the Housing Provider] for the presence of rodents and cockroaches" and "the evidence showed that [the Housing Provider] took efforts on numerous occasions to eradicate any presence of rodents and cockroaches from [the Tenants'] unit . . . ." First Notice of Appeal at 2. These assertions do not persuade us for two reasons. First, inasmuch as there is substantial evidence in the record to support the ALJ's findings and conclusions of an unabated infestation throughout the relevant period, see supra at sec. III(A)(1)., the Housing Provider's contrary assertions are insufficient. "Where substantial evidence exists to support the hearing examiner's findings, even 'the existence of substantial evidence to the contrary does not permit the reviewing agency to substitute [its] judgment for that of the examiner.'" Hago v. Gewirz, TPs 11,552 & 12,085 at 6 (RHC Aug. 4, 2011) (citing WMATA v. D.C. Dep't of Emp't Servs., 926 A.2d 140, 147 (D.C. 2007)). Second, although the Housing Provider maintains that it made numerous efforts to eradicate the infestation, the Commission is unable to determine any substantial evidence in the record that the Housing Provider successfully abated it. See Hearing CDs (OAH May 7, 8, and June 4, 2008).

B. Whether the ALJ erred in determining that the Housing Provider acted in bad faith and is liable for treble damages.

The ALJ held the Housing Provider liable for treble damages pursuant to D.C. OFFICIAL CODE § 42-3509.01(a) (2001). Final Order at 31; R. at 251. According to the ALJ, the "Housing Provider's conduct in failing to address the rodent problem for a prolonged period of time by not taking aggressive steps to abate the problem from 2004-2007 was inexcusable and a heedless disregard for the health and safety of the tenants." Final Order at 31; R. at 251. The ALJ further held "that the evidence here supports a finding of bad faith by Housing Provider" because "[t]he record shows that Housing Provider rented Tenant [sic] an apartment that Housing Provider knew or should have known the Property required immediate extermination for rodents, and ignored Tenants' repeated requests to provide necessary extermination services to fully eradicate the rodent infestation problem that occurred daily." Final Order at 36-37; R. at 245-46. The ALJ concluded that "an award of treble damages is justified given the evidence of mice infestation, which has lasted for a prolonged period of time and never disappeared." Final Order at 36; R. at 246.

The penalty provision of the Act, in relevant part, provides:

> 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

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To the contrary, the Commission's review of the record indicates that the undisputed testimony at the hearing demonstrates that the infestation existed from 2004 through the 2008 hearing and had gone unabated. See supra at sec. III(A)(1). Furthermore, substantial but unsuccessful efforts by the Housing Provider to abate the infestation are insufficient defenses to claims of a reduction in services under the Act. See Jonathan Woodner Co., TP 27,730 at 5-6 (citing Hutchinson, TP 20,523) ("a housing provider may not implement a rent increase for a rental unit in which substantial housing code violations exist, even where the housing provider has made substantial, but unsuccessful, efforts to abate the violations"); Hutchinson, TP 20,523 ("It is commendable if a housing provider makes efforts to abate a substantial violation, but efforts, alone, do not suffice"); see also Parreco v. D.C. Rental Hous. Comm'n, 885 A.2d 327, 337 (D.C. 2005) (quoting 14 DCMR § 4211.6 (2004)) (there is a reduction of service "when the service is 'not promptly restored to the previous level'"); Walker, TP 26,197 at 14 ("housing provider's ineffectual efforts to alleviate the infestation by providing extermination services, does not obviate the substantial reduction in services"). Therefore, the Housing Provider's assertion that it attempted to eradicate the infestation is insufficient to reverse the conclusions in the Final Order.

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 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.

D.C. OFFICIAL CODE § 42-3509.01(a) (2001) (emphasis added).

This Commission has held that:

> In order to find that the housing provider acted in bad faith, and is consequently liable for treble damages, the record evidence must show that the housing provider knowingly violated the Act and engaged in egregious conduct. Knowing only requires knowledge of the essential facts which brings the conduct within the purview of the Act, and from such conduct, the law presumes knowledge of the resulting legal consequences. Quality Mgmt. Co. v. D.C. Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986) cited in Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990). The second prong of the analysis is whether the housing provider's conduct was sufficiently egregious to warrant the additional finding of bad faith. Fazekas v. Dreyfuss Brothers, Inc., TP 20,394 (RHC Apr. 14, 1989)). Bad faith is a continuing, heedless disregard of a duty. Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990).

Walker, TP 26,197 at 19-20.

The Commission also has observed that:

> Mere knowledge of housing code violations does not automatically constitute [bad] faith sufficient to justify an award of treble damages. The record must demonstrate that the housing provider knew the unabated housing code violations were substantial. Id. at 36 (citing Fazekas v. Dreyfuss Bros, Inc., TP 20,394 (RHC Aug. 16, 1993)).

Walker, TP 26,197 at 20.

The Commission applied both prongs of the bad faith analysis in Walker. The tenants in Walker "were subjected to severe rodent infestation for several years" and had given "notice of the rodent problem to the management regularly since January 1998." TP 26,197 at 20, 23. The Commission therefore held that the first prong of bad faith was met because "the housing provider knew that substantial housing code violations existed throughout the housing accommodation." Id. at 35. The Commission further held that the second prong of bad faith was

met because "the record reveals a continuing, heedless disregard of the duty to keep the rental units and common areas in substantial compliance with the housing regulations." Id. According to the Commission:

> The record revealed substantial evidence of chronic rodent infestation, constantly recurring trash, debris, and waste in the common areas, continual leaking pipes and collapsing ceilings, and the failure to provide air conditioning. Individually, these conditions evince a continuing and heedless disregard of the duty not to reduce services in a manner that affects the health, safety and security of the tenants. . . . The evidence surrounding each reduced service is sufficiently egregious to warrant the additional finding of bad faith. In totality, the conditions under which the tenants lived, and the housing provider's failure to abate the conditions, far exceed the standard for the imposition of treble damages.

Walker, TP 26,197 at 20 (emphasis added). See also Smith v. Christian, TP 27,661 at 12 (RHC Sept. 23, 2005) (finding that "[t]he housing provider knowingly violated the Act, and his conduct was sufficiently egregious to support the award of treble damages").

As discussed previously, the record contains substantial evidence that a rodent infestation lasted several years, still existed at the time of the 2008 hearing, and the Housing Provider did not abate the infestation despite being repeatedly informed about it starting in 2004. See supra at sec. III(A)(1). Inasmuch as the Tenants informed the Housing Provider about the infestation in 2004, the Housing Provider had knowledge of a substantial housing code violation, and thus meets the first prong of bad faith. See Walker, TP 26,197 at 20 (citing Fazekas, TP 20,394). Moreover, based on the nature of the violation, its length, and the Housing Provider's enduring failure to abate the infestation despite knowing about its existence, the Commission is satisfied that "these conditions evince a continuing and heedless disregard of the duty not to reduce services" and thus meets the second prong of bad faith. See Walker, TP 26,197 at 20 ("housing provider's failure to abate" severe rodent infestation for several years "far exceed the standard for the imposition of treble damages"). Therefore, the Commission determines that, based on the

substantial evidence in the record, the ALJ reasonably concluded that the Housing Provider "knowingly violated the Act and engaged in egregious conduct." Id.[14]

Accordingly, the Commission affirms the Final Order.

C. Whether the ALJ erred in determining that the Housing Provider wilfully violated the Act under D.C. OFFICIAL CODE § 42-3509.01(b) (2001).

The ALJ also concluded in the Final Order that the Housing Provider committed four (4) willful violations of the Act pursuant to D.C. OFFICIAL CODE § 42-3509.01(b) (2001) and assigned a statutory fine of $5,000 for each violation. Final Order at 34-35; R. at 247-48. According to the ALJ:

> [the] Housing Provider willfully violated the Act after being placed on notice of the chronic mice problem and not fully eradicating the problem in September 2004. The Housing Provider's actions in failing to fully eradicate the problem since 2004 did rise to the level of being willful, and in bad faith because it was egregious and a reckless disregard for maintaining and leasing an apartment in sanitary condition, *i.e.* intentional violation of the law, deliberate and the product of a conscious choice.

Final Order at 34-35; R. at 247-48 (emphasis in original). Therefore, the ALJ imposed "a civil fine of $5,000 for the substantial reduction in services due to the chronic mice problem that remains a problem in Tenants/Petitioners' unit, and impose[d] another $15,000 in fines for taking the illegal rent increases in 2005, 2006 and 2007, when the Property was not in substantial compliance with D.C. housing regulations." Final Order at 37; R. at 245.

The penalty provision of the Act provides, in relevant part, that:

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[14] The Housing Provider asserts on appeal that the finding of "bad faith" is "not supported by the evidence, findings of fact or conclusions of law" because "the record shows that [the Housing Provider] undertook efforts on numerous occasions to address [the Tenants'] complaints." See First Notice of Appeal at 2. The Commission observes, again, that "[w]here substantial evidence exists to support the hearing examiner's findings, even 'the existence of substantial evidence to the contrary does not permit the reviewing agency to substitute [its] judgment for that of the examiner.'" Hago, TPs 11,552 and 12,085 at 6 (citing WMATA, 926 A.2d at 147). The Commission is satisfied that because there is substantial probative evidence in the record supporting the ALJ's conclusion that the Housing Provider acted in bad faith, see supra at sec. III(B), "'the existence of substantial evidence to the contrary does not permit the [Commission] to substitute [its] judgment for that of the [ALJ].'" See Hago, TPs 11,552 and 12,085 (citing WMATA, 926 A.2d at 147).

> Any person who wilfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than $ 5,000 for each violation.

D.C. OFFICIAL CODE § 42-3509.01(b) (2001).

The District of Columbia Court of Appeals (DCCA) "has affirmed the Commission's interpretation of the term 'willfully' as a 'more culpable mental state' than the term 'knowingly.'" Drell, TP 27,344 at 87 (quoting Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 505 A.2d 73, 75 n. 6 (D.C. 1986)). "'[W]ilfully' goes to intent to violate the law. 'Knowingly' is simply that you know what you are doing." Quality Mgmt. Inc., 505 A.2d at 75 (quoting Council of the District of Columbia, Council Period 3, Second Session, 43rd Legislative Session at 88-83 (Nov. 14, 1980)). "The Act places a heavier burden [upon a tenant] under D.C. OFFICIAL CODE § 42-3509.01(b) of showing that a housing provider's conduct was 'intentional, or deliberate or the product of a conscious choice[.]'" Drell, TP 27,344 at 87 (quoting Ratner Mgmt. Co. v. Tenants of Shipley Park, TP 11,613 (RHC Nov. 4, 1988) at 4-5). "'[A] fine may be imposed . . . only where the housing provider intended to violate or was aware that it was violating a provision of the Rental Housing Act.'" Washington Cmtys. v. Joyner, TP 28,151 (RHC July 22, 2008) at 13 (quoting Miller v. D.C. Rental Hous. Comm'n, 870 A.2d 556, 559 (D.C. 2005)).

The Commission is satisfied that the ALJ reasonably concluded that the failure to abate the mice infestation constitutes a willful violation of the Act. See Final Order at 37; R. at 245. There is substantial evidence in the record that the Housing Provider knew about a rodent infestation in 2004 but had not abated it at the time of the 2008 hearing. See Supra at sec.

III(A)(1). The Commission determines that because the Housing Provider knew about the infestation, which constitutes an unlawful reduction of services, see Walker, TP 26,197 at 23; see also D.C. OFFICIAL CODE § 42-3502.11 (2001), the Housing Provider's ongoing failure to abate the infestation for several years was "'the product of a conscious choice[,]'" see Drell, TP 27,344 at 87 (quoting Ratner Mgmt. Co., TP 11,613 at 4-5), and demonstrates the Housing Provider was at least "aware that it was violating a provision of the Rental Housing Act." Joyner, TP 28,151 at 13 (quoting Miller, 870 A.2d at 559). See also Bernstein Mgmt. Corp. v. D.C. Rental Hous. Comm'n, 952 A.2d 190,

The Commission is equally satisfied that the ALJ reasonably concluded that the implementation of "illegal rent increases in 2005, 2006 and 2007, when the Property was not in substantial compliance with D.C. housing regulations" also constitutes willful violations of the Act under D.C. OFFICIAL CODE § 42-3509.01(b) (2001). See Final Order at 37; R. at 245. As previously discussed, there is substantial evidence in the record of a substantial housing code violation existing from 2004 through the date of the hearing in 2008. See supra at sec. III(A)(1). There is also substantial evidence in the record that the Housing Provider increased the rent in 2005, 2006, and 2007. R. at 314, 317-18, 320-21. Finally, there is substantial evidence in the record that the Housing Provider was notified about the violation numerous times and well before the rent increases occurred. See supra, at sec. III(A)(1).

It is well established that a housing provider is prohibited from implementing a rent increase while a known substantial housing code violation exists. D.C. OFFICIAL CODE § 42-3502.08(a)(1) (2001). Bearing this in mind, the Commission determines that because the Housing Provider was notified about a substantial housing code violation, it should have known that any subsequent rent increases would be illegal, see D.C. OFFICIAL CODE § 42-3502.08(a)(1)

(2001), and thus its decision to go ahead and implement the increases demonstrate that the Housing Provider was "aware that it was violating a provision of the Rental Housing Act." Joyner, TP 28,151 at 13 (quoting Miller, 870 A.2d at 559) (finding substantial evidence in the record of a willful violation where housing provider increased rent while substantial housing code violations existed). See Smith v. Christian, TP 27,661 at 11. ("The housing provider knowingly violated the Act, and his conduct was sufficiently egregious to support the award of treble damages.").

Accordingly, the Commission affirms the Final Order.

D. Whether the Commission, in the event that it declines to reverse the fines imposed pursuant to D.C. OFFICIAL CODE § 42-3509.01(b) (2001), may substantially reduce the amount of the fines.

The Housing Provider requests in its Notice of Appeal that, in the event that the Commission does not reverse the imposition of a $5,000 fine for each of the four (4) willful violations of the Act, that they instead be reduced "in light of the absence of any findings of bad faith, coupled with the evidence propounded by the Respondent of that it took efforts to ameliorate the conditions in question . . . ." See Notice of Appeal at 3-4. For the reasons set forth below, the Commission denies this issue and affirms the Final Order.

The Commission is unaware of any case wherein we have unilaterally reduced a fine imposed pursuant to D.C. OFFICIAL CODE § 42-3509.01(b) (2001). Instead, we have either affirmed or vacated the fine depending on whether the hearing examiner made findings of fact and conclusions of law supported by substantial evidence in the record. See e.g., Marguerite Corsetti Trust v. Segreti, TP 28,207 (RHC Sep. 18, 2012) ("the imposition of a $ 5,000 fine . . . flows rationally from the facts"); Joyner, TP 28,151 ("imposition of the $ 1,500 fine on the housing provider for 'willful' violation of the Act is supported by substantial evidence in the

record"); Walker, TP 26,197 ("[s]ince the hearing examiner did not issue findings of fact and conclusions of law on the issue of willfulness, the Commission vacates the fine and remands this matter"); Heidary v. Gomez, TP 27,179 (RHC Oct. 24, 2003) ("[i]n the absence of a finding that the housing provider willfully violated the Act, the Commission vacates the three $ 500.00 fines"); Gelman Mgmt. Co. v. Kuka, TP 27,442 (RHC Sep. 26, 2003) (Commission vacated fine because hearing examiner failed to make findings of fact and conclusions of law); Meyers v. Smith, TP 26,129 (RHC Mar. 17, 2003) (Commission reversed a fine because the hearing examiner failed to make findings of fact and conclusions of law); RECAP – Bradley Gillian v. Powell, TP 27,042 (RHC Dec. 19, 2002) ("there was no basis for the $ 500.00 fine under D.C. Official Code § 42-3509.01(b) (2001)" and thus "the $ 500.00 fine is vacated"); Rivera v. Swan Enterprises, TP 11,324 (RHC Mar. 26, 1985) ("[a]s to the $ 5,000 fine, we do not believe there is substantial evidence in the record to support a finding of a wilfull violation of the 1977 Act; nor did Examiner Underdue make the requisite findings of fact or conclusions of law that are necessary as a predicate for the imposition of a fine"). However, on at least one occasion, we have reduced a fine that the Commission itself imposed. See Montgomery v. Offurum, TP 27,676 (RHC May 11, 2005). In the instant case, the ALJ made findings of fact and conclusions of law that the Housing Provider wilfully violated the Act, and there is substantial evidence in the record supporting these conclusions. See supra, at sec. III(C).

Moreover, this Commission may reverse final decisions only when they are "based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record." 14 DCMR § 3807.1 (2004). The Act provides that any person that "wilfully" violates the Act "shall be subject to a civil fine of not more than $ 5,000 for each

violation." D.C. OFFICIAL CODE § 42-3509.01(b) (2001) (emphasis added). Inasmuch as the ALJ did not exceed this statutory limit for any one of the four (4) violations, see Final Order at 34-35; R. at 247-48, the Commission is satisfied that the ALJ did not abuse her discretion merely because she imposed the maximum civil fine permitted by the Act. See 14 DCMR § 3807.1 (2004).

Accordingly, the Commission dismisses this issue.

E. Whether the ALJ committed error because neither Respondent nor Respondent's counsel received a copy of the Motion for Attorneys' Fees.

Housing Provider's counsel on appeal, Attorney Erik Bolog, asserts that the "Order Granting Motion for Attorney's Fees" is "arbitrary, capricious, represent[s] an abuse of discretion" because "[n]either Respondent [nor] Respondent's counsel received a copy of the Motion and did not have the opportunity to file an opposition to the Motion." Second Notice of Appeal at 1. The applicable OAH rules provide: "All documents filed with the Office of Administrative Hearings shall be served on the other parties on the same day they are filed with the Office of Administrative Hearings." 1 DCMR § 2928.6 (2004). "When a party has a representative of record, service shall be made upon the representative." 1 DCMR § 2928.2 (2004).

The Commission notes that the record contains substantial evidence that Attorney Bolog did not receive a copy of the Motion for Attorneys' Fees. See 14 DCMR § 3807.1 (2004). The record contains a file-stamped copy of the Motion for Attorneys' Fees which was filed with OAH on April 30, 2010. Motion for Attorney's Fees at 1; R. at 233. The Motion for Attorneys' Fees certifies that a "true copy" of the motion was "mailed, via first class mail," on April 29, 2010, to "Kevin I. Kane, Esquire and Matthew H. Welty, Esquire at 110 North Washington St.,

Suite 500 Rockville, MD 20850" and not to Attorney Bolog. Motion for Attorney's Fees at 2; R. at 232.

However, while the record does not indicate that the Tenant sent a copy of the Motion for Attorney's Fees to Attorney Bolog, this omission does not lead the Commission to conclude that the ALJ erred in granting the Motion for Attorneys' Fees. The Commission's review of the OAH record indicates that only two attorneys represented the Housing Provider in the OAH proceedings before the ALJ: Attorneys Kane and Welty. R. at 88-93; 110-22. The Commission's review of the OAH record does not reveal any evidence of an appearance by Attorney Bolog.[15] Furthermore, the OAH record does not include a motion for withdrawal by Attorneys Kane and Welty. Inasmuch as the evidence in the OAH record does not indicate that Attorney Bolog entered an appearance before the ALJ, or that he had any status as a representative of the Housing Provider before the ALJ, the Commission is satisfied that the substantial evidence in the record indicates that he was not a "representative of record" under OAH Rule § 2928.2 (2004). See 14 DCMR § 3807.1 (2004). The Commission thus concludes that because its review of the OAH record indicates that Attorney Bolog was not a "representative of record," the Tenant was not obligated to serve Attorney Bolog with "[a]ll documents filed with the Office of Administrative Hearings" under OAH Rule § 2928.6 (2004).

Accordingly, the Commission affirms the Order for Attorney's Fees.

F. Whether the ALJ erred when she deemed the Tenants to have prevailed on issues that are still pending on appeal.

[15] We note that the Commission's record (but not OAH's record) includes a notice of appearance filed by Attorney Bolog. The appearance is file-stamped "Received Rental Housing Commission" with the date on April 26, 2010. See Notice of Appearance. Because the Notice of Appearance was not filed with OAH, the ALJ would have had no reason to believe that Attorney Bolog was a "representative of record" under OAH Rule § 2928.2 (2004) and that the Tenant should have served the Motion for Attorneys' Fees on Attorney Bolog.

The Housing Provider asserts that because the Final Order is being appealed, the Tenants are not prevailing parties, and thus, it was premature for the ALJ to grant the Motion for Attorneys' Fees. See Second Notice of Appeal at 2. The Act provides that "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 . . . ." D.C. OFFICIAL CODE § 42-3509.02 (2001). A prevailing party "is 'a party in whose favor a judgment is rendered, regardless of the amount of damages awarded.'" Walker, TP 26,197 at 35 (quoting BLACK'S LAW DICTIONARY, 1145 (7th ed. 1999)). The Act "creates a presumptive award of attorney's fees for 'prevailing tenants in both tenant-initiated and landlord-initiated proceedings.'" Loney v. D.C. Rental Hous. Comm'n, 11 A.3d 753, 759 (D.C. 2010) (quoting Hampton Courts Tenants' Ass'n v. D.C. Rental Hous. Comm'n, 573 A.2d 10, 13 (D.C. 1990)) (emphasis added); see also D.C. OFFICIAL CODE § 42-3509.02 (2001). Moreover, "prevailing tenants, regardless of their position in the litigation, should generally be awarded attorney's fees though these 'may be withheld, in the court's discretion, if the equities indicate otherwise.'" Tenants of 500 23rd Street, N.W. v. D.C. Rental Hous. Comm'n, 617 A.2d 486, 488 (D.C. 1992) (quoting Ungar v. D.C. Rental Hous. Comm'n, 535 A.2d 887, 892 (D.C. 1987)) (emphasis added); see also Walker, TP 26,197 (quoting Slaby v. Bumper, TPs 21,518 & 22,521 (RHC Sept. 21, 1995)) (a prevailing party "merely has to 'succeed on any significant issue which achieves some of the benefit the parties sought in bringing the suit.'"); Chamberlain Apartments Tenants' Ass'n v. 1429-51 Ltd. P'ship, TP 23,984 (RHC July 7, 1999) at 12; Ungar, 535 A.2d at 892.

Inasmuch as the Commission's review of the record indicates that the Tenants prevailed on every legal issue raised in the tenant petition in the proceedings below, the Commission is

satisfied that the ALJ correctly determined that the Tenants qualify as prevailing parties, and therefore, affirm the Order for Attorney's Fees.

G. Whether the amount of hours for which the Tenant's counsel were awarded fees was excessive because the ALJ failed to base the award on a reduced number of hours to account for the additional amount of time that was expended due to the make-up and nature of Tenant's legal team.

The Housing Provider argues on appeal that the ALJ erred because she "should have based the award on a reduced number of hours to account for the additional amount of time that was expended" since the Tenants were represented by student attorneys. See Second Notice of Appeal at 2. The Housing Provider asserts that the "failure to do so renders the amount of the award arbitrary, capricious and legally erroneous." See Second Notice of Appeal at 2.

The District's regulations provide that attorney's fees can be awarded for law students working under the supervision of an attorney. 14 DCMR § 3825.2 (2004). The Commission recently held that an award for student attorneys was reasonable because the student attorneys' hours "were substantially reduced to reflect the equivalent of a 'reasonable' number of hours that a practicing attorney in the 'specialized' field of rent control would have spent on the same tasks." Ahmed, Inc. v. Avila, TP 28,799 (RHC Jan. 29, 2013) at 5.

In the instant case, the Tenants' counsel reduced the number of hours sought for student attorneys by two-thirds because "a practicing attorney would likely have spent fewer hours . . . ." See Memorandum of Points and Authorities in Support of Petitioner's Motion for Attorney's Fees at 7; R at 225. Supervising attorney Edward Allen reduced the hours for one student attorney from 91.1 hours to 30 hours. See Memorandum of Points and Authorities in Support of Petitioner's Motion for Attorney's Fees at 7; R at 225. He also reduced the hours of another student attorney from 41.8 hours to 13.8 hours. See Memorandum of Points and Authorities in Support of Petitioner's Motion for Attorney's Fees at 7; R at 225. Following these reductions,

counsel sought total attorney's fees of $9,951. See Petitioner's Motion for Attorney's Fees at 1; R. at 233. The ALJ awarded this exact amount. See Order for Attorneys' Fees at 1; R. at 296.

The ALJ made the award of legal fees based upon a substantial reduction in the number of hours attributed to the student attorneys. Therefore, the Commission is satisfied that, contrary to the Housing Provider's argument on appeal, the ALJ relied upon substantial evidence in the record to make the award of attorney's fees to Tenants' counsel on the basis of "a reduced number of hours to account for the additional amount of time that was expended due to the make-up and nature of Petitioners' [Tenants'] legal team." See Notice of Appeal at 2.

Moreover, based on the substantial evidence in the record, the Commission is satisfied that the hours awarded "reflect the equivalent of a 'reasonable' number of hours that a practicing attorney in the 'specialized' field of rent control would have spent on the same tasks." Avila, TP 28,799 at 5.

Accordingly, the Commission affirms the Order for Attorneys' Fees.

IV. CONCLUSION

For the reasons stated herein, the Commission affirms the Final Order and the Order for Attorney's Fees.

SO ORDERED

RONALD A. YOUNG, COMMISSIONER

MARTA W. BERKLEY, COMMISSIONER

SZEGEDY-MASZAK, CHAIRMAN, concurring in part and dissenting in part:

In its discussion of the Housing Provider's Issue C ("[w]hether the ALJ erred in determining that the Housing Provider willfully violated the Act under D.C. OFFICIAL CODE § 42-3509.01(b) (2001)"), the majority affirms the ALJ's imposition of fines totaling $20,000. In the Final Order, the ALJ imposed the maximum amount of fines under the Act ($5,000) for each of the following violations: (1) a substantial reduction in services due to a mouse infestation; (2) taking an illegal rent increase in 2005; (3) taking an illegal rent increase in 2006; and (4) taking an illegal rent increase in 2007. *See* Final Order at 3-6; R. at 103-106.

The Commission has previously held that an ALJ's discretion regarding the imposition of fines is guided by the statutory maximum of $5,000, and will be upheld when those fines flow rationally from, and are based upon, substantial record evidence. *See* D.C. OFFICIAL CODE § 42-3509.01(b) (2001); Washington Cmtys. v. Joyner, TP 28,151 (RHC July 22, 2008) at 17 (citing Bernstein v. Estrill, TP 21,792 (RHC Aug. 12, 1991) at 5); Borgner v. Woodson, TP 11,848 (RHC June 10, 1987) at 11-15). In my view, the ALJ's imposition of fines in this case does not flow rationally from the substantial evidence in the record, insofar as it does not reflect the prevailing rule in this jurisdiction that the amount of a fine should be in proportion to both the seriousness of the offense, and any damages awarded as the result of such offense. *See* James v. United States, 59 A.3d 1233, 1238 (D.C. 2013); One 1995 Toyota Pick-Up Truck v. District of Columbia, 718 A.2d 558, 564 (D.C. 1998) (explaining that under the Eighth Amendment, excessive fines are unconstitutional because the gravity of the offense must be proportional to the severity of the punishment).

Here, the amount of rent refunds awarded to the Tenants related to the illegal rent increases taken in 2005, 2006, and 2007 total $1,200 while the statutory fines imposed upon the Housing Provider for these violations total $15,000. *See* Final Order at 3-6; R. at 103-106. Additionally, the amount of rent refunds awarded to the Tenants related to the reduction in services total $4,413.33, which was then trebled, while the statutory fine imposed upon the Housing Provider for this violation totals $5,000.[16] *See id.* My review of the record evidence used by the ALJ to support his determination of "willfulness" in this case does not support the amount of the fines imposed upon the Housing Provider. *See* Final Order at 3-6; R. at 103-106. *See also* D.C. OFFICIAL CODE § 42-3509.01(b) (2001);

I am unable to determine from my review of the record that the ALJ's imposition of the fines above is based upon, or flows rationally from, substantial evidence in the record. *See* D.C. OFFICIAL CODE § 42-3509.01(b) (2001); Washington Cmtys., TP 28,151 at 17 (citing Bernstein, TP 21,792 at 5); Borgner, TP 11,848 at 11-15. I would remand this issue to the ALJ with or without an evidentiary hearing for either further findings of fact with respect to "willfulness" as additional evidentiary support for the amount of the statutory fines currently imposed on the Housing Provider, or for adjustments to the current amount of fines as a more reasonable and accurate reflection of the current evidentiary support for the ALJ's determination of "willfulness" and subsequent imposition of fines. *See* Washington Cmtys., TP 28,151 at 17 (citing Bernstein, TP 21,792 at 5); Borgner, TP 11,848 at 11-15.

[16] In addition to imposing fines on the Housing Provider, the ALJ also trebled the damages awarded to the Tenants, under D.C. OFFICIAL CODE § 42-3509.01 (2001). The trebled damages based on the illegal rent increases in 2005, 2006, and 2007 total $3,600; the trebled damages based on the reduction in services total $13,200. *See* Final Order at 3-6; R. at 103-106.

Concurring in issues A, D, E, F, and G. Concurring only in result of issue B. Dissenting from issue C.

Accordingly, I respectfully dissent with respect to Issue C.

PETER SZEGEDY-MASZAK, CHAIRMAN

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-07-29,063 was mailed, postage prepaid, by first class U.S. mail on this **27th day** of **September, 2013** to:

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