

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,064

In re: 1315 Peabody Street, NW Unit 2-A

Ward Four (4)

AHMED, INC.
Housing Provider/Appellant

v.

JOSE OSMIN TORRES & LORENA LEIVA
Tenants/Appellees

ORDER DENYING MOTION TO WITHDRAW APPEAL

January 31, 2013

BERKLEY, COMMISSIONER. On September 13, 2007, Jose Osmin Torres and Lorena Leiva (Tenants) filed Tenant Petition 29,064, against Mollie Rosendorf, which was amended to Ahmed, Inc. (Housing Provider). They alleged that rent increases were taken while their unit was not in substantial compliance with the D.C. Housing Regulations, and services and facilities provided in connection with the rental of their unit had been substantially reduced in violation of the Rental Housing Act of 1985, D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). On March 20, 2008, the Tenants filed an Amended Petition raising the following allegations:

1. Rent increases taken in 2006 and 2007 were made while Tenants' unit was not in substantial compliance with the D.C. housing regulations.
2. Tenants' unit suffered from substantial and/or prolonged violations of the D.C. housing regulations;
3. Services and facilities provided as part of rent were substantially reduced, where the Housing Provider failed to remedy substantial and prolonged housing code violations.

4. Services and facilities provided as part of rent were substantially reduced where the Housing Provider has discontinued payment for electricity.
5. The rent ceiling filed with RACD for Petitioners' unit was improper.
6. The rent charged exceeded the maximum allowable rent for Tenants/Petitioners' unit; and
7. Rent increases taken in 2006 and 2007 were unlawful because the Housing Provider failed to certify to Petitioners that the Unit and common elements of the housing accommodation were in substantial compliance with the housing regulations.

On February 19, 2010, the Office of Administrative Hearings (OAH), Administrative Law Judge Claudia Barber (ALJ) issued a Final Order. In an Amended Final Order issued on April 15, 2010, the Housing Provider was ordered to pay the Tenants rent refunds, including interest in the amount of \$16,176.15. The ALJ also ordered that the rent be rolled back to \$570.00 per month as of July 1, 2006. In addition, the Housing Provider Park Lee Associates was ordered to pay the D.C. Treasurer fines in the amount of \$15,000.00. On April 15, 2010, the ALJ granted the Tenants' Motion for Attorneys' Fees and ordered the Housing Provider to pay Tenants' Counsel, the University of the District of Columbia David A. Clarke School of Law's Housing and Consumer Affairs Clinic, attorney's fees in the amount of \$12,648.55, within thirty days of the issuance of the order.

Settlement of litigation is to be encouraged. The court in Proctor v. D.C. Rental Hous. Comm'n, 484 A.2d 542 (D.C. 1984) required the Commission to consider: 1) the extent to which the settlement enjoys support among the affected Tenants, 2) the potential for finally resolving the dispute, 3) fairness of the proposal to all affected persons, 4) saving of litigation costs to the parties, and 5) difficulty of arriving at prompt final evaluation of merits, given complexity of law, and delays inherent in administrative and judicial processes. Id. at 548. When a case is

settled on appeal, the pending litigation will be considered moot, and further court action is unnecessary. Milar Elevator Co. v. D.C. Dep't of Emp't Servs., 704 A.2d 291 (D.C. 1997). The Commission is required to review all settlement agreements that withdraw appeals, 14 DCMR 3824.2 (2004). Cited in Zurlo v. Marra, TP 27,349 (RHC Jan. 21, 2004); Kellogg v. Dolan, TP 27,550 (RHC Feb. 20, 2003); Jefferson v. Hercules Real Estate, Inc., TP 27,478 (RHC Jan. 21, 2003).

In this appeal, the settlement agreement was unanimous because it had the support of both parties; however, the agreement does not appear to resolve all issues which arose as a result of the OAH Final Order in Torres v. Ahmed, Inc., RH-TP-07-29,064 (OAH Feb.19, 2010). The Consent Motion to Withdraw Appeal (Consent Motion) filed with the Commission on January 9, 2013, states that on December 14, 2012, the parties reached “a global settlement which settled issues between them in this case and other cases pending before the Office of Administrative Hearings and the D.C. Superior Court.” Consent Motion p. 1. The Consent Motion also states that the Housing Provider has met the terms of payment under “the Consent Order issued by the Office of Administrative Hearings Judge Tucker [sic], a copy of which is attached hereto as Exhibit A.” Consent Motion p. 1. The Commission’s record does not contain any evidence, however, that the Housing Provider paid the Civil Fines totaling \$15,000.00 imposed against the Housing Provider by ALJ Barber for failing to correct chronic mice and bed bug problems in the Tenants’ apartment. Moreover, the Consent Order was not attached to the Consent Motion and there is no evidence in the file that that the Civil Fines totaling \$15,000.00 were paid.

In Miller v. D.C. Rental Hous. Comm’n, 870 A.2d 556 (D.C. 2005), a tenant petitioned for review of the Commission’s decision to uphold a finding of statutory retaliation by the

housing provider and to vacate the fine which had been imposed by the ALJ. The District of Columbia Court of Appeals (DCCA) vacated that portion of the Commission's decision finding that "[a]bsent a holding by the RHC that no conclusion of willfulness could be made as a matter of law on this record, the proper course for it was not to strike the fine *simpliciter* but rather to return the case to the ALJ for findings of fact related to that issue." 870 A.2d at 558. The DCCA found that it was "handicapped in its review by the failure of petitioner to provide us with the transcript of the evidentiary hearing before the ALJ." 870 A.2d at 558 n.2. The court relied on its opinion in Cobb v. Standard Drug Co., 453 A.2d 110, 111 (D.C. 1982), where it noted that

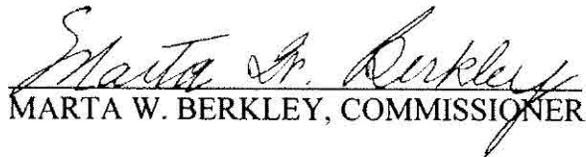
[a] losing party who notes an appeal from such a judgment bears the burden of 'convincing the appellate court that the trial court erred.' Harvey v. United States, *supra*, 385 A.2d at 37; *accord*, Higgins v. Carr Bros. Co., 317 U.S. 572, 574, 87 L. Ed. 468, 63 S. Ct. 337 (1943). In meeting that burden, it is appellant's duty to present this court with a record sufficient to show affirmatively that error occurred. T.B.T. Corp. v. Basiliko, 103 U.S. App. D.C. 181, 183, 257 F.2d 185, 187 (1958); *see* Palmer v. Hoffman, 318 U.S. 109, 116, 87 L. Ed. 645, 63 S. Ct. 477 (1943); Murchison v. Peoples Contractors, Ltd., 250 A.2d 920, 922 n.7 (D.C. App. 1969); Walker-Thomas Furniture Co. v. Jackson, 189 A.2d 123 (D.C. App. 1963). The responsibility of perfecting the record remains with appellant and 'cannot be shifted to either the trial court or this court.' Brown v. Plant, 157 A.2d 289, 291 (D.C. Mun. App. 1960).

Cobb, 453 A.2d at 111.

Pursuant to 14 DCMR § 3824.2 (2004), the parties may file a motion to withdraw an appeal, and the Commission shall review the motion to ensure the rights of all parties are protected. In reviewing the record in the instant case, the Commission does not have a basis for determining whether to dismiss this appeal. *See* Miller, 870 A.2d at 558. Therefore, the Consent Motion to Withdraw Appeal is dismissed without prejudice and the Housing Provider has thirty

(30) days to submit evidence that the global settlement of issues pending before the OAH and the D.C. Superior Court satisfied the OAH order to pay \$15,000.00 in Civil Fines.

SO ORDERED.


MARTA W. BERKLEY, COMMISSIONER

MOTIONS FOR RECONSIDERATION

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

JUDICIAL REVIEW

Pursuant to DC 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
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER DISMISSING APPEAL WITHOUT PREJUDICE ON SETTLEMENT** in RH-TP-07-29,064 was mailed, postage prepaid, by first class U.S. mail on this **31st day of January, 2013** to:

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