DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-08-29,478

In re: 1239 Vermont Avenue N.W., Unit 908

Ward Two (2)

JOSEPH BRATCHER
Tenant/Appellant

v.

CALVIN JOHNSON
Housing Provider/Appellee

DECISION AND ORDER

March 27, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH), based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).[1] The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the 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.

[1] OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversions Division (RACD) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01-1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the RACD were transferred to 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 § 42-3502.03(a) (2001 Supp. 2008).

I. PROCEDURAL HISTORY

On November 12, 2008, Tenant/Appellant Joseph Bratcher (Tenant), residing in Unit 908 at 1239 Vermont Avenue N.W. (Housing Accommodation), filed Tenant Petition RH-TP-08-29,478 (Tenant Petition) with RAD, claiming that the Housing Provider/Appellee Calvin Johnson (Housing Provider) violated the Act as follows: (1) the building where the Tenant's rental unit was located was not properly registered with the RAD; (2) the rent increase was larger than the increase allowed by any applicable provision of the Act; (3) the Housing Provider did not give the Tenant a proper 30 day notice of rent increase before the increase was charged; (4) the Housing Provider substantially reduced the services and facilities in connection with the Tenant's housing accommodation; (5) the Housing Provider took retaliatory action against the Tenant in violation of Section 502 of the Act; (6) the Housing Provider served the Tenant with a Notice to Vacate that violates Section 501 of the Act. *See* Tenant Petition at 1-2; Record for RH-TP-08-29,478 (R.) at 44-45.

On July 14, 2009, a hearing was held on the Tenant's Motion to Amend the Tenant Petition ("Motion to Amend"), and Administrative Law Judge Hines (ALJ) subsequently denied the Motion to Amend on the record at that hearing. R. at 147-48; Hearing CD (OAH July 14, 2009).

Evidentiary hearings were held before the ALJ on August 27, 2009 and October 20, 2009. On March 18, 2010, the ALJ issued the Final Order in this case: Bratcher v. Johnson, RH-

TP-08-29,478 (OAH Mar. 18, 2010) (Final Order) at 1-31; R. at 119-49. The ALJ made the following determinations in the Final Order:[2]

1. The Housing Provider lost his exemption status as an individual landlord on August 19, 2008, when he filed a claim of exemption form indicating that the property was owned by Calyndie Property Rentals, LLC. Final Order at 7; R. at 143.

2. Tenant prevails on his claim that his rental unit was not properly registered in violation of the Act, because the Housing Provider's claim of exemption was not valid. The penalty for violating this provision of the Act is an imposition of a fine under D.C. OFFICIAL CODE § 42-3509.01(b) (2001). There is no evidence that Housing Provider acted "willfully," within the meaning of D.C. OFFICIAL CODE § 42-3509.01(b), and therefore no fine is imposed on the Housing Provider. *See id.* at 8-9; R. at 141-42.

3. Tenant claimed that a rent increase on September 1, 2005, was greater than what is allowed by any applicable provision of the Act; Tenant filed the Tenant Petition on November 12, 2008, which is more than three years from the effective date of the challenged rent adjustment. Because the statute of limitations, at D.C. OFFICIAL CODE § 42-3502.06(e), has run on Tenant's claim, Tenant does not prevail. *See id.* at 9-10; R. at 140-41.

4. Tenant claimed that the Housing Provider failed to provide a proper 30 day notice of rent increase, for the rent increase effective on September 1, 2005. Tenant filed the Tenant Petition on November 12, 2008, which is more than three years from the effective date of the rent adjustment. Tenant does not prevail because the statute of limitations at D.C. OFFICIAL CODE § 42-3502.06(e) has run on his claim. *See id.* at 10; R. at 140.

5. Tenant claimed that a failure to return a parking space constituted a reduction in facilities, under D.C. OFFICIAL CODE § 42-3502.11. Pursuant to the parties' lease agreement, the use of the parking space was not authorized by the payment of the rent charged, and was therefore not a related facility under the Act. *See id.* at 11-12; R. at 138-39.

6. Tenant alleges that the swimming pool at the Housing Accommodation was not filled with water; the swimming pool is a facility that the Tenant was entitled to use because he was paying rent at the Housing Accommodation,

[2] The Commission recites herein a summary of the ALJ's conclusions on each of the issues raised in the Tenant Petition and discussed in the "Conclusions of Law" section of the Final Order. *See* Final Order at 6-23; R. at 127-44.

and thus a related facility under the Act. *See id.* at 12-13; R. at 138-37. The value of the reduction was $10.00 per week for the twelve-week pool season in 2006. *See id.* at 15-16; R. at 134-35. The Tenant did not prove the duration of the reduction in facilities during 2007, and thus is not entitled to any rent reduction for the 2007 pool season. *See id.* at 16; R. at 134.

7. Tenant claims that facilities in his unit were substantially reduced when a clothes dryer was removed from his unit. The clothes dryer was a facility that the Tenant was entitled to use because he was paying rent at the Housing Accommodation, and therefore a related facility under the Act. *See id.* at 13-14; R. at 136-37. The reduction was valued at $25.00 per month. *See id.* at 17; R. at 133.

8. Tenant claims that, within six (6) months of his attempt to enforce rights under his lease, the Housing Provider committed three (3) acts of retaliatory conduct: (1) filed complaints for possession for non-payment of rent in July and November 2008; (2) failed to allow Tenant to retain a pet in his unit; and (3) refused to return a parking space for the unit. *See id.* at 18-19; R. at 132-32. For each allegation of retaliation, the Housing Provider satisfied his burden of showing, by clear and convincing evidence, that his actions were not retaliatory. *See id.* at 19-21 R. at 129-31.

9. Tenant claims that the Housing Provider served a Notice to Vacate on April 1, 2008, that was in violation of Section 501 of the Act. *See id.* at 21; R at 129. The Notice to Vacate does not give the minimum time for the Tenant to vacate, and thus was an improper Notice to Vacate under the Act. *See id.* at 22; R. at 128. The penalty for violating this provision of the Act is an imposition of a fine under D.C. OFFICIAL CODE § 42-3509.01(b). There is no evidence that Housing Provider acted "willfully," within the meaning of D.C. OFFICIAL CODE § 42-3509.01(b), and therefore no fine is imposed on the Housing Provider. *See id.* at 22-23; R. at 127-128.

On May 27, 2010, the Tenant filed a timely Notice of Appeal for RH-TP-08-29,478 (Notice of Appeal). The Commission held the appellate hearing on April 12, 2012.

II. STANDARD OF REVIEW

The Commission's standard of review is derived from the DCAPA, *see* D.C. OFFICIAL CODE § 2-509 (2001), and provides the following:

> The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with

> the 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). "Substantial evidence" has been defined as such relevant evidence as a reasonable mind might accept as able to support a conclusion. *See* Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079 (D.C. 1994); Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012); Hago v. Gewirz, RH-TP-08-11,552 & RH-TP-08-12,085 (RHC Aug. 4, 2011). Where substantial evidence exists to support the ALJ'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." *See* WMATA v. D.C. Dep't of Emp't Servs., 926 A.2d 140, 147 (D.C. 2007); Young v. D.C. Dept. of Emp't Servs., 865 A.2d 535, 540 (D.C. 2005); Marguerite Corsetti Trust, RH-TP-06-28,207; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Turner v. Tscharner, TP 27,014 (RHC June 13, 2001) at 11. The Commission has consistently stated that its role is not to "weigh the testimony and substitute ourselves for the trier of fact who heard the conflicting testimony, observed the adversary witnesses, and determined the weight to be accorded their testimony." Fort Chaplin Park Assocs., 649 A.2d at 1079; Commc'n Workers of Am. v. D.C. Comm'n on Human Rights, 367 A.2d 149, 152 (D.C. 1976); Marguerite Corsetti Trust, RH-TP-06-28,207; Turner, TP 27,014 at 11; Gray v. Davis, TP 23,081 (RHC Dec. 7, 1993) at 5.

III. DISCUSSION OF ISSUES ON APPEAL

In assessing the Notice of Appeal, the Commission is mindful of the important role that lay litigants play in the Act's enforcement. *See, e.g.,* Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1298-99 (D.C. 1990); Cohen v. D.C. Rental Hous. Comm'n, 496 A.2d 603, 605 (D.C. 1985); Jackson v. Peters, RH-TP-12-28,898 (RHC Sept. 27, 2013) at n.23; Watkis v.

Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) at n.14. Courts have long recognized that *pro se* litigants can face considerable challenges in prosecuting their claims without legal assistance. Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C. 2010) (citing Hudson v. Hardy, 412 F.2d 1091, 1094 (D.C. Cir. 1968)). Nonetheless, "while it is true that a court must construe pro se pleadings liberally . . . the court may not act as counsel for either litigant." *See* Flax v. Schertler, 935 A.2d 1091, 1107 n.14 (D.C. 2007) (quoting In re Webb, 212 B.R. 320, 321 (Bankr. Fed. App. 1997)). As the DCCA has asserted, a *pro se* litigant "cannot generally be permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forego expert assistance." *See* Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d at 979 (quoting Dozier v. Ford Motor Co., 702 F.2d 1189, 1194 (D.C. Cir. 1993)).

The Commission's regulations require that a notice of appeal contain "a clear and concise statement of the alleged error(s)." 14 DCMR § 3802.5(b) (2004). The Commission may not review issues that are "vague, overly broad, or do not allege a clear and concise statement of error [in the Final Order]." *See, e.g.,* Barac Co. v. Tenants of 809 Kennedy St., N.W., VA 02-107 (RHC Sept. 27, 2013) (determining that "the Hearing Examiner used the wrong burden of proof" was not a clear and concise statement of an issue for appeal); Dejean v. Gomez, RH-TP-07-29,050 (RHC Aug. 15, 2013) (explaining that tenant's narrative recitation of facts related to the tenant petition failed to clearly identify an error made by the ALJ); Sellers v. Lawson, RH-TP-08-29,437 (RHC Nov. 16, 2012) (dismissing issue where housing provider merely stated that he was appealing the ALJ's order); Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012) (holding the following claims in the notice of appeal were not clear and concise statements of error: (1) "Housing Violations/Decreased Facilities," (2) "tenant Petition Addendum," and (3) "Due Process"); Tenants of 1460 Irving St., N.W. v. 1460 Irving

St., L.P., CIs 20,760-20,763 (RHC Apr. 5, 2005) (denying appeal issue where tenants failed to refer to any record evidence to reverse the decision of the hearing examiner on the challenged finding of fact); Norwood v. Peters, TP 27,678 (RHC Feb. 3, 2005) (denying appeal issues as too vague: (1) "[t]he findings of fact are not supported or logically related to the evidence...," and (2) "[t]he findings of fact are completely misapplied in this case"); Parreco v. Akassy, TP 27,408 (RHC Dec. 8, 2003) (dismissing as too vague issue alleging that the hearing examiner applied the wrong version of a regulation, where the housing provider failed to identify the specific regulation that was incorrectly applied).

The Commission observes that the Notice of Appeal filed by the Tenant contains twenty-nine (29) pages of almost exclusively narrative statements, presented in a manner that makes it extremely difficult for the Commission to discern any "clear and concise" statement of error on the part of the ALJ.[3] *See* Notice of Appeal at 1-29. The only non-narrative portion of the Notice of Appeal appears on page 2 of the document, and provides the following ten (10) numbered statements, which the Tenant contends form the basis of his appeal, as follows:[4]

1. Denial of Tenant[']s due process rights

[3] The Commission observes that, throughout the Notice of Appeal, the Tenant references his Motion for Reconsideration filed with OAH, and the ALJ's subsequent Order Denying Motion for Reconsideration. *See* Notice of Appeal at 1-29. The Commission has consistently held that it lacks jurisdiction to hear appeals from the denial of a motion for reconsideration, and thus lacks jurisdiction to consider whether the ALJ erred by denying the Tenant's Motion for Reconsideration in this case. *See, e.g.,* 14 DCMR § 4013.3 ("[t]he denial of a motion for reconsideration shall not be subject to reconsideration or appeal"); Totz v. D.C. Rental Hous. Comm'n, 474 A.2d 827, 828 (D.C. 1984) (holding that the District of Columbia Court of Appeals (DCCA) lacks jurisdiction to hear an appeal from a denial of reconsideration, but that it will treat an appeal from the denial of a motion for reconsideration as having been taken from the underlying final order) (citing Reichman v. Franklin Simon Corp., 392 A.2d 9, 11 n.3 (D.C. 1978)); Coleman v. Lee Washington Hauling Co., 388 A.2d 44, 45 (D.C. 1978) (citing 901 Corp. v. A. Sandler Co., 254 A.2d 411, 412 (D.C. 1969); De Levay v. Marvins Credit, Inc., 127 A.2d 554 (D.C. 1956)); Dreyfuss Mgmt., LLC v. Beckford, RH-TP-07-28,895 (RHC Sept. 27, 2013); Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012) at n.3; Sellers, RH-TP-08-29,437 at n.6.

[4] The issues that Tenant contends form the basis of his appeal are recited here using the Tenant's language in the Notice of Appeal. *See* Notice of Appeal at 2-3.

2. The ruling is incomplete

3. Ex parte communication

4. Judge[']s failure to perceive discretion

5. Findings of fact which were not part of the record and findings of fact which overlooked the Housing Provider[']s actual testimony

6. Judge[']s abuse of discretion

7. Legal error

8. Fraud

9. Incorrect calculation of award and interest

10. Denying Tenant[']s evidence of Housing Provider statements, given under oath in another case, regarding Tenant[']s rent and the parking spot.

See id. at 2-3. The Commission observes that the remainder of the Notice of Appeal does not contain any discernible reference to these numbered issues, and the Commission is unable to determine, based on its review of the Notice of Appeal, which portions of the lengthy narrative correspond to any particular numbered issue. *See generally, id.* at 1-29. The Commission notes that the ten (10) numbered issues, *supra*, do not reference any particular claim from the Tenant Petition, any particular finding of fact made by the ALJ in the Final Order, or any particular Conclusion of Law made by the ALJ in the Final Order. *See id.* at 2. Accordingly, the Commission determines that the ten (10) numbered issues in the Notice of Appeal do not provide a clear and concise statement of the ALJ's alleged error(s), and thus the Commission dismisses these issues on appeal. 14 DCMR § 3802.5; Barac Co., VA 02-107; Dejean, RH-TP-07-29,050; Sellers, RH-TP-08-29,437; Levy, RH-TP-06-28,830; RH-TP-06-28,835; Tenants of 1460 Irving St., N.W., CIs 20,760-20,763; Norwood, TP 27,678; Parreco, TP 27,408.

Nonetheless, despite the Tenant's narrative presentation of the issues in the Notice of Appeal, the Commission in the exercise of its discretion is satisfied that the Tenant does identify the following issues cognizable within the context and language of the Act which the Commission shall address:[5]

1. Whether the ALJ erred in denying the Tenant's Motion to Amend;[6]
2. Whether the ALJ erred in *sua sponte* raising the statute of limitations defense;[7]
3. Whether the ALJ erred in determining that the Housing Provider was exempt from the Act;[8]

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[5] *See, e.g.*, Dreyfuss Mgmt., RH-TP-07-28,895 (recasting the statement of the issues on appeal, consistent with the language in the notice of appeal); Watkis, RH-TP-07-29,045 (where the housing provider presented a narrative statement in the notice of appeal, the Commission, in its discretion, restated the issue to identify the allegation of error); Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012) at n.8 (restating issues on appeal where the tenant's notice of appeal provided a "disjointed narrative"); Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.9 (restating the Tenant's issue on appeal).

[6] The Commission, in its discretion, interprets the following language in the Notice of Appeal, in relevant part, as raising an allegation of error in the ALJ's denial of the Motion to Amend:

> The Tenant has stated from the beginning that once he realized what the 'Tenant Petition' involved, the deadline had passed to submit documents prior to the initial hearing. So, I amended the Petition immediately after the initial hearing. To allow the update would in no [sic] have caused the Housing Providers [sic] to suffer prejudice as it was several months before we reconvened . . . . Because the motion to the amended petition was denied, the Tenant is forced to file another petition regarding the housing code violations after this petition is completed, which does nothing but harm the Housing Provider, the Tenant and the Court due to time, resources and money . . . .

Notice of Appeal at 5-6. *See., e.g.*, Dreyfuss Mgmt., RH-TP-07-28,895; Watkis, RH-TP-07-29,045; Ahmed, Inc., RH-TP-28,799; Levy, RH-TP-06-28,830; RH-TP-06-28,835.

[7] The Commission, in its discretion, interprets the following language in the Notice of Appeal, in relevant part, as raising an allegation of error in the ALJ's decision to *sua sponte* raise the statute of limitations:

> In its ruling, the Court erred by disregarding well established case law and OAH and Superior Court Rules of Procedure by providing a Statute of Limitations defense for the Housing Provider, after Housing Provider and his attorney failed to plead the statute of limitations, thereby waiving the right to the affirmative defense.

Notice of Appeal at 11. *See., e.g.*, Dreyfuss Mgmt., RH-TP-07-28,895; Watkis, RH-TP-07-29,045; Ahmed, Inc., RH-TP-28,799; Levy, RH-TP-06-28,830; RH-TP-06-28,835.

[8] The Commission, in its discretion, interprets the following language in the Notice of Appeal, in relevant part, as raising an allegation of error in the ALJ's determination that the Housing Provider was exempt from the Act:

4. Whether the ALJ erred in the valuation of damages arising out of reductions in services and/or facilities.[9]

Notice of Appeal at 1-29. Accordingly, the Commission will proceed to address each of these four (4) issues in this Decision and Order.[10]

> At no point did Housing Provider claim a defense of being exempt from the Rental [sic] Control Act . . . . The landlord did not provide the documentation to the tenant as required by section 205(f) and (g)(1)(C), as stated in the tenant petition attachment PX 124 and therefore failed to satisfy the registration requirements under the Act . . . . As discussed in Pet R [sic] December 15, 2009. [sic] all rental increases above the rent ceiling would be illegal and should be returned to the Tenant.

Notice of Appeal at 22, 24. *See., e.g.,* Dreyfuss Mgmt., RH-TP-07-28,895; Watkis, RH-TP-07-29,045; Ahmed, Inc., RH-TP-28,799; Levy, RH-TP-06-28,830; RH-TP-06-28,835.

[9] The Commission, in its discretion, interprets the following language in the Notice of Appeal, in relevant part, as raising an allegation of error in the ALJ's valuation of the damages awarded arising out of reductions in services and/or facilities:

> As far as the pool, the court is all over the board, stating in its denial for reconsideration that Tenant had the opportunity to make arguments during the hearing and did not. Yet in the prior final ruling, Judge Hines states that she didn't find my testimony of $600/wk credible. I do not blame her I would not either. The Tenant never made that claim as the record will show. The Tenant Petition states $800-900, as well as Tenants testimony . . . . The record will clearly show . . . that the cost for the comparable pool next door is $800/season or 66.67/month for the years of 2006 and 2007 . . . .

Notice of Appeal at 19-20. *See., e.g.,* Dreyfuss Mgmt., RH-TP-07-28,895; Watkis, RH-TP-07-29,045; Ahmed, Inc., RH-TP-28,799; Levy, RH-TP-06-28,830; RH-TP-06-28,835.

[10] In addition to the four (4) identifiable issues, the Tenant states the following in the Notice of Appeal:

> This increase [$200.00 increase effective June 1, 2008, plus a demand for an additional $1,000 deposit] was discussed extensively. Tenant has an assisted living animal. The Landlord learned of the animal in April, 2008. The Landlord collected 2 months of rent without saying anything regarding the animal . . . . The ADA and the Fair Housing Act both prevent the Housing Provider from charging for an assisted living animal for a disabled Tenant, which I am. The Housing Provider then used this $1,400 'past due' amount to claim the Tenant was late in his rent during a discrimination case. The Tenant has a letter from a doctor regarding the Assisted Living animal . . . .

Notice of Appeal at 15-16. To the extent that this language contends that the ALJ erred by not addressing the applicability of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.* (2012), or the Fair Housing Act ("FHA"), 42 U.S.C. § 3601 *et seq.* (2012), to the claims in the Tenant Petition, the Commission is satisfied that the ALJ is without jurisdiction under the Act to specifically address the merits of the ADA and FHA claims, and that the ALJ's subsequent omission of any discussion of the ADA or FHA was in accordance with the provisions of the Act and was not arbitrary, capricious or an abuse of discretion. D.C. OFFICIAL CODE § 42-3502.04(c) (2001); 14 DCMR § 3807.1 (2004). *See, e.g.,* Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC

A. Whether the ALJ erred in denying the Tenant's Motion to Amend.

With reference to the ALJ's denial of his Motion to Amend, the Tenant asserts that he attempted to amend the Tenant Petition to include housing code violations and to "clean up the original Tenant Petition," and because he was unaware of a rent increase that was "supposedly served upon him in August of 2008." Notice of Appeal at 7-8. The Tenant additionally contends that the amendments to the Tenant Petition did not include any protected, privileged or confidential information that had been learned for the first time during the parties' mediation, and that allowing the amendment would not have caused any prejudice to the Housing Provider because the amendment was filed several months before the evidentiary hearings were held. *Id.* at 5, 10.

As detailed *supra* at 4-5, the Commission will uphold an ALJ's decision where it is in accordance with the provisions of the Act, and supported by substantial evidence. 14 DCMR § 3807.1. The Commission observes that the DCAPA proscribes the following requirements for contested cases, in relevant part:

> Every decision and order adverse to a party to the case, rendered by . . . an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantive evidence. A copy of the decision and order and accompanying findings and conclusions shall be given by the . . . agency . . . to each party or to his attorney of record.

D.C. OFFICIAL CODE § 2-509(e). Both DCCA and Commission precedent indicate that a case must be remanded where the decision and order fails to comply with the above-recited

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Dec. 23, 2013) (stating that the jurisdiction of the Rent Administrator and OAH is defined under the Act at D.C. OFFICIAL CODE § 42-3502.04(c) (2001)); Barac Co., VA 02-107 ("[t]he Act specifically delineates the jurisdiction of the Rent Administrator" at D.C. OFFICIAL CODE § 42-3502.04(c)).

requirements of the DCAPA. *See, e.g.* Butler-Truesdale v. Aimco Props., LLC, 945 A.2d 1170, 1171-72 (D.C. 2008) (citing Branson v. D.C. Dep't of Emp't Servs., 801 A.2d 975, 979 (D.C. 2002) ("[w]hen an agency has failed to consider and resolve each contested issue of material fact, we have remanded the case back to the agency for further proceedings); Morrison v. District of Columbia, 834 A.2d 890, 898 (D.C 2003) (quoting Branson, 801 A.2d at 979) ("[w]here an agency fails to address an issue presented to it, [the Court] generally 'remand[s] the case . . . for a determination'"); Branson, 801 A.2d at 979 (remanding where agency failed to address appellant's claim of an "unsafe working environment"); Washington, RH-TP-11-30,151 (remanding for a revision of the final order in compliance with the DCAPA, where the ALJ failed to make findings of fact on each issue, failed to base findings on substantial evidence, and failed to make conclusions of law that flowed rationally from the findings of fact).

The Commission observes that on July 14, 2009, a hearing was held on the Tenant's Motion to Amend. Hearing CD (OAH July 14, 2009). The Tenant and the Housing Provider were both present at the hearing. *Id.* Counsel for the Housing Provider opposed the Motion to Amend, alleging at the hearing that the added claims were based on confidential information learned during the parties' mediation session. *Id.* at 9:41-43. The Tenant denied using any information learned during mediation in the amendment of his Tenant Petition. *Id.* at 9:44-46. After hearing arguments from both parties, the ALJ stated the following on the record:

> I have heard oral argument as it relates to Tenant's motion to amend the Tenant Petition and Housing Provider's opposition to that amendment, and I have considered what the parties have said and I think, one, that first we have to consider that the parties did engage in mediation, and what Housing Provider is saying is during the course of that mediation some of the issues that Tenant wishes to include in his amended Tenant Petition were discussed in mediation. Tenant says that they were not, and given that mediation occurred on February 9th, and that Tenant amended, made a motion to amend the Tenant Petition on February 17th, and what Housing Provider was anticipating was a settlement

> agreement or a . . . motion for a new hearing and what he received was Tenant's amended Tenant Petition, motion to amend Tenant Petition, I do find that I will deny Tenant's motion to amend the Tenant Petition, and we will at this point set a new hearing, with Tenant's original Tenant Petition and the complaints stated therein.

Id. at 10:50-52. The Commission's review of the record reveals that the ALJ did not issue a written order on the Motion to Amend the Tenant Petition.

Based on its review of the record, the Commission is not satisfied that the ALJ's oral denial of the Motion to Amend at the July 14, 2009 was based on specific findings of fact supported by substantial evidence, and conclusions of law that were in accordance with the provisions of the Act. D.C. OFFICIAL CODE § 2-509(e); 14 DCMR § 3807.1; Hearing CD (OAH July 14, 2009) at 10:50-52. For example, the Commission is unable to discern any specific findings of fact supporting the ALJ's denial of the Tenant's Motion to Amend on the disputed grounds that the Motion to Amend was predicated upon non-specific, unidentified confidential information learned by the Tenant during mediation. *See* Hearing CD (OAH July 14, 2009). The Commission is particularly concerned about the lack of specific findings of fact on this disputed issue, where the nature of the Housing Provider's objection to the Motion to Amend – that it was based on confidential information learned by the Tenant during mediation and presumably disclosed in the Motion to Amend – made it difficult, if not impossible, for the Tenant to adequately rebut the objection without further specifying and disclosing the very confidential matters that formed the basis of the Housing Provider's objection.

Moreover, the Commission is unable to discern any conclusions of law made by the ALJ in her ruling, aside from the ultimate conclusion that the Motion to Amend is denied. D.C. OFFICIAL CODE § 2-509(e); 14 DCMR § 3807.1; Hearing CD (OAH July 14, 2009) at 10:50-52. Thus, the Commission is unable to determine whether the ALJ's denial of the Motion to Amend

is in accordance with the provisions of the Act, because the ALJ fails to cite either the specific factual basis for, and any statutory, regulatory, or other authority under the Act or otherwise to support her denial of the Motion to Amend. D.C. OFFICIAL CODE § 2-509(e); Hearing CD (OAH July 14, 2009) at 10:50-52. For example, the ALJ failed to reference, or otherwise mention, the regulatory standards governing the amendment of pleadings, *see* 14 DCMR § 4014.1, .2,[11] and failed to reference or otherwise mention the regulatory standards governing the admissibility of statements made during a mediation. *See* 14 DCMR § 3913.8.[12]

It is axiomatic that, where the record does not reflect that the ALJ made findings of fact and conclusions of law on each contested issue, the Commission is necessarily unable to determine whether the findings of fact are supported by substantial record evidence, whether the conclusions of law flow rationally from the findings of fact, and whether the decision is arbitrary, capricious, or an abuse of discretion. *See* D.C. OFFICIAL CODE § 2-509(e); 14 DCMR § 3807.1. (emphasis added) Based on its review of the record, the Commission determines that the ALJ's oral ruling on the Tenant's contested Motion to Amend at the July 14, 2009 OAH hearing was not in compliance with the DCAPA, because the ALJ failed to make findings of fact and conclusions of law in writing, as required by D.C. OFFICIAL CODE § 2-509(e). D.C.

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[11] 14 DCMR § 4014.1 provides the following, in relevant part:

> Any party may move to request . . . leave to amend a pleading if the motion is served on opposing parties and the Rent Administrator at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Rent Administrator.

14 DCMR § 4014.2 provides the following: "Motion shall set forth good and sufficient cause for the relief requested."

[12] 14 DCMR § 3913.8 provides the following: "Admissions of responsibility by either party or other stipulations required as an essential condition for making an agreement shall not be admissible in any adjudicatory proceedings under the Act, this subtitle, or any other administrative or judicial proceedings under provisions of District of Columbia law."

OFFICIAL CODE § 2-509(e); 14 DCMR § 3807.1; Hearing CD (OAH July 14, 2009) at 10:50-52.

Accordingly, the Commission remands this issue for further proceedings, as determined necessary in the discretion of the ALJ, to provide any additional evidence in support of, or in opposition to, the Tenant's Motion to Amend. Following any proceedings as determined necessary in the discretion of the ALJ, the Commission instructs the ALJ to prepare a written order with her decision regarding the Tenant's Motion to Amend, containing findings of fact and conclusions of law, in accordance with the DCAPA, and as described *supra*. Butler-Truesdale, 945 A.2d at 1171-72; Morrison, 834 A.2d at 898; Branson, 801 A.2d at 979; Washington, RH-TP-11-30,151.

B. Whether the ALJ erred in *sua sponte* raising the statute of limitations defense.

The Tenant states in the Notice of Appeal that the ALJ erred by "providing a Statute of Limitations defense for the Housing Provider, after [the] Housing Provider and his attorney failed to plead the statute of limitations, thereby, waiving the right to the affirmative defense." Notice of Appeal at 11.

The Commission's review of the record reveals that the Housing Provider did not object at the OAH hearings to any of the Tenant's testimony or evidence on the basis of the Act's statute of limitations.[13] Hearing CD (OAH Oct. 20, 2009); Hearing CD (OAH Aug. 27, 2009). Nevertheless, the Commission observes that the ALJ dismissed the following three (3) of the Tenant's claims on the basis of the Act's statute of limitations: (1) Tenant's claim that the

[13] The Act's statute of limitations is contained at D.C. OFFICIAL CODE § 42-3502.06(e) (2001 Supp. 2007), and provides the following:

> A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment . . . .

Housing Provider increased his rent on September 1, 2005 by an amount larger than allowed by the Act; (2) Tenant's claim that there was no proper 30 day notice of rent increase for the increase taken on September 1, 2005; and (3) Tenant's claim that services and/or facilities were substantially reduced as a result of the closure of the swimming pool at the Housing Accommodation during the 2005 pool season.[14] Final Order at 9-10, 12; R. at 138, 140-41. The Commission is satisfied based on its review of the record, that the ALJ did not reference, or

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[14] The Commission observes that the ALJ made the following conclusions of law, in relevant part, regarding the applicability of the statute of limitations:

> Tenant alleges that Housing Provider increased his rental amount larger than what is allowed by any applicable provision of the Act. When Tenant signed a new lease with Housing Provider on September 1, 2005, his rent went from $1,975 to $2,100 which is an increase of $125.
>
> Tenant filed the [T]enant [P]etition on November 12, 2008. No tenant petition may be filed with respect to any rent adjustment more than 3 years after the effective date of the adjustment. Tenant filed the [T]enant [P]etition on November 12, 2008, which is more than three years from the effective date of the rent adjustment which was September 1, 2005. Because the statute of limitations has run on Tenant's claim that Housing Provider increased Tenant's rent larger than what is allowed by any applicable provision of the Act, Tenant does not prevail.
>
> . . .
>
> Tenant alleges that Housing Provider did not provide a proper 30 day notice of rent increase before the increase was charged. The rent increase occurred when Tenant signed a new lease with Housing Provider on September 1, 2005 and Tenant's rent went from $1,975 to $2,100.
>
> Again, Tenant filed the [T]enant [P]etition on November 12, 2008. No tenant petition may be filed with respect to any rent adjustment more than 3 years after the effective date of the adjustment. Tenant filed the [T]enant [P]etition on November 12, 2008, which is more than three years from the effective date of the rent adjustment which was September 1, 2005. Because the statute of limitations has run on Tenant's claim that there was no proper 30 day notice of rent increase before the increase was charged, Tenant does not prevail.
>
> . . .
>
> Tenant claims that the swimming pool was not filled during the twelve week pool season in 2005. Tenant filed the [T]enant [P]etition on November 12, 2008 . . . . The summer months of 2005 would be more than three years prior to the filing date of the [T]enant [P]etition. The limitations provision of the Act prohibits the filing of a tenant petition "with respect to any rent adjustment more than 3 years after the effective date of the adjustment." The [T]enant [P]etition applies to rent adjustments that occurred November 12, 2005, and later. Therefore, Tenant's claim is beyond the statute of limitations period and is time barred.

Final Order at 9-10, 12; R. at 138, 140-41.

otherwise cite to, any legal basis under the Act, its regulations, or applicable case law precedent, that provides authority for the *sua sponte* dismissal of the Tenant's claims based on the Act's statute of limitations. *See id.*

The Commission observes that in the Notice of Appeal, the Tenant cites a federal rule of civil procedure, as well as a number of federal circuit court cases that stand for the proposition that the statute of limitations defense is waived if not raised by a party "in the first responsive pleading," and that it "ordinarily is error for a district court to raise the issue sua sponte." Notice of Appeal at 12-13 (citing, for example, Fed. R. Civ. P. 8(c);[15] Banks v. Chesapeake & Potomac Tel. Co., 802 F.2d 1416, 1427 (D.C. Cir. 1986); Santos v. District Council, 619 F.2d 963, 967 n.5 (2d Cir. 1980); Senter v. General Motors Corp., 532 F.2d 611 (6th Cir. 1976); Wagner v. Fawcett Publications, 307 F.2d 409, 412 (7th Cir. 1962)).

The Commission notes that, on the other hand, the DCCA has held that an ALJ may raise the statute of limitations issue *sua sponte*, although she is not required to do so, where the expiration of the limitations period is "'clear from the face of the complaint.'" Brin v. SEW Investors, 902 A.2d 784, 800 (D.C. 2004) (quoting Feldman v. Gogos, 628 A.2d 103, 104-105 (D.C. 1993)) (explaining that "as an affirmative defense, the burden of proof is on the defendant unless the claim is barred on its face"). *See also* Logan v. Lasalle Bank Nat'l Ass'n, 80 A.3d 1014, 1019-20 (D.C. 2013) ("[g]enerally, the statute of limitations is invoked as an affirmative defense . . . at the [D.C. Super. Ct. R.] 12 (b)(6) stage, a court should not dismiss on statute of limitations grounds unless the claim is time-barred on the face of the complaint"); Oparaugo v.

[15] The Commission notes that Fed. R. Civ. P. 8(c) ("[i]n responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including: . . . statute of limitations") is substantially similar to D.C. Super. Ct. Civ. R. 8(c), which provides, in relevant part, as follows: "[i]n pleading to a preceding pleading, a party shall set forth affirmatively . . . statute of limitations . . . and any other matter constituting an avoidance or affirmative defense . . . ."

Watts, 884 A.2d 63 (D.C. 2005) (citing Executive Sandwich Shoppe, Inc. v. Carr Realty Corp., 749 A.2d 724, 734 (D.C. 2000); Pekofsky v. Blalock, 175 A.2d 604, 605 (D.C. 1961)) (stating that the statute of limitations is an affirmative defense, and the party pleading it bears the burden of proof unless the claim is barred on its face). *C.f.* Gelman Mgmt. Co., RH-TP-09-29,715 (the Commission may not consider a statute of limitations defense raised for the first time on appeal).

In light of the conflicting legal authority and the ALJ's failure to provide the statutory or other legal grounds under the Act or otherwise for her *sua sponte* application of the Act's statute of limitations, where it was not raised as a defense by the Housing Provider, the Commission is unable to determine that the ALJ's resulting dismissal of three (3) of the Tenant's claims was not arbitrary, capricious, an abuse of discretion, or otherwise in accordance with the provisions of the Act. *See* 14 DCMR § 3807.1. *See also* Final Order at 9-10, 12; R. at 138, 140-41. The Commission notes the importance of the ALJ's identification of the legal grounds for her *sua sponte* action, since it resulted in the barring and forfeiture of three (3) major claims by the Tenant under the Act.

Accordingly, the Commission remands to the ALJ for further conclusions of law providing the statutory or other legal grounds under the Act or otherwise for the ALJ's decision to *sua sponte* bar the following three (3) claims in RH-TP-08-29,478 on the grounds of the Act's statute of limitations, D.C. OFFICIAL CODE § 42-3502.06(e), where the statute of limitations was not first raised as a defense by the Housing Provider: (1) Tenant's claim that the Housing Provider increased his rent on September 1, 2005 by an amount larger than allowed by the Act; (2) Tenant's claim that there was no proper 30 day notice of rent increase, for the increase on September 1, 2005; and (3) Tenant's claim that services and/or facilities were substantially reduced as a result of the closure of the swimming pool at the Housing Accommodation during

the 2005 pool season. *Compare* Banks, 802 F.2d at 1427, Santos, 619 F.2d at 967 n.5, Senter, 532 F.2d 611, *and* Wagner, 307 F.2d at 412, *with* Logan, 80 A.3d at 1019-20, Oparaugo, 884 A.2d 63, Brin, 902 A.2d at 800, *and* Pekofsky, 175 A.2d at 605. *See also supra* at 16.

If, upon review of the record on this issue, the ALJ determines that further evidentiary proceedings are required, the Commission further instructs the ALJ to conduct such proceedings as appropriate under the Act.

C. Whether the ALJ erred in determining that the Housing Provider was exempt from the Act.

The Tenant contends in the Notice of Appeal that the ALJ erred in determining that the Housing Provider was properly registered, because the Housing Provider did not provide the Tenant with proper notice of his claimed exemption, in violation of D.C. OFFICIAL CODE § 42-3505(f), (g)(1)(C). Notice of Appeal at 24. Furthermore, the Tenant asserts that Housing Provider's failure to give the Tenant proper notice of the exemption renders the exemption void ab initio. *See id.* at 15.

In the Final Order, the ALJ found that the Housing Provider filed two (2) claims of exemption, as follows: (1) on October 12, 2007, listing the owner of the Housing Accommodation as Calvin Johnson (the Housing Provider); and (2) on August 19, 2008, changing the name of the owner of the Housing Accommodation to Calyndie Property Rentals, LLC ("Calyndie LLC"). *See* Final Order at 6; R. at 144. The ALJ reasoned that when the Housing Provider transferred the ownership of the Housing Accommodation from himself to Calyndie LLC, a corporate entity, he lost his entitlement to claim the small landlord exemption from the Act. *See* Final Order at 6-7; R. at 143-44 (citing 14 DCMR § 4106.12, .13(a);[16] Price v.

[16] 14 DCMR § 4106.12 provides the following:

D.C. Rental Hous. Comm'n, 512 A.2d 263, 267 (D.C. 1986)). *See also* D.C. OFFICIAL CODE § 42-3502.05(a)(3).[17]

The Rent Administrator shall approve a claim of exemption under § 205(a)(3) of the Act, if it meets the following requirements:

(a) Where the rental unit for which exemption is claimed is owned by an individual who has an interest with no more than three (3) other natural persons in four (4) or fewer rental units;

(b) Where the exemption includes an affirmation that the claim is valid;

(c) Where the exemption includes the name and address of each person having a direct or indirect interest in the rental unit; and

(d) Where the exemption includes the address of all other housing accommodations or rental units located in the District of Columbia in which the owners, individually or collectively, have a direct or indirect interest, and the number of rental units in each housing accommodation.

14 DCMR § 4106.13(a) provides the following:

The Rent Administrator shall disapprove a claim of exemption under § 205(a)(3) of the Act, where the rental unit for which exemption is claimed is one of the following:

(a) If it is owned in whole or in part by a partnership or corporation, except as authorized by § 4107 of this subtitle or § 205(a)(3)(d) of the Act.

[17] D.C. OFFICIAL CODE § 42-3502.05(a)(3), which shall be referred to herein as either D.C. OFFICIAL CODE § 42-3502.05(a)(3) or the "small-landlord exemption," provides the following:

Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons;

(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;

The Commission's review of the record reveals that the ALJ did not make any findings of fact or conclusions of law regarding either the validity of the Housing Provider's claim of exemption that was filed on October 12, 2007, or whether the Housing Provider was properly registered prior to October 12, 2007. *See* Final Order at 3-23; R. at 127-47.

In order to qualify for the small-landlord exemption at issue in this case, the housing accommodation must be owned by "not more than 4 *natural persons*." D.C. OFFICIAL CODE § 42-3502.05(a)(3)(A) (emphasis added). *See* 14 DCMR § 4106.12, -.13(a). *See supra* at pp. 20, nn.15-16. In accordance with 14 DCMR § 4106.13(a), *see supra* at p. 20 n.16, the Commission has determined that corporations are not "natural persons" for purposes of the small-landlord exemption. *See* Shipe v. Carter, RH-TP-08-29,411 (Sept. 18, 2010) (citing Seaman v. D.C. Rental Hous. Comm'n, 552 A.2d 863, 865 n.6 (D.C. 1989)) (determining that where the housing provider was a limited liability company (LLC) it was not a "natural person" as required by the Act's small-landlord exemption). *See also* Price, 512 A.2d at 267[18] (affirming the Commission's

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> (D) The limitation of the exemption to a housing accommodation owned by natural persons shall not apply to a housing accommodation owned or controlled by a decedent's estate or testamentary trust if the housing accommodation was, at the time of the decedent's death, already exempt under the terms of paragraphs (3)(A) and (3)(B) of this subsection; and
>
> (E) For purposes of determining the eligibility of a condominium rental unit for the exemption provided by this paragraph, by § 42-3404.13(a)(3) or by § 42-4016(a)(3), a housing accommodation shall be the aggregate of the condominium rental units and any other rental units owned by the natural person(s) claiming the exemption.

[18] The DCCA in Price, 512 A.2d 263, interpreted the small-landlord exemption contained in the Rental Housing Act of 1980, at D.C. OFFICIAL CODE § 45-1516(a)(3) (1980). *See* Price, 512 A.2d at 266-67. The Commission observes that the text of D.C. OFFICIAL CODE § 45-1516(a)(3) (1980) containing the requirement that the housing accommodation be owned by "natural persons," is identical to the text of D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001), at issue in this case. *Compare* D.C. OFFICIAL CODE § 45-1516(a)(3)(A) (1980), *with* D.C. OFFICIAL CODE § 42-3502.05(a)(3)(A) (2001). D.C. OFFICIAL CODE § 45-1516(a)(3)(A) (1980) provides, in relevant part, the following:

> (a) Sections 45-1516(d) through 45-1530, except § 45-1528, shall apply to each rental unit in the District of Columbia except: . . .

determination that a housing accommodation owned by a partnership was ineligible for the small-landlord exemption, because a partnership is not a "natural person"); Marguerite Corsetti Trust, RH-TP-06-28,207 (determining that a revocable trust was not a "natural person" for purposes of the small-landlord exemption); Daly v. Tippett, TP 27,718 (RHC June 1, 2007) (affirming hearing examiner's determination that the owner of the housing accommodation, a living trust, did not qualify as a "natural person" for the small-landlord exemption).

The Commission has consistently held that the burden of proof is on the housing provider to prove eligibility for an exemption. *See, e.g.* Watkis, RH-TP-07-29,045; Brooks v. Jones, RH-TP-09-29,531 (RHC May 9, 2012) (citing Goodman, 573 A.2d 1293; Revithes v. D.C. Rental Hous. Comm'n, 536 A.2d 1007 (D.C. 1987)); Pena, RH-TP-06-28,817 (citing Revithes, 536 A.2d 1007; Best v. Gayle, TP 23,043 (RHC Nov. 21, 1996)); Mann Family Trust v. Johnson, TP 26,191 (RHC Nov. 21, 2005) (citing Revithes, 536 A.2d 1007).

A housing provider must provide "credible, reliable evidence" of eligibility for an exemption, and a mere assertion of exemption contained in a claim of exemption form, is not sufficient to satisfy the housing provider's burden of proof. *See, e.g.* Brooks, RH-TP-09-29,531 (affirming ALJ's determination that housing provider failed to prove exemption, where housing provider asserted they were exempt, but failed to present evidence of the filing of a claim of exemption form); Pena, RH-TP-06-28,817 (affirming ALJ's conclusion that housing provider qualified for an exemption, where the record reflected that the housing provider presented no

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> (3) [a]ny rental unit in any housing accommodation of 4 or fewer units, including any aggregate of 4 units whether within the same structure or not: Provided, that
>
> (A) such housing accommodation is owned by not more than 4 natural persons . . . .

The text of D.C. OFFICIAL CODE § 42-3502.05(a)(3)(A) (2001) is recited *supra*, at p. 20 n.16.

evidence on the issue of exemption); Johnson v. Am. Rental Mgmt. Co., TP 27,921 (RHC Sept. 30, 2005) (stating that "some evidence of the entitlement to an exemption must be presented at the . . . hearing, not merely an assertion, or a statement, or the Registration/Claim of Exemption Form").

The Act provides that a prerequisite to any valid claim of exemption from the Act is that proper notice of a housing accommodation's exempt status is given to the tenants. D.C. OFFICIAL CODE § 42-3502.05(d); 14 DCMR § 4106.8; Watkis, RH-TP-07-29,045 (affirming ALJ's conclusion that housing provider was not entitled to exemption because no evidence was introduced to show that tenant was given notice of the exemption); Levy, RH-TP-06-28,830; RH-TP-06-28,835 (reversing the ALJ's determination that the housing accommodation was exempt from the Act where the housing provider had failed to provide the tenant with proper notice under D.C. OFFICIAL CODE § 42-3502.05(d)); Daly, TP 27,718 (reversing where there was no evidence in the record to support hearing examiner's finding that the tenant was on notice of the housing provider's claim of exemption). The Commission has consistently held that failure to give a tenant notice of the exempt status of the housing accommodation renders the exemption void *ab initio*. *See, e.g.*, Watkis, RH-TP-07-29,045; Smith v. Christian, TP 27,661 (RHC Sept. 23, 2005); Butler v. Toye, TP 27,262 (RHC Dec. 2, 2004).

The Commission will uphold the ALJ's decision so long as it is in accordance with the provisions of the Act, and supported by substantial evidence. *See* 14 DCMR § 3807.1. *See also supra* at 4-5.

First, the Commission's review of the record supports the ALJ's finding that the Claim of Exemption Form filed on August 19, 2008, lists the owner of the Housing Accommodation as Calyndie LLC. *See* Final Order at 6-7; R. at 134-44; Respondent/Housing Provider's Exhibit

(RX) 203B; R. at 240. The Commission observes that the ALJ's finding that Calyndie LLC is a corporate entity, and thus not eligible to claim the small-landlord exemption, is in accordance with the provisions of the Act, and supported by ample case law precedent, as discussed *supra* at 21-22. *See* D.C. OFFICIAL CODE § 42-3502.05(a)(3)(A); 14 DCMR § 4106.12, 13(a); Price, 512 A.2d at 267; Marguerite Corsetti Trust, RH-TP-06-28,207; Shipe, RH-TP-08-29,411; Daly, TP 27,718. The Commission is thus satisfied that the ALJ's conclusion that, as of August 19, 2008 the Housing Provider was no longer exempt from the Act, is in accordance with the provisions of the Act and supported by substantial evidence. 14 DCMR § 3807.1. *See* Final Order at 6-7; R. at 143-44.

Second, the Commission is unable to determine whether the ALJ's conclusion that the Housing Provider was exempt from the Act prior to August 19, 2008, is in accordance with the Act, or supported by substantial evidence. 14 DCMR § 3807.1. The Commission observes that the only findings of fact or conclusions of law that the ALJ made regarding the validity of the Housing Provider's claim of exemption prior to August 19, 2008, were as follows:

> 2. Housing Provider filed the first Claim of Exemption form on October 12, 2007 listing the owner of the property as Calvin C. Johnson. RX 203A. The Rent Administrator shall approve a claim of exemption where the rental unit for which exemption is claimed is owned by an individual who has an interest with no more than three other natural persons in four or fewer rental units.

Final Order at 6; R. at 144.

The Commission's review of the Final Order reveals that the ALJ did not make any findings of fact or conclusions of law regarding whether the Housing Provider satisfied his burden of proof that he qualified for the small-landlord exemption, such as, for example, whether the Housing Provider proved that he owns four (4) or fewer rental units (D.C. OFFICIAL CODE §

42-3502.05(a)(3)), whether the Housing Provider proved that the Housing Accommodation is owned by four (4) or fewer natural persons (D.C. OFFICIAL CODE § 42-3502.05(a)(3)(A)), or whether the Housing Provider proved that the Tenant was given proper notice of the exemption (D.C. OFFICIAL CODE § 42-3502.05(d)). The Commission notes that this last requirement is especially important, because failure to give proper notice of the exemption to the Tenant renders the exemption void *ab initio*, even if the Housing Provider complied with all other requirements. D.C. OFFICIAL CODE § 42-3502.05(d); 14 DCMR § 4106.8; Watkis, RH-TP-07-29,045; Levy, RH-TP-06-28,830; RH-TP-06-28,835; Daly, TP 27,718; *See also* Smith, TP 27,661; Butler, TP 27,262.

Furthermore, the Commission's review of the Final Order reveals that the ALJ did not make any findings of fact or conclusions of law regarding whether the Housing Provider qualified for the small-landlord exemption at any time prior to October 12, 2007, where the relevant time period for the claims in the Tenant Petition under the Act's three (3) year statute of limitations extend to (at minimum) November 12, 2005. *See* Tenant Petition at 1; R. at 45. *See also* D.C. OFFICIAL CODE § 42-3502.06(e).

As the Commission explained at length, *supra* 11-12, the ALJ is required to make findings of fact and conclusions of law on each contested issue, and where she fails to do so, the Commission will remand for the ALJ to make such findings of fact and conclusions of law. D.C. OFFICIAL CODE § 2-509(e); Butler-Truesdale, 945 A.2d at 1171-72; Morrison, 834 A.2d at 898; Branson, 801 A.2d at 979; Washington, RH-TP-11-30,151. Having failed to make the requisite findings of fact and conclusions of law regarding the Housing Provider's claim of exemption for the entire relevant period prior to August 19, 2008, the Commission observes that it cannot perform its review function by determining whether the ALJ's conclusion was in accordance

with the Act or supported by substantial evidence. 14 DCMR § 3807.1. *See* D.C. OFFICIAL CODE § 2-509(e); Butler-Truesdale, 945 A.2d at 1171-72; Morrison, 834 A.2d at 898; Branson, 801 A.2d at 979; Washington, RH-TP-11-30,151.

Thus, the Commission remands for further proceedings related to the Housing Provider's claim of exemption. Specifically, the Commission instructs the ALJ to conduct such evidentiary proceedings, as determined necessary under the Act in the ALJ's discretion, to allow the ALJ to make further findings of fact and conclusions of law regarding whether the Housing Provider satisfied the statutory requirements under the Act for the small-landlord exemption, at D.C. OFFICIAL CODE § 42-3502.05(a)(3), for the entire period relevant to this Tenant Petition prior to August 19, 2008 (i.e., commencing on November 12, 2005).

D. Whether the ALJ erred in the valuation of damages arising out of reductions in services and/or facilities.

The Notice of Appeal contains a paragraph discussing facts related to the ALJ's valuation of the reduction in facilities arising out of the closing of the pool at the Housing Accommodation. Notice of Appeal at 19-20. The Tenant states, in relevant part, that:

> . . The record will clearly show that the Tenant made the claim that the pool was closed for the entire seasons of 2006 and 2007 and that the cost for the comparable pool next door is $800/season or [$]66.67/month for the years of 2006 and 2007. Rent does not go up and down based on when the pool is open. Housing [p]roviders determine its value and then spread that out over 12 months. Again, because the pool was closed the entire season, no partial seasons, determining weeks it is open a summer is pretty irrelevant. Now if it was closed only part of the summer, than a weekly value would absolutely make sense. You can search the internet for the Washington Plaza Hotel pool, half a block away, the same as the city pools and see in fact it was $800, of [$]66.67/month. To rate the value of a pool on your roof, which you can walk up a flight of stairs, barefoot, shirtless and with an adult drink, to a city pool packed with kids that you have to get dressed for and take Metro, is like comparing McDonalds to a steakhouse.

Id. In the Final Order, the ALJ found that the pool at the Housing Accommodation was closed for a twelve-week period in 2006, and valued the reduction in facility at $10.00 per week. *See* Final Order at 15-16; R. at 134-35. The ALJ stated that she did not find credible the Tenant's testimony that the value of the pool was $600, "because it is almost a third of his rent for use of a facility for a twelve-week period."[19] *Id.* at 16; R. at 134. Regarding the 2007 pool season, the ALJ found that the Tenant did not meet his burden of proof regarding the duration of the reduction in facility, and therefore did not award any damages for the closure of the pool in 2007. *See id.* The Commission determines that the ALJ's findings on this issue are in accordance with the applicable provisions of the Act, and are supported by substantial record evidence. 14 DCMR § 3807.1.

The Commission has consistently determined that an ALJ may fix the dollar value of a reduction in services and/or facilities without expert testimony or other direct testimony on the dollar value of the reduction once the existence, duration, and severity of the reduction in services is established. *See, e.g.,* Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013); 1773 Lanier Place, N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009); Jonathan Woodner Co. v. Enobakhare, TP 27,730 (RHC Feb. 3, 2005) (citing Norman Bernstein Mgmt., Inc. v. Plotkin, TP 21,182 (RHC May 8, 1989).

In this case, although the record reveals that the Tenant testified that the value of the pool closure was $600 per season,[20] *see* Hearing CD (OAH Aug. 27, 2009), the ALJ did not credit this

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[19] As the Commission explained, *supra* at 4-5, it is the duty of the ALJ to assess the credibility of witnesses, and the Commission will not substitute itself for the ALJ who had direct opportunity to assess witness testimony and credibility. *See, e.g.* Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Dec. 27, 2012); Marguerite Corsetti Trust, RH-TP-06-28,207; Ford v. Dudley, TP 23,973 (RHC June 3, 1999).

[20] The Commission's review of the record reveals that testimony offered by the Tenant at the OAH hearing regarding the value of the reduction in facilities, was that the Tenant requested a $900 reduction in his rent for

testimony,[21] and instead, in her discretion, determined the dollar value of the reduction in facility based on the "existence, duration, and severity" of the reduction. *See* Final Order at 15-16; R. at 134-35 (citing Norman Bernstein Mgmt. Inc. v. Plotkin, TP 21,282 (RHC May 10, 1989) at 5; Harris v. Wilson, TP 28, 197 (RHC July 12, 2005) at 5).

Where the record contains conflicting testimony, the Commission will not substitute itself for the ALJ who observed first-hand the testimony and other evidence introduced at the OAH hearing. *See* WMATA, 926 A.2d at 147; Fort Chaplin Park Assocs., 649 A.2d at 1079; Commc'n Workers of Am., 367 A.2d at 152; Marguerite Corsetti Trust, RH-TP-06-28,207; Turner, TP 27,014 at 11; Gray, TP 23,081 at 5. Furthermore, where substantial evidence exists to support the ALJ'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." *See* WMATA v. D.C. Dep't of Emp't Servs., 926 A.2d at 147; Young., 865 A.2d at 540; Marguerite Corsetti Trust, RH-TP-06-28,207; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Turner, TP 27,014. The Commission is thus satisfied, based on its review of the record, that the ALJ's determination that the value of the reduction in facility due to the closure of the pool during the twelve-week pool season during 2006 was $10.00 per week, was in accordance with the provisions of the Act, supported by the substantial evidence in the record, including the testimony of the parties at the OAH hearing, and was not arbitrary, capricious, or an abuse of

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September 2007, to compensate for the closure of the pool during the 2007 pool season, based on the cost of the swimming pool at a hotel next door to the Housing Accommodation. Hearing CD (OAH Aug. 27, 2009) at 3:27. Furthermore, the Tenant contended that, instead of agreeing to credit him $900 for the pool closure, the Housing Provider instead offered a one-time $600 "hardship credit." *See id.* The Commission's review of the record also reveals that the Housing Provider testified at OAH that he gave the Tenant a $600 credit for his September 2007 rent, because the Tenant was unable to pay his rent as a result of being recently hospitalized and losing his job, not to compensate for the closure of the pool. Hearing CD (OAH Oct. 20, 2009) at 4:10. 4:16-17.

[21] *See supra* at 4-5.

discretion, and thus affirms the ALJ on this issue. 14 DCMR § 3807.1; Morris, RH-TP-06-28,794; Drell, TP 27,344; Jonathan Woodner Co., TP 27,730; Hearing CD (OAH Aug. 27, 2009) at 3:27; Hearing CD (OAH Oct. 20, 2009) at 4:10, 4:16-17.

III. PLAIN ERROR

As stated previously, the Commission will defer to an ALJ's decision "so long as it flows rationally from the facts and is supported by substantial evidence." *See* 14 DCMR § 3807.1; Watkis, RH-TP-07-29,045 (citing Drell, TP 27,344); Eastern Savings Bank v. Mitchell, RH-TP-08-29,397 (RHC Sept. 28, 2012); Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009). While the Commission's review of an issue is typically limited to the issues raised in the notice of appeal, it may always correct "plain error." 14 DCMR § 3807.4. *See also,* Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994); Proctor v. D.C. Rental Hous. Comm'n, 484 A.2d 542, 550 (D.C. 1984); Gelman Mgmt. Co., RH-TP-09-29,715; Munonye v. Hercules Real Estate Servs., RH-TP-07-29,164 (RHC July 7, 2011); Drell, TP 27,344; Ford, TP 23,973.

A. Plain error in the ALJ's calculation of damages for the reduction in facilities arising out of the closure of the pool during the 2006 pool season

The Commission observes that in the Final Order, the ALJ determined that the closure of the pool at the Housing Accommodation for the twelve-week pool season beginning on June 19, 2006, constituted a reduction in facilities. *See* Final Order at 11-13; R. at 137-39. The ALJ additionally determined that the Tenant was entitled to a rent refund based on the reduction in facilities, for the entire twelve-week period, valued at $10.00 per week. *See id.* at 15-16; R. at 134-35.

The Commission notes that the Act was amended, effective August 5, 2006, by the "Rent Control Reform Amendment Act of 2006," D.C. Law 16-145 (Aug. 5, 2006), which amended the Act by eliminating the term "rent ceiling," and in its place, substituting the term "rent charged." *See* D.C. OFFICIAL CODE § 42-3502.06(a) (2001 Supp. 2007); D.C. Law 16-145 §§ 2(a) & (c), 53 D.C. Reg. at 4889, 4890 (2006). The Commission notes that prior to the amendment of the Act, the remedy for a reduction in services and/or facilities was an increase or decrease in the rent ceiling rather than the rent charged, and a tenant could only recover for a reduction in services and/or facilities if the rent charged exceeded the reduced rent ceiling. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001) (hereinafter, "pre-August 5 provision of § 42-3502.11").[22] Beginning on August 5, 2006, the remedy for a reduction in services and/or facilities is an increase or decrease directly to the rent charged to reflect the value of the reduction. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001 Supp. 2007) (hereinafter "post-August 5 provision of § 42-3502.11").[23]

Although the ALJ cited in the Final Order to both the pre-August 5 provision of § 42-3502.11 and the post-August 5 provision of § 42-3502.11, as the basis for her calculation of the rent refund resulting from a reduction in facilities, the Commission observes that the ALJ

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[22] The pre-August 5 provision of § 42-3502.11 provides the following:

> If the Rent Administrator determines that the related services 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 ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.

[23] The post-August 5 provision of § 42-3502.11 provides the following:

> If the Rent Administrator determines that the related services 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.

erroneously calculated the Tenant's rent refund for the entire twelve-week pool season beginning on June 19, 2006, on the basis of the post-August 5 provision of § 42-3502.11. *See* Final Order at 14-17; R. at 133-36. The Commission therefore vacates the ALJ's calculation of damages for this period for her failure to apply the pre-August 5 provision of § 42-3502.11 to damages that accrued from June 19, 2006 through August 4, 2006, and the post-August 5 provision of § 42-3502.11 to damages that accrued from August 5, 2006 onward, as described *supra*. 14 DCMR § 3807.1.

Accordingly, the Commission remands this issue for the ALJ to recalculate the Tenant's rent refund for the reduction in facilities arising out of the pool closure during the twelve-week pool season in 2006. The ALJ is instructed to determine whether the Tenant's rent charged was greater than his rent ceiling for the period of June 19, 2006 through August 4, 2006, after subtracting the value of the reduction in facility, $10 per week, from the rent ceiling, to reflect the pre-August 5, 2006 provision of § 42-3502.11 that was in effect during that period, as described *supra*.[24] If, after reducing the rent ceiling to reflect the value of the reduction in facilities, the Tenant's rent charged exceeds the rent ceiling, the ALJ is instructed to refund to the Tenant the difference between the two amounts for the period of June 19, 2006 through August 4, 2006. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001).

Furthermore, the ALJ is instructed to subtract the value of the reduction in facility, $10 per week, from the Tenant's rent charged for the period of August 5, 2006 through the end of the twelve-week pool season, to reflect the post-August 5 provision of § 42-3502.11 that was in

[24] The Commission observes that the ALJ made a finding of fact in the Final Order that there was no evidence in the record regarding the Tenant's rent ceiling. Final Order at 15; R. at 135. The Commission's review of the record, including testimony at the OAH hearing as well as the documentary evidence submitted by both parties, supports this finding. *See* Hearing CD (OAH Aug. 27, 2009); Hearing CD (OAH Oct. 20, 2009).

effect during that period, as described *supra*, and refund to the Tenant the $10 per week overcharge. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001 Supp. 2007).

B. Plain error in the ALJ's calculation of damages for the reduction in facilities arising out of the removal of a clothes dryer from the Tenant's unit

In the Final Order, the ALJ awarded the Tenant $25.00 per month for a reduction in facilities related to the removal of a clothes dryer from the Tenant's unit. Final Order at 133; R. at 17. The ALJ determined that the reduction began in November, 2008, and continued through February 9, 2009, which was the date of the initial OAH hearing.[25] *See id.* at 28; R. at 122.

The Commission's cases have consistently determined that an ALJ has jurisdiction to award a rent refund up to (and including) the date of the final evidentiary hearing. *See* United Dominion Mgmt. Co. v. Rice, RH-TP-06-28,749 (RHC Aug. 15, 2013); Drell, TP 27,344 (remanding final order for calculation of damages only to date of final evidentiary hearing in case involving multiple evidentiary hearing dates); Canales v. Martinez, TP 27,535 (RHC June 29, 2005) (determining that the hearing examiner erred when he awarded a refund to the tenant after the date of the evidentiary hearing); Zucker v. NWJ Mgmt., TP 27,690 (RHC May 16. 2005) (explaining that the refund of an improper rent adjustment may go up to the date of the hearing); Jenkins v. Johnson, TP 26,191 (RHC Nov. 21, 2005) (observing that "[t]he hearing examiner can award damages up to the date of the hearing for continuing violations."). Based on its review of the record, the Commission determines that the ALJ erred in only awarding the Tenant a rent refund up to and including February 9. 2009, and not up to and including October 20, 2009 which was the date of the final evidentiary hearing. *See* United Dominion Mgmt. Co.,

[25] The Commission notes that the February 9, 2009 OAH hearing was merely a preliminary hearing, at which neither party presented evidence related to the claims in the Tenant Petition. Hearing CD (OAH Feb. 9, 2009). The evidentiary hearings in this case were held on August 27, 2009, and October 20, 2009.

RH-TP-06-28,749; Drell, TP 27,344; Canales, TP 27,535; Zucker, TP 27,690; Jenkins, TP 26,191.[26]

Accordingly, with respect to the reduction in facilities for the removal of the clothes dryer, the Commission directs the ALJ to make the following designated correction to the findings of fact and conclusions of law: identifying October 20, 2009 as the date through which the Tenant is entitled to damages. 14 DCMR § 3807.1; United Dominion Mgmt. Co., RH-TP-06-28,749; Drell, TP 27,344; Canales, TP 27,535; Zucker, TP 27,690; Jenkins, TP 26,191. The Commission additionally vacates the ALJ's determination of the rent refund up to and including February 9, 2009, and instructs the ALJ to recalculate the rent refund from the reduction in facilities for removal of the clothes dryer up to and including October 20, 2009 which was the date of the final evidentiary hearing on RH-TP-08-29,478. *See* United Dominion Mgmt. Co., RH-TP-06-28,749; Drell, TP 27,344; Canales, TP 27,535; Zucker, TP 27,690; Jenkins, TP 26,191.

IV. CONCLUSION

The Commission remands to OAH for further proceedings, as determined necessary in the discretion of the ALJ, to provide any additional evidence in support of, or in opposition to, the Tenant's Motion to Amend. Following any proceedings as determined necessary in the discretion of the ALJ, the Commission instructs the ALJ to prepare a written order with her decision regarding the Tenant's Motion to Amend, containing findings of fact and conclusions of law, in accordance with the DCAPA, and consistent with the standards described *supra* at 10-15.

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[26] The Commission observes that the ALJ made no findings of fact or conclusions of law regarding the end-date of the rent refund; the only indication in the Final Order that the ALJ calculated the rent refund through February 9, 2009 is in Appendix B to the Final Order, a table showing the ALJ's calculation of the rent refund due to the Tenant arising out of the reduction in facilities for the removal of a clothes dryer. *See* Final Order at 28; R. at 122.

Butler-Truesdale, 945 A.2d at 1171-72; Morrison, 834 A.2d at 898; Branson, 801 A.2d at 979; Washington, RH-TP-11-30,151.

Regarding the issue related to the Act's statute of limitations, *see* D.C. OFFICIAL CODE § 42-3502.06(e), the Commission remands this issue to the ALJ for further conclusions of law providing the statutory or other legal grounds under the Act or otherwise for the ALJ's decision to *sua sponte* bar the following three (3) claims in RH-TP-08-29,478 on the grounds of the Act's statute of limitations, where the statute of limitations was not first raised as a defense by the Housing Provider: (1) Tenant's claim that the Housing Provider increased his rent on September 1, 2005 by an amount larger than allowed by the Act; (2) Tenant's claim that there was no proper 30 day notice of rent increase, for the increase on September 1, 2005; and (3) Tenant's claim that services and/or facilities were substantially reduced as a result of the closure of the swimming pool at the Housing Accommodation during the 2005 pool season. *Compare* Banks, 802 F.2d at 1427, Santos, 619 F.2d at 967 n.5, Senter, 532 F.2d 611, *and* Wagner, 307 F.2d at 412, *with* Logan, 80 A.3d at 1019-20, Oparaugo, 884 A.2d 63, Brin, 902 A.2d at 800, *and* Pekofsky, 175 A.2d at 605. *See also supra* at 16. If, upon review of the record on this issue, the ALJ determines that further evidentiary proceedings are required, the Commission further instructs the ALJ to conduct such proceedings as appropriate under the Act.

Regarding the exemption of the Housing Accommodation from the Act, the Commission remands for further proceedings. Specifically, the Commission instructs the ALJ to conduct such evidentiary proceedings, as determined necessary under the Act in the ALJ's discretion, to allow the ALJ to make further findings of fact and conclusions of law regarding whether the Housing Provider satisfied the statutory requirements under the Act for the small-landlord

exemption, at D.C. OFFICIAL CODE § 42-3502.05(a)(3), for the entire period relevant to this Tenant Petition prior to August 19, 2008 (i.e., commencing on November 12, 2005).

With respect to the ALJ's valuation of the rent reduction for the closure of the pool, the Commission is satisfied, based on its review of the record, that the ALJ's determination that the value of the reduction in facility due to the closure of the pool during the twelve-week pool season during 2006 was $10.00 per week, was in accordance with the provisions of the Act, supported by the substantial evidence in the record, including the testimony of the parties at the OAH hearing, and was not arbitrary, capricious, or an abuse of discretion, and thus affirms the ALJ on this issue. 14 DCMR § 3807.1; Morris, RH-TP-06-28,794; Drell, TP 27,344; Jonathan Woodner Co., TP 27,730; Hearing CD (OAH Aug. 27, 2009) at 3:27; Hearing CD (OAH Oct. 20, 2009) at 4:10, 4:16-17.

With respect to the ALJ's calculation of the appropriate rent reduction and refund resulting from the closure of the pool for the twelve week period commencing June 19, 2006, the Commission vacates therefore the ALJ's calculation of damages for this period for the ALJ's failure to apply the pre-August 5 provision of § 42-3502.11 to damages that accrued from June 19, 2006 through August 4, 2006, and the post-August 5 provision of § 42-3502.11 to damages that accrued from August 5, 2006 onward. *See* 14 DCMR § 3807.1. *See supra* at 29-31. The Commission remands this issue for the ALJ to recalculate the Tenant's rent consistent with the Commission's instructions *supra* at 31.

With respect to the reduction in facilities for the removal of the clothes dryer, the Commission directs the ALJ to make the following designated correction to the findings of fact and conclusions of law: identifying October 20, 2009 as the date through which the Tenant is entitled to damages. 14 DCMR § 3807.1; United Dominion Mgmt. Co., RH-TP-06-28,749;

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-10-29,478 was mailed, postage prepaid, by first class U.S. mail on this **27th day** of **March, 2014** to:

Joseph Bratcher
P.O. Box 34015
Washington, DC 20043

David Sidbury
33 R Street, NE, Suite B
Washington, DC 20002

LaTonya Miles
Clerk of Court
(202) 442-8949

Drell, TP 27,344; Canales, TP 27,535; Zucker, TP 27,690; Jenkins, TP 26,191. The Commission additionally vacates the ALJ's determination of the rent refund up to and including February 9, 2009, and instructs the ALJ to recalculate the rent refund from the reduction in facilities for removal of the clothes dryer up to and including October 20, 2009 which was the last date of the evidentiary hearing on RH-TP-08-29,478. *See* United Dominion Mgmt. Co., RH-TP-06-28,749; Drell, TP 27,344; Canales, TP 27,535; Zucker, TP 27,690; Jenkins, TP 26,191.

The ALJ is affirmed on all other issues.

SO ORDERED.

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, COMMISSIONER

CLAUDIA L. McKOIN, COMMISSIONER

MOTIONS FOR RECONSIDERATION

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

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed