DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-09-29,503

In re: 1412 Pennsylvania Avenue, S.E., Unit B

Ward Six (6)

EBONY HARDY
Tenant/Appellant/Cross-Appellee

v.

LOUIS SIGALAS
Housing Provider/Appellee/Cross-Appellant

DECISISON AND ORDER

July 21, 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 to -510 (2001), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941, 14 DCMR §§ 3800-4399 govern these proceedings.

[1] The OAH assumed jurisdiction over the conduct of hearings on tenant petitions from the Rental Accommodations and Conversion Division (RACD) and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Repl. 2007). The functions and duties of the RACD were transferred to the RAD by the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (Sept. 18, 2007) (codified at D.C. Official Code § 42-3502.03a (Repl. 2010)).

I. PROCEDURAL HISTORY

On December 23, 2008, Tenant/Appellant/Cross-Appellee Ebony Hardy (Tenant), residing in Unit B of 1412 Pennsylvania Avenue, S.E. (Housing Accommodation), filed Tenant Petition RH-TP-09-29,503 (Tenant Petition) with RAD, claiming that Housing Provider/Appellee/Cross-Appellant Louis Sigalas (Housing Provider) violated the Act as follows:[2] (1) "[t]he building where my/our rental unit(s) is located is not properly registered with the RAD;" (2) "[s]ervices and/or facilities provided as part of rent and/or tenancy have been substantially reduced;" and (3) "[a] Notice to Vacate has been served on me/us, which violates Section 501 of the Act." Tenant Petition at 1-2; Record (R.) at 16-17. An amended Tenant Petition (Amended Tenant Petition) was filed on April 28, 2009, making the following additional claims: (4) "[t]he rent increase was larger than the increase allowed by any applicable provision of the Act;" (5) "[t]he landlord (housing provider) did not file the correct rent increase with the RACD;" (6) "[t]he rent increase was made while my/our units were not in substantial compliance with DC Housing Regulations;" and (7) "[t]he landlord (housing provider), manager, or other agent has taken retaliatory action against me/us in violation of Section 502 of the Act." Amended Tenant Petition at 1-2; R. at 72-73.

On May 7, 2009 Administrative Law Judge Caryn L. Hines (ALJ) issued an order granting the Tenant's motion to amend the Tenant Petition. Hardy v. Sigalas, RH-TP-09-29,503 (OAH May 7, 2009). Hearings were held on May 11, 2009, June 8, 2009, July 13, 2009, and July 27, 2009. Final Order at 2; R. at 167. On August 26, 2010, the ALJ issued a final order,

[2] The claims are recited herein using the language of the Tenant Petition and the Amended Tenant Petition, respectively.

Hardy v. Sigalas, RH-TP-09-29,503 (OAH Aug. 26, 2010) (Final Order). The ALJ made the following findings of fact in the Final Order:[3]

1. The Housing Accommodation is the second floor apartment, Unit B, of a two floor building located at 1412 Pennsylvania Avenue, SE.

2. Tenant entered into a lease with Housing Provider and paid monthly rent of $1,050 on November 19, 2007. Petitioner's Exhibit (PX) 103. Tenant's rent has remained the same throughout her tenancy.

3. Housing Provider showed Tenant the rental unit prior to her signing the lease.

4. Housing Provider filed a claim of exemption form on August 7, 1985 with DCRA, because Housing Provider holds and operates four or fewer rental units. PX 105. Housing Provider did not notify Tenant about the exemption until February 18, 2009, when he posted the exemption at the unit.

5. Darin Drakeford lived in the Unit from 2000 to 2006 and paid $800.

6. In November 2007, Tenant complained to Housing Provider that the heating system was not working. Housing Provider sent repair personnel in February 2008, but the problem persisted. Respondent's Exhibit ("RX") 202.

7. Tenant used the oven to heat the apartment during the winter of 2007 and 2008.

8. In October 2008, Tenant informed Housing Provider that the heating system was not working again. Tenant reported the problem to the DCRA, who sent a housing inspector on December 10, 2008, and cited Housing Provider for not providing adequate heat. PX 100. Housing Provider sent repair personnel to work on the heating system on December 12, 2008 and December 23, 2008.

9. The heating system worked in January 2009, but stopped working about a month later. Tenant warmed her apartment with space heaters during the winter[s] of 2008 and 2009. PX 144.

10. Tenant notified Housing Provider that there was a crack in the ceiling of the common area outside of the apartment, which caused leaks in the kitchen and the hallway of the unit in June 2008. PX 130. Housing Provider repaired the crack in December 2008. PX[s] 100, 101, 102.

[3] The ALJ's findings of fact are recited herein using the language of the Final Order.

11. The walls in the back bedroom get wet when it rains resulting in peeling paint and plaster. PXs 102, 128, 129.

12. Tenant hammered a nail in the plaster wall and created a hole in the bedroom wall. Tenant never notified Housing Provider about the hole.

13. Rain seeped in from the broken window seal, causing dampness on the bedroom wall. The window seal was broken because Tenant removed the window bars to gain access to the roof balcony. The dampness in the bedroom wall was caused because rain seeped in from the broken window seal. RXs 208, 209, 210, 212.

14. The unit did not have smoke detectors. There was a smoke detector in the common area that did not work and was not properly secured to the ceiling. Tenant notified Housing Provider that the unit lacked smoke detectors in November 2007. Housing Provider installed smoke detectors in December 2008. PX 100. Tenant took the smoke detectors down because they were going off constantly. Tenant did not notify Housing Provider that the smoke detectors were malfunctioning.

15. The bedroom and the bathroom door knobs locked. Tenant was locked in the bedrooms and the bathroom in the first week after moving in on November 19, 2007, and told Housing Provider as soon as she got out. PX 102. Housing Provider replaced the knobs in late December 2008.

16. Tenant notified Housing Provider in February 2008 that the refrigerator malfunctioned. PXs 100, 102. Housing Provider replaced the refrigerator in January 2009.

17. At the end of December 2008, sparks came out of the ceiling fan and half of the unit was without power. Housing Provider was notified about the electrical outage at the end of December 2008 and responded immediately to repair the problem. The outage was caused by faulty wiring of a ceiling fan that Tenant installed. RX 203.

18. DCRA sent a notice of violation to Housing Provider about the rodent infestation on December 18, 2008. PX 101. Housing Provider signed a contract with Orkin for monthly treatment on January 8, 2009. RX 205.

19. Tenant experienced an infestation of bed bugs and scabies as early as March 2008 and notified Housing Provider late summer 2008. PXs 116, 117. Tenant and her children sought medical treatment because of the bug bites. PXs 107-111, 113. Tenant threw away the mattresses and couch in February 2009 because of the problem. Housing Provider started providing monthly extermination service in January 2009.

20. When Tenant moved into the housing accommodation there was carpet on the floor. Tenant removed the carpet in 2008. Tenant contracted with someone to replace the carpet with tile. The floor has missing parts and a broken baseboard. PX 102. DCRA sent Housing Provider a notice of violation citing the missing parts and broken baseboard on December 18, 2008. These violations were abated on December 28, 2008. PX 102.

21. DCRA cited Housing Provider for a crack in the glass in one of the windows at the front of the apartment on December 18, 2008. PX 101. As of the date of the hearing, it has not been repaired.

22. The windows did not have locks and the screen mesh is very thin. PX 101. Tenant notified Housing Provider about the problems with the window glass, screen and locks in December 2008. PX[s] 101, 102. Housing Provider ordered new screens for the window in January 2009, and was denied access by Tenant in May 2009, when he tried to install them.

23. The kitchen drawers were dry-rotted and the door of the cabinet was in poor working condition. Tenant notified Housing Provider about the problem sometime in early 2008. Tenant's children used to swing on the cabinet doors. PX 102. Housing Provider repaired the drawers and cabinets in December 2008.

24. The bathroom faucet started leaking in January, February or March of 2008. Tenant notified Housing Provider about the problem sometime late summer 2008. PX 101. Housing Provider repaired the faucet at the end of December 2008.

25. Housing Provider served Tenant with a Notice to Vacate on October 13, 2008 because the lease had expired. PX 104.

26. Housing Provider filed a possessory action for failure to pay rent in the Superior Court of the District of Columbia Landlord and Tenant Branch ("Landlord and Tenant Branch") in January 2009, after Tenant did not pay rent from October through December 2008.

27. On February 18, 2009, Housing Provider posted a notice that the unit was exempt from the rent stabilization provisions of the Act.

Final Order at 2-6; R. at 163-67.

The ALJ made the following conclusions of law:[4]

. . .[5]

B. Small Landlord Exemption and Rent Increase

1. The Rental Housing Act requires housing providers either to register a housing accommodation containing rental units or to file a claim of exemption. D.C. Official Code §§ 42-3502.05(a); 14 DCMR [§] 4102.2. The Registration and coverage provisions of the Act apply to exempt and nonexempt rental units. The Housing Regulations provide:

> The registration requirements of this section shall apply to each rental unit covered by the Act as provided in § 4100.3 and to each housing accommodation of which the rental unit is a part, including each rental unit exempt from the Rent Stabilization Program.

14 DCMR [§] 4101.1.

> The terms "to register" and "registration" shall be understood to include filing with the Rent Administrator the following:
>
> (a) For a rental unit covered by the Rent Stabilization Program, the information required to establish and regulate rent ceilings pursuant to § 205(f) of the Act and § 4204; or
>
> (b) For rental units exempt from the Rent Stabilization Program, the information required to establish the claim of exemption pursuant to § 205(a) of the Act and § 4103.

14 DCMR [§] 4101.2.

2. Housing Provider filed a claim of exemption for the housing accommodation on August 7, 1985, for holding and operating four or fewer rental units. PX 105.

3. However, the Rental Housing Act and the housing regulations require that a housing provider who claims an exemption provide written notice to prospective tenants that the rental unit will not be regulated by the rent stabilization program. D.C. Official Code § 42-3502.05(d); 14 DCMR

[4] The ALJ's conclusions of law are recited herein using the language of the Final Order, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

[5] The Commission omits the ALJ's statement concerning jurisdiction from its recitation of the ALJ's conclusions of law. *See* Final Order at 6; R. at 163.

[§] 4106.8. The lease does not give notice of this exemption. PX 103. There is no evidence that Housing Provider gave Tenant notice that the property was exempt until he posted a notice at the unit on February 18, 2009. D.C. Official Code § 42-3502.05(d) [(2001)]; 14 DCMR [§] 4106.8. A housing provider's failure to provide timely prior notice to a tenant of a claim for exemption from the Act makes the claim of exemption void until proper notification is given.

4. Because Housing Provider did not give Tenant notice of the exemption until February 18, 2009, the exemption is void until Tenant received proper notice. If a Housing Accommodation is not exempt from the rent stabilization provisions of the Act, Housing Provider is only permitted to raise rents in an amount and a manner that is prescribed in the Act. The only rent adjustment available to Housing Provider here is the annual adjustment of general applicability. Housing Provider may not implement the rent increase unless he files a Certificate of Election of Adjustment of General Applicability and a Notice of Increase in Rent Charged that was sent to Tenant and the Rent Administrator. There is no evidence in the record that Housing Provider filed a Certificate of Election of Adjustment of General Applicability with the Rent Administrator. Therefore, the correct rent for Tenant should have been the same as the prior tenant. Tenant introduced evidence that the prior tenant's rent was $800. Housing Provider presented no evidence to the contrary. Therefore, Tenant is entitled to a rent refund from the date of the inception of the lease, November 19, 2007 through February 18, 2009, when Housing Provider posted notice of the exemption at the unit.

5. Tenant is awarded $250 in rent refunds for each of the approximately 16 months that she did not have notice of the exemption. [Citation to Appendix omitted.]

C. Tenant's claim that Housing Provider substantially reduced the services and facilities in the rental unit

6. Tenant claims that Housing Provider substantially reduced services and facilities that were to be provided by law or under the terms of the lease. The Rental Housing Act provides that where "related services or related facilities supplied by a housing provider for a housing accommodation . . . are substantially increased or decreased, the Rent Administrator [Administrative Law Judge] 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. In turn, an Administrative Law Judge may award a rent refund to a tenant when a housing provider "substantially reduces or eliminates related services previously provided for a rental unit." D.C. Official Code § 42-3509.01(a).

7. "Related services" under the Act are defined as:

> [S]ervices 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).

8. "Related facility" is defined as:

> [A]ny facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

D.C. Official Code § 42-3501.03(26).

9. The Rental Housing Commission has set a three prong test for a tenant to establish that Housing Provider substantially reduced the services and facilities of the rental unit. First, there must be a reduction or elimination of a substantial service or facility. Next, the tenant must establish the duration of the reduction. Finally, the tenant must establish that the housing provider had knowledge of the reduction.

i. Mice infestation

10. Tenant established that the unit was infested with mice. PX 101. However, she did not provide any evidence about when she notified Housing Provider or the duration of the infestation. Tenant has a duty to notify the Housing Provider about the interior conditions of the unit. Housing Provider testified that he learned of the problem with mice when DCRA sent him the Notice of Violation on December 18, 2008. Housing Provider responded by getting extermination for the unit on January 8, 2009. RX 205. Housing Provider has a duty to make repairs to the unit in a timely fashion. When Housing Provider was notified about the infestation he abated it in a timely manner.

ii. Electrical Problem

11. The electricity in the unit went out in December 2008 due to Tenant incorrectly installing a ceiling fan. RX 203. Housing Provider sent an electrician the same day he was notified of the problem. Housing Provider has a duty to make repairs to the unit in a timely fashion. Because Housing

Provider repaired the electrical problem in a timely manner, I find that he did not substantially reduce the services or facilities in the unit.

iii. Flooring

12. Tenant complained that the carpeting was dirty and infested with bugs. Tenant did not provide any evidence that she requested Housing Provider to replace the carpet but instead Tenant removed the carpet and hired someone to replace it with tile. Housing Provider was notified that there were problems with the floor that Tenant had installed and with the baseboard when DCRA sent him a notice of violation on December 18, 2008. PX 102. Housing Provider repaired the problems on January 3, 2009. When Housing Provider was notified about the condition he repaired it in a timely manner.

iv. Inadequate Heat

13. Tenant complained that Housing Provider did not provide adequate heat for the unit. Tenant first notified Housing Provider of this condition at the end of November 2007. The problem was not repaired until February 23, 2008. RX 202. The following fall in October 2008, Tenant notified Housing Provider that the heating system was not working again. In January 2009, the heating system began working but stopped in February 2009 at which time Tenant notified Housing Provider. Frequent lack of sufficient heat is a substantial violation. Therefore, Tenant is entitled to a rent refund of $75 per month for the time period that she was without adequate heat which is $434.25 plus $32.92 in interest. [Citation to Appendix omitted.]

v. Smoke Detectors

14. The unit was without functioning smoke detectors until the end of December 2008. Tenant notified Housing Provider about the problem when she moved in on November 19, 2007. Absence of required fire prevention or fire control is a substantial violation. Tenant is awarded a rent refund of $40 a month for approximately 13 months which is $534.08 plus $35.30 in interest. [Citation to Appendix omitted.] Because Tenant removed the smoke detectors in December 2008 and never notified Housing Provider that they malfunctioned the award period ends in December 2008.

vi. Insect Infestation

15. Tenant noticed that insects had infested the unit in March 2008 and notified Housing Provider about the problem in August 2008. Tenant and her children were treated by a physician for scabies in September 2008. PXs 107-111, 113. Housing Provider contracted for exterminating services on January 8, 2009. Despite the treatment, Tenant still noticed insects and threw away her mattress and couch in February 2009. Housing Provider eliminated the

infestation in May 2009. Insect infestation is a substantial violation. Tenant is awarded a rent refund of $75 a month for nine months which is $675 plus $35.17 in interest. [Citation to Appendix omitted.]

vii. Functioning Door Knobs and Locks

16. The unit was without functioning door knobs and locks. Tenant was locked in by the defective locks and notified Housing Provider about the problem at the end of November 2007. DCRA cited Housing Provider about the locks in December 2008. PX 102. Housing Provider replaced the door knobs and locks in December 2008. Tenant is awarded a rent refund of $15 a month for approximately thirteen months which is $185.55 plus $12.48 in interest. [Citation to Appendix omitted.]

viii. Refrigerator

17. The refrigerator in the unit froze items that were kept in the refrigerator portion. Tenant complained to Housing Provider that the refrigerator was malfunctioning at the end of February 2008. Housing Provider installed a new refrigerator in January 2009. A housing provider is required to keep the refrigerator in good working condition. A malfunctioning refrigerator for eleven months is a substantial reduction of services of [sic] facilities. Tenant is therefore awarded a rent refund of $30 a month for eleven months which is $330 plus $3.62 in interest. [Citation to Appendix omitted.]

ix. Damp Bedroom Wall

18. The wall near the window in the back bedroom got damp when it rained. Tenant notified Housing Provider about this problem in May 2008. Housing Provider testified that the reason the wall became damp was because the window bars were removed and the window seal was broken from Tenant using the window to access the roof. RXs 208-210, 212. Housing Provider repaired the window seal and the cracks in the walls in December 2008. Tenant has denied Housing Provider access to repaint the wall. Housing Provider has the responsibility to make repairs to the unit in a timely fashion. Although tenant may have caused the damage, Housing Provider may, if the provisions of the lease allow, charge Tenant with the cost of damage in a separate proceeding. Since Housing Provider was notified of the problem, and did not repair it until 7 months later, Tenant is awarded a rent refund of $10 a month for eight months which is $70 plus $4.35 in interest. [Citation to Appendix omitted.]

x. Kitchen Cabinet and Drawers

19. The kitchen cabinet and two drawers malfunctioned. Tenant acknowledged that the damage to the cabinet door was due to her children swinging on it.

Tenant was vague as to when she notified Housing Provider about the problem and testified that she notified Housing Provider in the beginning of 2008. In order for this administrative court to provide Tenant an award, Tenant would have to establish the duration of the reduction. Tenant did not establish duration and has the burden of proof in this matter. Because there is no evidence in the record establishing duration, this claim is dismissed with prejudice.

xi. Windows

20. The windows did not have adequate screens or locks. The glass of one window is cracked. Tenant notified Housing Provider of the problem when she moved in on November 19, 2007 and DCRA cited Housing Provider for this violation in December 2008. PXs 101, 102. New window locks were installed in December 2008. Housing Provider ordered the screens in December 2008. Tenant denied Housing Provider access to the unit to install the screens on May 18, 2009. Where a tenant frustrates the repair of a condition alleged to be a reduction in services or facilities, the housing provider cannot be charged with violation of the Act. As of the date of the hearing, the crack in the window has not been repaired.

21. Tenant is therefore awarded a rent refund of $10 a month for approximately thirteen months for the window locks which is $123.70 plus interest [sic] $8.32 in interest; $10 per month for approximately nineteen months for the screens which is $179.50 plus $10.82 in interest; and $10 a month for approximately twenty-one months for the crack in the glass which is $203.10 plus $11.64 in interest. [Citation to Appendix omitted.]

D. Retaliation

22. ["]Retaliatory action" is action intentionally taken against a tenant by a housing provider to injure or get back at the tenant for having exercised rights protected by §502 of the Act. If a housing provider takes certain statutorily defined "housing provider action" within six months of a tenant's "protected act," a tenant benefits from a presumption of retaliation. The presumption includes that the housing provider took "an action not otherwise permitted by law" unless [h]ousing [p]rovider "comes forward with clear and convincing evidence to rebut this presumption."

23. Tenant first filed this tenant petition on December 23, 2008. She filed an amended tenant petition alleging retaliation on April 28, 2009. Tenant alleges Housing Provider served her with a Notice to Vacate on October 13, 2008 in retaliation to Tenant's request for repairs in November 2007, February 2008, May 2008, and August 2008. However, to qualify for the presumption of retaliation, Tenant's protected act, requests for repairs, must be in writing or witnessed if given orally. Tenant presented no exhibits into evidence that

shows [sic] any written request for repairs. Tenant also failed to present any evidence that her request[s] for repairs were witnessed. Therefore, the presumption does not apply here.

24. However, assuming the presumption did exist, Housing Provider testified that he sought possession of the unit because Tenant damaged the property, was consistently late with the rent, and was behind in rent payments from April 2008. Housing Provider presented clear and convincing evidence that his actions were not retaliatory and has rebutted the presumption. In the amended petition, Tenant also argued that Housing Provider retaliated by initiating a claim for possession in the Superior Court of the District of Columbia Landlord and Tenant Branch in January 2009 after Tenant initiated this tenant petition. However, Housing Provider testified that he initiated that action in January 2009 after Tenant failed to pay rent in October, November, and December 2008. Tenant admits that she did not pay rent for the months of October, November, and December and testified that she spent the rent money on gifts for her children for Christmas. I conclude that Housing Provider initiated the action in Superior Court because Tenant did not pay her rent and that Housing Provider has rebutted the presumption of retaliation. Because Housing Provider rebutted the presumption of retaliation with clear and convincing evidence, Tenant does not prevail on this claim.

E. Improper Notice to Vacate

25. Housing Provider served Tenant with a Notice to Vacate on October 13, 2008. PX 104. In order to be valid, a notice to vacate shall include a statement detailing the factual basis on which the housing provider relies; the minimum time to vacate; a statement that the housing accommodation is registered or exempt from registration and a statement that a copy of the notice to vacate was provided to the Rent Administrator.

26. The notice that Housing Provider served on Tenant does give the time for Tenant to vacate, but also shows that Housing Provider erroneously believed that he could terminate Tenant's tenancy solely because the lease agreement was ending. Housing Provider conceded during the hearing that the Notice to Vacate he served on Tenant was not valid and he withdrew the notice when he learned it was not valid. I therefore find that Tenant prevails on her claim that Housing Provider served a Notice to Vacate on her which violates §501 of the Act.

27. The penalty for serving an improper Notice to Vacate is a fine. In order for a fine to be imposed, there must be a finding that Housing Provider's actions were intentional and, therefore, willful. D.C. Official Code § 42-3509.01(b)(3). Tenant did not present evidence of Housing Provider's knowledge of or intent to violate the Act. Absent such evidence, there is no

basis for concluding that Housing Provider violated the Act intentionally. Therefore no fine is imposed.

Final Order at 7-18; R. at 157-62 (footnotes omitted).

On September 10, 2010, the Tenant filed a timely notice of appeal for RH-TP-09-29,503 (Tenant's Notice of Appeal) with the Commission raising the following issues:[6]

1. The decision of the OAH wrongly allowed a rent increase to be imposed while the rental unit was not in substantial compliance with D.C. Housing Regulations;

2. The decision of the OAH regarding Tenant/Appellant's claim that Housing Provider substantially reduced the services and facilities in the rental unit was contrary to law and the evidence in the record;

3. The decision of the OAH that Housing Provider did not take retaliatory action against Tenant was contrary to law and contrary to the evidence in the record; and

4. The OAH improperly failed to treble damages.

Tenant's Notice of Appeal at 1; R. at 173.

Also on September 10, 2010 the Tenant filed a Motion for Reasonable Attorney's Fees with the ALJ, requesting $27,900.00 be paid to Sidley Austin LLP, for services performed by Kyle J. Fiet, the Tenant's counsel. Motion for Reasonable Attorney's Fees at 1; R. at 194.

On September 21, 2010 the Tenant's counsel filed a motion with the Commission to withdraw as counsel (Motion to Withdraw Appearance). The Tenant's counsel cited a deterioration in the attorney-client relationship as the reason for the motion to withdraw. Motion to Withdraw Appearance at 1. The Tenant did not object to the motion. *Id.*

On February 9, 2011 the Commission issued an order granting the Tenant's counsel's Motion to Withdraw Appearance (Order Granting Motion to Withdraw). The Commission

[6] The issues on appeal are recited herein using the language of the Tenant's Notice of Appeal.

mailed a copy of the order by postage prepaid first class U.S. mail to the Tenant, the Tenant's counsel, and the Housing Provider. *See* Order Granting Motion to Withdraw at 4.

On February 1, 2011 the ALJ issued an order granting the Tenant's Motion for Reasonable Attorney's Fees (Order for Attorney's Fees). The Order for Attorney's Fees granted only $7,738.90 of the Tenant's request of $27,900.00. The ALJ explained the award as follows:[7]

III. Governing Law and Discussion

A. Tenant as a Prevailing Party

1. The first issue is whether Tenant was a prevailing party in the instant case. The Act provides for the award of attorney's fees to the prevailing party in any action under the Act, except actions for eviction. The D.C. Housing Regulations state that "[a] presumption of entitlement to an award of attorney's fees is created by a prevailing tenant, who is represented by an attorney." To be deemed a prevailing party "it is necessary only that the plaintiff succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit." When a party does not prevail on all of the issues presented to the court, the court must scrutinize the hours and the rate of attorney's fees requested to avoid compensation for legal work on issues where the party did not prevail.

2. Tenant prevailed in the claims that: 1) the building in which her unit is located is not properly registered with the RACD; 2) Housing Provider improperly served her with a Notice to Vacate; 3) and in part that Housing Provider substantially reduced services and/or facilities as part of the rent or tenancy. In doing so, Tenant received an award of $6,882.95. Therefore, an award of attorney's fees is warranted.

B. The Merits of Tenant's Claim for Attorney's Fees

I. Establishing the Lodestar

3. The award of attorney's fees must be calculated in accordance with the existing case law, where the starting point shall be the lodestar. The lodestar is the number of hours reasonably expended on a task multiplied by a reasonable hourly rate. An award of attorney's fees must be based on an affidavit executed by the attorney of record itemizing the attorney time for the legal services and providing the information listed in 14 DCMR [§] 3825.8. Attorneys may be awarded fees for services performed after the filing of the

[7] The ALJ's determinations in the Order for Attorney's Fees are recited herein using the language of the ALJ in the Order for Attorney's Fees, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

petition and after the party notified this administrative court that the party was represented by an attorney. Additionally, the affidavit submitted in support of an attorney's fees motion "must be sufficiently detailed to permit the District Court [or agency] to make an independent determination whether or not hours claimed are justified." Once a party has provided an affidavit in support of a request for attorney's fees, "the determination of the reasonableness of attorney's fee amounts is clearly 'a matter within the trial judge's discretion.'" The same discretionary standard applies to attorney's fees determinations by an administrative agency.

4. In accordance with 14 DCMR [§] 3825.8, Tenant submitted an affidavit, including a timesheet, for Mr. Fiet's services, in support of Tenant's request for attorney's fees. Mr. Fiet's affidavit lists specific activities that he performed, the date, and the time expended in increments of as little as fifteen minutes. In the affidavit, Mr. Fiet "swears and affirms" that he had "read the foregoing Affidavit of Attorney's Fees'" [sic] and that "the factual statements made in it are true to the best of his personal knowledge, information, and belief." Furthermore, the affidavit was notarized by a licensed Notary Public. According to the affidavit and timesheet, Mr. Fiet spent a total of 124 hours on the instant case, from March 2009 through July 2009. Although Mr. Fiet notes in the affidavit that the *Laffey* Matrix attorney fee schedule suggests a billing rate of $225 per hour for attorney [sic] with 1-3 years experience [sic], Mr. Fiet used a billing rate of $115 per hour to calculate his applicable fees, to reach a lodestar of $27,900. Therefore, based on the affidavit and sworn statement of Mr. Fiet, this administrative court calculates the lodestar to be $14,260 (124 hours at $115 per hour).

II. Reducing or Increasing After Consideration of the Factors

5. This administrative court takes note that courts have found that the lodestar should be adjusted in exceptional cases. In *Perdue v. Kenny A. ex rel. Winn*, the Supreme Court held that under federal fee-shifting statutes, "there is a strong presumption that the lodestar is sufficient" and therefore adjustments are "permitted in extraordinary circumstances." However, the Supreme Court also noted that where a strong presumption exists, "the presumption may be overcome in those rare circumstances in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." Additionally, the District of Columbia Court of Appeals found that "a reasonable number of hours is not necessarily the raw, gross figure that the firm's documentation depicts, but rather the number of hours an attorney skilled in the specialized field of rental housing would claim in the exercise of 'billing judgment.'" Therefore, the District of Columbia Municipal Regulations (DCMR) allow for adjustment of the lodestar based on a number of factors. The lodestar amount may be reduced or increased after considering the following:

1) the time and labor required;

2) the novelty, complexity, and difficulty of the legal issues or questions;

3) the skill requisite to perform the legal service properly;

4) the preclusion of other employment by the attorney, due to acceptance of the case;

5) the customary fee or prevailing rate in the community for attorneys with similar experience;

6) whether the fee is fixed or contingent;

7) time limitations imposed by the client or the circumstances;

8) the amount involved and the results obtained;

9) the experience, reputation, and ability of the attorney;

10) the undesirability of the case;

11) the nature and length of the professional relationship with the client;

12) the award in similar cases; and

13) the results obtained, when the moving party did not prevail on all the issues

14 DCMR [§ 3825.8(b)].

6. To evaluate whether the lodestar amount should be reduced or increased in this instant case, based on the above-mentioned factors, I reviewed the affidavit supporting the Tenant's motion for attorney's fees.

a. Time and Labor Required and Preclusion of Other Employment

7. The lodestar amount may be reduced if the court, in its discretion, finds that the case did not involve extensive time or labor and it did not preclude the attorney from accepting other employment. The affidavit submitted by Mr. Fiet supports that from March 2009 through July 2009, approximately 120 days, Mr. Fiet worked a total of 45 days on Ms. Hardy's case. During this time, only 19 of the 45 days required Mr. Fiet to spend three or more hours in a given day on Ms. Hardy's case. Furthermore, on 22 of the remaining days, Mr. Fiet spent less than 1 hour on the case. Additionally, from March 9, 2009

through May 12, 2009[,] approximately 63 days, Mr. Fiet documented no time spent on Ms. Hardy's case.

8. This court also finds that Mr. Fiet overstated his involvement in the affidavit submitted by the tenant. The affidavit states that Mr. Fiet worked on Ms. Hardy's case from March 2009 through August 2010. However, the affidavit does not support any work completed by Mr. Fiet concerning this matter after July 2009. Instead, Mr. Fiet wrongly includes in his calculations, the months in which the parties waited for the final order to issue. Therefore, because Tenant's case did not demand a significant amount of Mr. Fiet's time and labor, and did not preclude Mr. Fiet from accepting other employment, this court finds that a 10% deduction in the lodestar amount is appropriate.

b. The Experience, Reputation and Ability of the Attorney

9. Where the court finds that the hours and charges provided were "far in excess of what reasonably skilled counsel expend for similar work in rental housing litigation" according to its "extensive experience with attorney services in the rental housing arena," the court does not abuse its discretion in reducing the attorney's fees award. Furthermore, "hours are not reasonably expended . . . if an attorney takes extra time due to inexperience."

10. The affidavit submitted by Mr. Fiet evidences his limited experience in rental housing law. Mr. Fiet worked with Sidley Austin just five months prior to entering an appearance on behalf of Ms. Hardy. During those five months, Mr. Fiet's "practice focuse[d] primarily on commercial litigation and government contracting." This court finds as a result of his inexperience and as evidenced on numerous occasions in his affidavit, Mr. Fiet met with several Sidley Austin attorneys, who supervised his representation or provided support in his representation of Ms. Hardy. Mr. Fiet's lack of experience is exemplified by the number of hours spent with other attorneys discussing strategies related to the case, the mediation, and the hearing. Additionally, Mr. Fiet spent significant time seeking "advice regarding OAH procedures and D.C. rental housing law," and information regarding "D.C. rent stabilization law, OAH jurisdiction and procedure," from an attorney with Bread for the City, and a professor of law at the University of the District of Columbia School of Law. Mr. Fiet attests that the hours documented in the affidavit do not include "time spent by attorneys at Sidley Austin other than [him]self" or "time spent on legal research." However, Mr. Fiet seeks fees for time he spent with those other attorneys at Sidley Austin and time spent reviewing applicable law through others. As a result of Mr. Fiet's inexperience with rental housing law and his significant reliance on discussions with other attorneys to bring him up to speed, this court finds that a [10%] deduction in the lodestar amount is appropriate.

c. The Results Obtained, When the Moving Party Did Not Prevail on All the Issues

11. When a party does not prevail on all issues presented, the hours and the rate of the attorney's fees requested must be scrutinized to avoid compensation for legal work on issues where the party did not prevail. An adjustment for time spent on unsuccessful claims is mandated in the second phase of the process. Two of the thirteen factors prescribed in 14 DCMR [§] 3825.8(b) are implicated: (8) the amount involved and the results obtained; and (13) the results obtained, when the moving party did not prevail on all the issues.

12. In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the U.S. Supreme Court determined that two questions must be answered when a party has succeeded on some but not all claims for relief. The court must determine: (1) if the plaintiff failed to prevail on claims that were unrelated to the claims on which she succeeded and (2) if the plaintiff achieved a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award. However, "a plaintiff may present in one lawsuit distinctly different claims for relief that are based on different facts and legal theories."

13. In the instant case, Tenant claimed that Housing Provider was in violation of the Act because (1) the rent increase was larger than the increase allowed by any applicable provision of the Act; (2) the housing provider did not file the correct rent increase forms with the RACD; (3) the building where the unit is located was not properly registered with the RACD; (4) a rent increase was taken while the unit was not in substantial compliance with D.C. Housing Regulations; (5) Housing Provider substantially reduced the services and/or facilities provided in connection with the unit; (6) Housing Provider took retaliatory action against Tenant in violation of Section 502 of the Act; and (7) Housing Provider served Tenant with a Notice to Vacate in violation of Section 501 of the Act.

14. The first set of claims, claims one through four, are interrelated because they were based on the same set of law [sic] and facts, whether the housing provider was property [sic] registered and thus could take a rent increase. I found that because the property was not exempt, Housing Provider had to meet certain requirements in order to properly increase the rent. Furthermore, Housing Provider was limited in the amount he can [sic] raise the rent, and the rent could not be raised while the unit was not in substantial compliance with D.C. Housing Regulations. Tenant prevailed on this set of claims.

15. The fifth claim, whether Housing Provider substantially reduced the services and/or facilities, and its subclaims are distinct from each other and the other claims. Each subclaim of the services and/or facilities claim relied on a different set of facts (*e.g.* whether the condition complained of was a violation, the length of the violation, whether Housing Provider had been

notified, and whether Housing Provider had attempted to remedy the violation) and on different sets of law (*e.g.* 14 DCMR [§] 4216.2(i) (2004) (rodent infestation); 14 DCMR [§ 4216(e)] (defective electrical wiring), etc.). Of the nine alleged subclaims of reductions of services and/or facilities, Tenant only completely prevailed on four and partially prevailed on a fifth.

16. The sixth claim, that Housing Provider took retaliatory action against Tenant in violation of Section 502 of the Act, is distinct from all other claims. The claim relies on a separate set of facts (whether Housing Provider served Tenant with a Notice to Vacate as retaliation, and a separate section of the law (Section 502 of the Act). Tenant failed to prevail on this claim, as no retaliation was found.

17. The last claim, that Housing Provider improperly served Tenant with a Notice to Vacate, is also distinct from all other claims. Here, the issue was not the motive behind the Notice, but the content of the Notice. The requirements regarding the content of a Notice to Vacate are found under a different section of the law (Section 501 of the Act). Here, Tenant prevailed however no fine was imposed based on this violation because Tenant did not prove that the violation was willful.

18. We have four distinct sets of claims: (1) the rent increase larger than the increase allowed by any applicable provision of the Act and was not valid because of [sic] Housing Provider did not meet registration requirements pursuant to the Act; (2) Housing Provider substantially reduced Tenant's services and/or facilities; (3) Housing Provider took retaliatory action against Tenant; and (4) Housing Provider improperly served Tenant with a Notice to Vacate.

19. The second claim can be broken down into nine distinct subclaims regarding which services and/or facilities were reduced and under which law the reduction allegedly violated.

20. Each of these claims and subclaims required different types of proof in order for Tenant to prevail and each claim and subclaim involved separate legal theories. Mr. Fiet's work on each claim required him to prove different facts and use different legal theories to substantiate Tenant's claims and subclaims. Therefore, I find that the claims and subclaims were unrelated and that the legal services provided on each claim and subclaim should be separated.

21. The second step is to determine whether the plaintiff achieved a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award. Therefore, I should reduce the lodestar for which Tenant seeks compensation by eliminating time spent on specific claims under which Tenant did not prevail. But here that is not practicable. Generally, counsel is "not required to record in great detail how each minute of his time is

expended" but "at least counsel should identify the general subject matter of his time expenditures." Mr. Fiet's lack of specificity makes it difficult to determine which hours were expended on which claims. Although Tenant's counsel has submitted an itemization of his tasks and the time expended, the tasks are not detailed or linked to specific claims. For example, Tenant's counsel lists a number of entries relating to fact investigation and case strategy. There is no way to separate the time spent on a claim by claim basis.

22. Because it is not possible to reduce Tenant's counsel's hours selectively, I will reduce the number of the hours that Tenant's counsel expended by an amount that I consider to be reasonable in light of the time that was spent and the results that were obtained. The Rental Housing Commission (RHC) has held that attorney fees may be reduced in proportion to the number of claims in which the prevailing party is successful. In *Londraville v. Kader* [TP 21,748 (RHC Dec. 14, 1993)], the housing providers prevailed on three of four issues raised in the tenant petition and requested a full award amount. The RHC found that the tenants did present a "meaningful case" for the issue on which they prevailed and proportionately reduced the total attorney fees award by 25% to reflect the tenants' success on one of the four issues they raised in the hearing. In the instant case, I have found that there were four groups of claims. Tenant has prevailed completely on two independent claims. I further found that Tenant completely prevailed on four and partially prevailed on the fifth services and/or facilities subclaim. Therefore, I find a reduction of 33% is appropriate, given Tenant prevailed on roughly two-thirds of her case.

23. I found that a 33% reduction in Tenant's counsel's lodestar is appropriate in view of the following considerations: (1) Tenant prevailed in a little over half of the claims that were asserted in the tenant petition. (2) Tenant only prevailed on half of the claims for substantial reduction in services and/or facilities, claims that accounted for a major part of the testimony at the hearing. (3) The award that Tenant received was substantially less than the attorney fees that Tenant's counsel seeks. Tenant received an award of $6,882.95 and her attorney seeks more than four times that amount, asking the court to award him $27,900 in fees.

IV. Summary

24. Based on the affidavit submitted by Mr. Fiet, this administrative court found that the lodestar amount is $14,260. After additional analysis of the affidavit, the court found that prosecuting Ms. Hardy's case did not demand a significant amount of Mr. Fiet's time and labor. Therefore, Mr. Fiet was not precluded from obtaining additional employment, which supported a 10% reduction in the lodestar. Additionally, Mr. Fiet's lack of experience in rental housing law and his significant time spent learning the relevant law and procedure also warranted an additional 10% deduction in the lodestar amount. Lastly, because Ms. Hardy only prevailed on roughly two-thirds of her claims,

this administrative court found that a 33% reduction was appropriate. Therefore, this court awards Tenant attorney's fees in the amount of $7,738.90.

Order for Attorney's Fees at 2-14; R. at 203-15.

On February 10, 2011 the Housing Provider filed a timely appeal (Housing Provider's Notice of Cross-Appeal) of the Order for Attorney's Fees with the Commission. The Housing Provider's Notice of Cross-Appeal stated the following errors:[8]

1. The OAH did not have jurisdiction to enter the Order (14 DCMR [§] 3802.3) because the underlying decision (Order of August 26, 2010) is on appeal.

2. The OAH Order was premature since the case is being appealed and no prevailing party is yet established (D.C. Code [§ 42-3509.02]).

3. The OAH Order was unwarranted because the Tenant/Petitioner is not entitled to fees on issues she lost.

4. The "internal inconsistencies" of tenant's affidavit rendered the evidence presented as unreliable and was an improper basis for an award.

5. The administrative law judge erred in crediting the affidavit which did not separate time spent as to prevailing and non-prevailing issues "making it difficult to determine which hours were expended on which claims," and when"[T]here [sic] is no way to separate the time spent on a claim by claim basis." The award was admittedly speculative.

6. The award of fees was unreasonable given the nature of the case and results obtained. No special expertise was needed, nor extensive research warranted, nor motions filed, nor were there any other factors justifying an attorney fee award larger than the underlying compensatory award.

7. The administrative law judge improperly entered an award of fees based on the evidence which was unreliable, inconsistent, and, according to the administrative law judge, "overstated" the involvement of the attorney in the case.

8. The award was not based on substantial credible evidence[.]

9. The administrative law judge abused her discretion in awarding fees for attorney training and background research on D.C. rental housing law and

[8] The issues on appeal are recited herein using the language of the Housing Provider's Notice of Cross-Appeal.

> OAH procedures. Based on the above, the Order of February 1, 2011 below must be reversed.

Housing Provider's Notice of Cross-Appeal at 1-2.

On February 3, 2012 the Commission issued a Notice of Scheduled Hearing and Notice of Certification of Record (Hearing Notice), setting the hearing on the Tenant's Notice of Appeal and the Housing Provider's Notice of Cross-Appeal for Thursday, March 15, 2012, at 2:00 p.m. Hearing Notice at 1. The Hearing Notice stated "The failure of either party to appear at the scheduled time will not preclude the Commission from hearing the oral argument of the appearing party and/or disposing of the appeal. Failure of an Appellant to appear may result in the dismissal of the party's appeal." *Id.*

Neither party filed a brief with the Commission. The Commission held a hearing on March 15, 2012. The hearing began at 2:13 p.m. and the Commission noted that the Tenant failed to appear.[9] Hearing CD (RHC Mar. 15, 2012) at 2:13 p.m. An oral motion to dismiss the Tenant's claims made in the Tenant's Notice of Appeal was made by the Housing Provider. Hearing CD (RHC Mar. 15, 2012) at 2:15 p.m. The Commission then heard oral argument on the issues raised in the Housing Provider's Notice of Cross-Appeal.

II. HOUSING PROVIDER'S MOTION TO DISMISS THE TENANT'S APPEAL

Pursuant to the DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001), "[i]n contested cases, the proponent of a rule or order shall have the burden of proof." *See also* Carter v. Paget, RH-TP-09-29,517 (RHC Dec. 10, 2013); Wilson v. KMG Mgmt., LLC, RH-TP-11-30,087 (RHC May 24, 2013); Barnes-Mosaid v. Zalco Realty, Inc., RH-TP-08-29,316 (RHC Feb. 24, 2012); Stancil v. Davis, TP 24,709 (RHC Oct. 30, 2000). Here, the Tenant was the proponent of the

[9] The Commission notes that the Tenant was representing herself *pro se* at this point in the proceedings. *See* Order Granting Motion to Withdraw at 2-3. The record contains no notice of appearance to the Commission made by any counsel for Tenant other than withdrawn counsel.

Tenant's Notice of Appeal and therefore had the burden to prosecute the appeal before the Commission. *See* Carter, RH-TP-09-29,517 at 7. The Commission's review of the record reveals no evidence that the Tenant did not receive actual notice of the Commission's hearing; nonetheless, the Tenant failed to appear. *See* Hearing CD (RHC Mar. 15, 2012) at 2:13 p.m. As noted *supra* at 13, the Tenant's counsel withdrew from the case approximately one year prior to the Commission's issuance of the Hearing Notice and indicated at that time that the Tenant was proceeding *pro se*. Motion to Withdraw Appearance at 1. As noted *supra* at 22, the Commission's Hearing Notice warns parties that their failure to appear may result in dismissal of the appeal.[10] Hearing Notice at 1.

In Stancil, TP 24,709, the Commission dismissed an appeal when neither the housing provider/appellant nor his attorney appeared at the scheduled hearing. Affirming the Commission's dismissal of the housing provider's appeal, the District of Columbia Court of Appeals (DCCA) held that the Commission has authority to dismiss an appeal when the appellant fails to attend a scheduled hearing. *See* Stancil v. D.C. Rental Hous. Comm'n, 806 A.2d 622, 622-25 (D.C. 2002). The DCCA recognized that, although the Commission does not have a specific regulation that prescribes dismissal when a party fails to appear, 14 DMCR § 3828.1[11] empowers the Commission to rely on the DCCA's rules when its rules are silent on a matter before the Commission. *Id.*

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[10] "The failure of either party to appear at the scheduled time will not preclude the Commission from hearing the oral argument of the appealing party and/or disposing of the appeal. Failure of an Appellant to appear may result in the dismissal of the party's appeal." Hearing Notice at 1.

[11] According to 14 DMCR § 3828.1:

> When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

In Stancil the DCCA noted that DCCA Rule 14 (D.C. App. R. 14) permits dismissal of an appeal "for failure to comply with these rules or for any other lawful reason," and that DCCA Rule 13 (D.C. App. R. 13) "authorizes an appellee to file a motion to dismiss whenever an applicant fails to take the necessary steps to comply with the court's procedural rules." Stancil, 806 A.2d at 625. The DCCA concluded that "both [DCCA] Rule 13 and Rule 14 support the proposition that dismissal is an appropriate sanction when an appellant is not diligent about prosecuting his appeal." Stancil, 806 A.2d at 625. *See also* Radwan v. D.C. Rental Hous. Comm'n, 683 A.2d 478, 480 (D.C. 1996) (favoring the Commission's adoption of other court rules absent a regulation specifically governing the Commission's discretion). The DCCA determined that it was unable to "find fault with the [Commission's] consideration of [the DCCA's] rules in applying section 3828.1 of its own regulations." Stancil, 806 A.2d at 625. Consequently, pursuant to Stancil, 806 A.2d at 625, the Commission has discretion to dismiss an appeal when the appellant fails to attend a scheduled hearing. *See also* Wilson, RH-TP-11-30,087; Barnes-Mosaid, RH-TP-08-29,316; Stancil, TP 24,709.

The Commission's review of the record reflects that a copy of the Hearing Notice was mailed by first class mail to the Tenant, the Housing Provider, and the Housing Provider's counsel. Hearing Notice at 3. The Certificate of Service in the Hearing Notice lists the Tenant's address as 1412 Pennsylvania Avenue, SE, Unit B, Washington, DC 20003. *Id.* This is the same address supplied for the Tenant in the Certificates of Service for the Motion to Withdraw Appearance and the Order Granting Motion to Withdraw. *See* Motion to Withdraw Appearance at 3; Order Granting Motion to Withdraw at 4. The Commission observes that no change of address has been filed by the Tenant.

For the reasons stated *supra*, the Commission dismisses the appeal by the Tenant *with prejudice* because the Tenant failed to appear at the scheduled Commission hearing and prosecute her appeal. D.C. OFFICIAL CODE § 2-509(b); 14 DCMR § 3828.1; *see also* Carter, RH-TP-09-29,517; Wilson, RH-TP-11-30,087; Barnes-Mosaid, RH-TP-08-29,316; Stancil, TP 24,709.

III. ISSUES ON APPEAL[12]

A. Whether the ALJ had jurisdiction to award attorney's fees because the Final Order was on appeal at the time of the Order for Attorney's Fees.

B. Whether the ALJ erred in awarding attorney's fees because the Tenant was not a prevailing party.

C. Whether the ALJ abused her discretion by basing the award of attorney's fees on evidence that was not substantial.[13]

IV. DISCUSSION OF ISSUES ON APPEAL

A. Whether the ALJ had jurisdiction to award attorney's fees because the Final Order was on appeal at the time of the Order for Attorney's Fees.

The Housing Provider asserts that after the Tenant's filing of a timely notice of appeal, the OAH lacked jurisdiction to award attorney's fees. *See* Housing Provider's Notice of Cross-Appeal at 1. The Housing Provider cites 14 DCMR § 3802.3 (2004), which states "[t]he filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator [OAH]." 14 DCMR § 3802.3. The Housing Provider does not cite any additional case law or other legal authority to support this assertion. *See* Housing Provider's Notice of Cross-Appeal.

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[12] The Commission, in its discretion, has rephrased the issues on appeal in this section of its Decision and Order to clearly identify the allegations of the ALJ's error(s) in the Order for Attorney's Fees, and to omit the Housing Provider's supporting assertions that were included in the statements of the issues on appeal. *See, e.g.*, Campbell I, RH-TP-06-29,715 at 19 n.16; Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013) at n.12; Jackson v. Peters, RH-TP-12-28,898 (RHC Sept. 27, 2013). For the complete language of the Housing Provider's Notice of Cross-Appeal, see Housing Provider's Notice of Cross-Appeal at 1-2; *supra* at 21-22.

[13] The Commission notes that the Housing Provider also claims that the ALJ awarded attorney's fees for time spent on issues the Tenant lost. *See* Housing Provider's Notice of Cross-Appeal at 1. The Commission addresses that claim in its discussion of issue C.

The Commission's standard of review is contained at 14 DCMR § 3807.1 and states the following:

> The Commission shall reverse final decisions of the Rent Administrator [OAH] 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 [OAH].

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* Murchison v. D.C. Dep't of Pub. Works, 813 A.2d 203, 205 (D.C. 2002); Ruffin v. Sherman Arms, LLC, TP 27,982 (RHC July 29, 2005) at 10.

While the Commission ordinarily cannot review an issue that was raised for the first time on appeal, *see* Carpenter v. Markswright, RH-TP-10-29,840 (RHC June 5, 2013); Jonathan Woodner Co. v. Enobakhare, TP 27,730 (RHC Feb. 3, 2005); Parreco v. Akassy, TP 27,408 (RHC Dec. 8, 2003), a party may raise a subject matter jurisdiction challenge at any point in the proceedings. *See* Ashton Gen. P'ship v. Fed. Data Corp., 682 A.2d 629, 632 n.2 (D.C. 1996); Gelman Mgmt. Co. v. Campbell (Campbell I), RH-TP-09-29,715 (RHC Dec. 23, 2013) at 19; Vista Edgewood Terrace v. Rascoe, TP 24,858 (RHC Oct. 13, 2000) at 7 (citing King v. Remy, TP 20,692 (RHC May 18, 1988)). The Commission interprets this issue on appeal to raise a question of the ALJ's subject matter jurisdiction, and will thus address it herein, while noting that the Housing Provider failed to raise this issue below. *See* Order for Attorney's Fees at 1; R. at 216; *see also* Ashton Gen. P'ship, 682 A.2d at 632 n.2; Campbell I, RH-TP-09-29,715 at 19; Vista Edgewood Terrace, TP 24,858 at 7 (citing King, TP 20,692).

The Act provides that "the Rent Administrator [or OAH], 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. A prevailing party "is 'a party in whose favor a judgment is rendered, regardless of the amount of damages awarded.'" Caesar Arms, LLC v. Lizama, RH-TP-07-29,063 (RHC Sept. 27, 2013) at 42; Cascade Park Apartments v. Walker, TP 26,197 (RHC Mar. 18, 2005) at 2 (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)); Lizama, RH-TP-07-29,063 at 42-43; *see also* D.C. OFFICIAL CODE § 42-3509.02. Moreover, in a court's discretion, "prevailing tenants, regardless of their position in the litigation," should generally be awarded attorney's fees.[14] 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)); Lizama, RH-TP-07-29,063 at 43; *see also* Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005) at 70 (quoting Slaby v. Bumper, TPs 21,518 & 22,521 (RHC Sept. 21, 1995) at 11-12) (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 15-16.

In a recent case affirming an ALJ's award of attorney's fees, the Commission rejected a claim that an ALJ made an erroneous, premature award of attorney's fees to tenants in a case on appeal to the Commission since the tenants could not be regarded as "prevailing parties" until a final decision on appeal had disposed of all legal issues. Lizama, RH-TP-07-29,063 at 42-43; *see also* Tenants of 500 23rd Street, N.W., 617 A.2d at 488; Ungar, 535 A.2d at 892. The

[14] The Commission discusses the ALJ's reduction of the attorney's fees awarded to the Tenant based on the number of prevailing issues *infra* at 43-48.

Commission has also determined that its own authority to award attorney's fees is not prohibited by a pending appeal to the DCCA. *See* Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Jan. 29, 2013) at 3-4 (stating that the Commission is not prevented from awarding attorney's fees because the case is on appeal to the DCCA); Tenants of 710 Jefferson St., N.W. v. Loney (Loney I), SR 20,089 (RHC Dec. 10, 2008) at 4 n.1 (same), *rev'd on other grounds sub nom.* Loney v. D.C. Rental Hous. Comm'n, 11 A.3d 753 (D.C. 2010).

In addition to the precedent of Lizama, RH-TP-07-29,063, *supra*, and Tenants of 500 23rd Street, N.W., 617 A.2d at 488 (quoting Ungar, 535 A.2d at 892), *supra*, the Commission determines that its own consideration and award of attorney's fees while a case is on appeal to the DCCA also supports the analogous consideration and award of attorney's fees by the OAH in a case on appeal to the Commission.[15] Despite the possible mootness of a respective award of attorney's fees by either the Commission or OAH in a case whose final outcome will be determined on appeal, the consideration of a respective motion for attorney's fees prior to the resolution of an appeal remains "in the interest of the parties" and would not constitute a "needless expenditure [by either the Commission or the OAH] of time and effort." Avila, RH-TP-28,799 at 3-4; Loney I, SR 20,089 at 4 n.1; *see also* Lizama, RH-TP-07-29,063.

For the foregoing reasons, the Commission concludes that the pending appeal of the Final Order did not prevent the ALJ from having subject matter jurisdiction over the issue of attorney's fees, and thus the ALJ did not err by issuing the Order for Attorney's Fees. *See* Tenants of 500 23rd St., N.W., 617 A.2d at 488; Avila, RH-TP-28,799 at 3-4; Lizama, RH-TP-07-29,063; Loney I, SR 20,089 at 4 n.1.

[15] The Commission observes that the authority of the Commission and the OAH to award attorney's fees to prevailing parties is contained in the same regulation. *See* 14 DCMR § 3825.

B. Whether the ALJ erred in awarding attorney's fees because the Tenant was not a prevailing party.

The Housing Provider also alleges that the Order for Attorney's Fees was "premature since the case is being appealed and no prevailing party is yet established" to implicate D.C. OFFICIAL CODE § 42-3509.02.[16] Housing Provider's Notice of Cross-Appeal at 1. The Commission notes that, aside from the above-recited sentence, there are no additional details, record evidence, or legal authority, other than D.C. OFFICIAL CODE § 42-3509.02, provided in support of this claim in the Housing Provider's Notice of Cross-Appeal. *See id.*

Based upon its review of the record, the Commission is satisfied that the Tenant was a prevailing party in this case because the record reflects that she succeeded on at least one "significant issue which achieves some of the benefit the parties sought in bringing the suit," including claims that the Housing Provider failed to register for an exemption, failed to give notice of the exemption, improperly increased rent without giving notice of an exemption, substantially reduced services, and improperly served a notice to vacate. *See* Walker, TP 26,197 at 2; Final Order at 7-18; R. at 157-62; Order for Attorney's Fees at 8-14; R. at 203-09.

Furthermore, the Commission's review of the record reveals that the Tenant only appealed those issues regarding which she did not prevail, and the Housing Provider's Notice of Cross-Appeal was limited to the ALJ's Order for Attorney's Fees, not including any claims regarding the merits of the Tenant Petition as determined by the ALJ in the Final Order. *See* Tenant's Notice of Appeal; Housing Provider's Notice of Cross-Appeal. The Commission observes that the Housing Provider's failure to contest any of the claims regarding which the

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[16] D.C. OFFICIAL CODE § 42-3509.02 states:

> The Rent Administrator [OAH], 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.

Tenant prevailed in the Final Order undermines any claim in this case that the Tenant's status as the prevailing party could only be ultimately established after appellate determination of the legal merits of such claims. *See* Tenant's Notice of Appeal; Housing Provider's Notice of Cross-Appeal.

As noted *supra* at 27, the Commission has rejected an identical claim to the above that an ALJ made an erroneous, premature award of attorney's fees to tenants in a case on appeal to the Commission since the tenants could not be regarded as "prevailing parties" until a final decision on appeal had disposed of all legal issues. Lizama, RH-TP-07-29,063; *see also* Tenants of 500 23rd Street, N.W., 617 A.2d at 488; Ungar, 535 A.2d at 892. Moreover, as noted *supra* at 27, "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 St., N.W., 617 A.2d at 488 (quoting Ungar, 535 A.2d at 892); Walker, TP 26,197 at 70 (quoting Slaby, TPs 21,518 & 22,521 at 11-12) (prevailing party "merely has to 'succeed on any significant issue which achieves some of the benefit the parties sought in bringing the suit'" for an award of attorney's fees to be appropriate).

For the foregoing reasons, the Commission determines that the ALJ did not err in finding that the Tenant was a prevailing party in the case before the OAH. *See* Lizama, RH-TP-07-29,063; *see also* Loney, 11 A.3d at 759; Tenants of 500 23rd Street, N.W., 617 A.2d at 488; Ungar, 535 A.2d at 892; Walker, TP 26,197 at 2.

C. Whether the ALJ abused her discretion by basing the award of attorney's fees on evidence that was not substantial.

The Housing Provider makes the following allegations that the ALJ's award of attorney's fees was an abuse of discretion and the evidence on which the award was based, the Tenant's counsel's sworn and notarized affidavit (Affidavit for Attorney's Fees), did not constitute

substantial evidence under 14 DCMR § 3807.1 to support an award of attorney's fees: (1) the Affidavit for Attorney's Fees contained "internal inconsistences;"[17] (2) an award of attorney's fees cannot be made when the Tenant did not prevail on every claim and the Affidavit for Attorney's Fees "did not separate time spent as to prevailing and non-prevailing issues;" (3) the award was "unreasonable given the nature of the case and the results obtained;" and (4) "[n]o special expertise was needed, nor extensive research warranted, nor motions filed, nor were there any factors justifying an attorney fee award larger than the underlying compensatory award." Housing Provider's Notice of Cross-Appeal at 2. Additionally, the Housing Provider contends that the Order for Attorney's fees was unwarranted because the Tenant "is not entitled to fees on issues she lost." *Id.*

As the Commission stated previously, *see supra* at 26, its standard of review is contained in 14 DCMR § 3807.1. The Commission may reverse decisions "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. "Substantial evidence" has been defined as "such relevant evidence as a reasonable mind might accept as able to support a conclusion." Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938); s*ee also* 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) at 14; Hago v. Gewirz, RH-TP-08-11,552 & RH-TP-08-12,085 (RHC Aug. 4, 2011) at 5.

The OAH "may award attorney's fees incurred in the administrative adjudication of a petition." 14 DCMR § 3825.1. An award of attorney's fees must be "based on an affidavit

[17] The Commission notes that the Housing Provider has not supplied any additional details, record evidence, or legal authority in support of this issue in the Housing Provider's Notice of Cross-Appeal, nor has he specified which "internal inconsistencies" should render the Affidavit for Attorney's Fees an improper basis for an award. *See* Housing Provider's Notice of Cross-Appeal at 1-2.

executed by the attorney of record itemizing the attorney's time for legal services." 14 DCMR § 3825.7. The affidavit "must be sufficiently detailed to permit the District Court [or agency] to make an independent determination whether or not the hours claimed are justified." Hampton Courts Tenants Ass'n v. D.C. Rental Hous. Comm'n, 599 A.2d 1113, 1117 (D.C. 1991) (quoting Nat'l Ass'n of Concerned Veterans v. Sec'y of Defense, 675 F.2d 1319, 1327 (D.C. Cir. 1982)). The "determination of the reasonableness of attorney's fee amounts" is clearly within the discretion of the ALJ. Hampton Courts Tenants Ass'n, 599 A.2d at 1115.

"The award of attorney's fees shall be calculated in accordance with the existing case law" by first determining the lodestar amount, 14 DCMR § 3825.8, which "is the number of hours reasonably expended on a task multiplied by a reasonable hourly rate." 14 DCMR § 3825.8(a); *see also* Avila, RH-TP-28,799 at 5; Sindram v. Tenacity Grp., RH-TP-07-29,094 (RHC Sept. 14, 2011); Reid v. Sinclair, TP 11,334 (RHC Dec. 1, 1988). After the establishment of the lodestar amount, there may be adjustments to the lodestar amount after consideration of the following thirteen factors:

1) the time and labor required;

2) the novelty, complexity, and difficulty of the legal issues or questions;

3) the skill requisite to perform the legal service properly;

4) the preclusion of other employment by the attorney, due to acceptance of the case;

5) the customary fee or prevailing rate in the community for attorneys with similar experience;

6) whether the fee is fixed or contingent;

7) time limitations imposed by the client or the circumstances;

8) the amount involved and the results obtained;

9) the experience, reputation, and ability of the attorney;

10) the undesirability of the case;

11) the nature and length of the professional relationship with the client;

12) the award in similar cases; and

13) the results obtained, when the moving party did not prevail on all the issues

14 DCMR § 3825.8(b) (emphasis added). In decisions awarding attorney's fees, all thirteen factors are considered when adjusting the lodestar amount.[18] *See, e.g.*, Gelman Mgmt. Co. v. Campbell (Campbell II), RH-TP-09-29,715 (RHC Feb. 18, 2014) at 11-16; Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC May 10, 2013) at 14-18; Avila, RH-TP-28,799 at 14-19.

1. The ALJ's Calculation of the Lodestar Amount

a. The ALJ's determination of the number of hours reasonably expended by the Tenant's counsel.

The Housing Provider alleges that the "internal inconsistencies" of the Affidavit for Attorney's Fees "rendered the evidence presented . . . unreliable" and that there was an improper award of "fees for attorney training and background research on D.C. rental housing law and OAH procedures." Housing Provider's Notice of Cross-Appeal at 2.

As previously stated, the first element of the lodestar calculation is the number of hours "reasonably expended" by counsel. 14 DCMR § 3825.8(a); *see* Campbell II, RH-TP-09-29,715 at 4; Avila, RH-TP-28,799 at 5. Factors to be considered in establishing whether the number of

[18] As indicated in the foregoing emphasized text of 14 DCMR § 3825.8(b), the Commission notes that it uses the word "and," rather than "or," which indicates that all thirteen factors are to be considered when adjusting the lodestar amount. 14 DCMR § 3825.8(b)(12)-(13); s*ee, e.g.*, Garcia v. United States, 469 U.S. 70, 73 (1984) ("Canons of construction indicate that terms connective in the disjunctive [(i.e., by "or")] . . . be given separate meanings"); Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979) ("Canons of construction ordinarily suggest that terms connected by a disjunctive [("or")] be given separate meanings, unless the context dictates otherwise"); Sanders v. Molla, 985 A.2d 439, 442 (D.C. 2009) (explaining that the separation of elements in a statute by the term "and" usually has a conjunctive connotation); Shipkey v. D.C. Dep't of Emp't Servs., 955 A.2d 718, 725 (D.C. 2008) (stating that the "use of 'or' instead of 'and' suggests that the factors enumerated [in a three-prong legal test] are to be considered separately, not in combination").

hours claimed is reasonable are: (1) whether the time records are contemporaneous, complete and standardized rather than broad summaries of work done and hours logged; (2) whether an attorney skilled in the specialized field of rental housing would have logged the same number of hours for similar work; and (3) whether the hours appear excessive, redundant or otherwise unnecessary. *See* Hampton Courts Tenants Ass'n, 599 A.2d at 1116-17; Kuratu, RH-TP-07-28,985 at 7; Loney I, SR 20,089 at 6 (citing Reid, TP 11,334 at 16-17). Under the Act, a party generally may not recover legal fees for work done before the OAH was informed of the Tenant's representation by counsel. *See* 14 DCMR § 3825.6.[19]

The Commission observes that the ALJ found that the Affidavit for Attorney's Fees submitted by the Tenant's counsel contained conflicting statements of the total billable hours claimed when total billable hours were listed as both 151.75 hours and 124.00 hours.[20] Order for Attorney's Fees at 1 n.1; R. at 216; *see also* Affidavit for Attorney's Fees at 2, 6; R. at 178, 182; Motion for Reasonable Attorney's Fees at 8; R. at 185. The Commission observes that the ALJ utilized the lower number of hours (124.00 hours) to calculate the lodestar amount because this was the amount spent "[a]ccording to the [sworn and notarized] affidavit and timesheet." Order for Attorney's Fees at 4-5; R. at 212-13. However, the Commission observes that the ALJ, in selecting 124.00 hours for the lodestar calculation, did not determine or discuss whether that figure was reasonable in accordance with 14 DCMR § 3825.8(a). *See* Hampton Courts Tenants Ass'n, 599 A.2d at 1115; *see also* Order for Attorney's Fees at 3-5; R. at 212-14. Specifically,

[19] "Attorney's fees shall be paid only for services performed after the filing of the petition and after the party notified the Rent Administrator [OAH] or the Commission that the party is represented by an attorney, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the party. Written filings to the Commission signed by the attorney shall be deemed to constitute notice of representation." 14 DCMR § 3825.6.

[20] The Commission notes that the ALJ did not describe or identify a reason for this discrepancy. The Commission's review of the record indicates that the when the daily totals listed in the Affidavit for Attorney's Fees are added together, the sum is 124.00 hours. *See* Affidavit for Attorney's Fees at 2-6; R. at 178-82.

the Commission's review of the record reveals no indication that the ALJ evaluated (1) whether the time records were contemporaneous, complete, and standardized rather than broad summaries of work done and hours logged; (2) whether an attorney skilled in the specialized field of rental housing would have logged the same number of hours for similar work; and (3) whether the hours appeared excessive, redundant, or otherwise unnecessary. *See* Order for Attorney's Fees at 3-5; R. at 212-14; *see also* Hampton Courts Tenants Ass'n, 599 A.2d at 1116-17; Kuratu, RH-TP-07-28,985 at 7; Loney I, SR 20,089 at 6 (citing Reid, TP 11,334 at 16-17).

Having failed to make clear findings of fact and conclusions of law on the reasonableness of the 124.00 hours claimed by the Tenant's counsel, the Commission is unable to determine whether the ALJ's utilization of 124.00 hours for purposes of calculating the lodestar amount is supported by substantial evidence. *See* 14 DCMR § 3807.1; Fort Chaplin Park Assocs., 649 A.2d at 1079; Marguerite Corsetti Trust, RH-TP-06-28,207 at 14; Hago, RH-TP-08-11,552 & RH-TP-08-12,085 at 5.

Moreover, the Commission observes that the ALJ cited the provisions of 14 DCMR § 3825.6[21] in the Final Order, stating that any hours worked prior to notification to OAH that the Tenant is represented by counsel should be excluded from an award of attorney's fees. *See* Order for Attorney's Fees at 3-4; R. at 213-14. However, the Commission's review of the record does not reveal that the ALJ applied 14 DCMR § 3825.6 in making her determination of the number of compensable hours spent on the case by the Tenant's counsel. *See* Order for Attorney's Fees at 3-5; R. at 212-14. For example, the Commission's review of the record

[21] 14 DCMR § 3825.6 provides the following:

> Attorney's fees shall be paid only for services performed after the filing of the petition and after the party notified the Rent Administrator or the Commission that the party is represented by an attorney, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the party. Written filings to the Commission signed by the attorney shall be deemed to constitute notice of representation.

reveals a notice of appearance (Notice of Appearance) by an attorney for the Tenant filed with OAH on March 16, 2009. Notice of Appearance; R. at 32. The Commission's review of the record also reveals that the Affidavit for Attorney's Fees lists hours as early as March 9, 2009, at least seven days prior to the Notice of Appearance. Affidavit for Attorney's Fees at 2; R. at 182.

Based on its review of the record, the Commission is unable to determine whether, in calculating the lodestar amount, the ALJ excluded the hours listed on the affidavit that occurred prior to filing of the Notice of Appearance, or otherwise determined that such hours were performed in reaching a determination to represent the Tenant, in accordance with 14 DCMR § 3825.6. *See* Order for Attorney's Fees at 3-5; R. at 212-14; Affidavit for Attorney's Fees at 2; R. at 182.

Accordingly, the Commission remands to the ALJ for further findings of fact and conclusions of law on the issues of the actual amount of the claimed hours and whether such claimed hours are "reasonable," in accordance with 14 DCMR § 3825.8(a), specifically addressing: (1) whether the time records are contemporaneous, complete and standardized rather than broad summaries of work done and hours logged; (2) whether an attorney skilled in the specialized field of rental housing would have logged the same number of hours for similar work; and (3) whether the hours appear excessive, redundant or otherwise unnecessary. *See* Hampton Courts Tenants Ass'n, 599 A.2d at 1116-17; Kuratu, RH-TP-07-28,985 at 7; Loney I, SR 20,089 at 6 (citing Reid, TP 11,334 at 16-17). Additionally, the Commission instructs the ALJ to make findings of fact and conclusions of law on the specific date that the Tenant's counsel notified OAH that counsel for the Tenant would appear in the case, and for any adjustment excluding those hours claimed that were not performed in reaching a determination to represent the Tenant prior to the notification, in accordance with 14 DCMR § 3825.6.

The Commission is aware that the number of hours ultimately determined by the ALJ may not total 124.00. As such, if the ALJ determines on remand that some number of hours other than 124.00 is reasonable, the Commission further instructs the ALJ to recalculate the lodestar amount and award of attorney's fees, consistent with its decision herein.

b. The ALJ's determination of the hourly rate for the Tenant's counsel's services to the Tenant.

The second element of the lodestar amount is the "reasonable hourly rate," which is "measured by prevailing market rates in the relevant community for attorneys of similar experience and skill." 14 DCMR § 3825.8(a); Hampton Courts Tenants Ass'n, 599 A.2d at 1115 n.7; Reid, TP 11,334 at 16-17. The burden of documenting the reasonable hourly rate lies with the fee applicant. Hampton Courts Tenants Ass'n, 599 A.2d at 1116-17 (citing Hensley v. Eckerhart, 461 U.S. 424, 437 (1983)); District of Columbia v. Jerry M., 580 A.2d 1270, 1281 (D.C. 1990). The Commission has elaborated the standard as follows:

> In Reid v. Sinclair, . . . [w]e noted that the community that we look to determine reasonable hourly rates in the specialized field of rent control is the community of practitioners in that field. We said it is not sufficient for counsel to show that there are other attorneys in the District of Columbia who receive the fee requested or even that counsel has received that fee on occasion in the past. Rather, the attorney must show by appropriate means, usually by affidavit, that he or she has obtained such a fee representing clients in rental housing litigation. Where the attorney cannot show that he or she has previously done that, the [ALJ] must determine the allowable rate using discretion within the parameters set forth in [Copeland v. Marshall, 641 F.2d 880 (D.C. Cir. 1980)] and other court opinions, [for example, Hensley v. Eckerhart, 461 U.S. 424 (1983), National Ass'n of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319 (D.C. Cir. 1982), and District of Columbia v. Hunt, 525 A.2d 1015 (D.C. 1987)].

Hampton Courts Tenants' Ass'n v. William C. Smith Co., CI 20,176 (RHC July 20, 1990) at 9 (emphasis added). *See also* Loney v. Tenants of 710 Jefferson Street, N.W. (Loney II), SR 20,089 (RHC June 6, 2012) at 58. Attorneys may be requested to submit affidavits containing information about the customary fees for attorneys who work in the field of rent control and

rental housing law under the Act. Loney II, SR 20,089 at 63; *see also* Butt v. Vogel, TP 22,806 (RHC Jan. 30, 1998) at 6-7; Carter v. Davis, TPs 23,535 & 23,553 (RHC Dec. 11, 1998) at 7; Town Ctr. Mgmt. Corp. v. Pettaway, TP 23,538 (RHC Feb. 29, 1996) at 8.

The Commission observes that, in addition to conflicting statements of the total billable hours, noted *supra* at 34, the ALJ found conflicting statements of the hourly rate in the Affidavit for Attorney's Fees. *See* Order for Attorney's Fees at 1 n.1; R. at 216; *see also* Affidavit for Attorney's Fees at 1, 6; R. at 178, 183. The Commission's review of the record reveals that the Tenant's counsel claimed $225 per hour under the Laffey Matrix[22] as a reasonable hourly rate in the Memorandum of Points and Authorities in Support of Tenant/Petitioner's Motion for Reasonable Attorney's Fees (Memorandum of Points) which was submitted with the Affidavit for Attorney's Fees. The Commission also notes that substantial evidence in the record supports a fee of $225 per hour as a reasonable hourly rate under the Laffey Matrix based on the number of years the Tenant's counsel had been in practice when he worked on the Tenant's case. *See* Affidavit for Attorney's Fees at 1; R. at 178; Memorandum of Points at 5; R. at 188.

Nonetheless, the Commission notes that in her calculation of the lodestar amount in the Affidavit for Attorney's Fees the Tenant's counsel provided a rate of $115 per hour. *See* Affidavit for Attorney's Fees at 6; R. at 183. The Commission's review of the record suggests that the ALJ decided to utilize the lower hourly rate ($115 per hour) to calculate the lodestar

[22] The Laffey Matrix begins with rates from 1981–1982 allowed and established by the U.S. District Court for the District of Columbia in the case of Laffey v. Northwest Airlines, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is a matrix form comprised of hourly rates for attorneys of varying experience levels and paralegals/law clerks, which has been compiled by the Civil Division of the United States Attorney's Office for the District of Columbia. It has been used since then by courts in the District to reflect billing rates for attorneys in the Washington, D.C. area with various degrees of experience. *See, e.g.*, Heller v. District of Columbia, 832 F. Supp. 2d 32, 40 (D.D.C. 2011). The Laffey Matrix is intended to be used in cases where a fee shifting statute permits a prevailing party to recover "reasonable" attorney's fees. In that regard, it is similar to Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(k) (2012), the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(E), and the Equal Access to Justice Act, 28 U.S.C. § 2412(b). Rates for subsequent years after 1981–1982 are adjusted annually based on cost of living increases for the Washington, D.C. area.

amount, because it was the rate used by the Tenant's counsel to "calculate his applicable fees." Order for Attorney's Fees at 4-5; R. at 212-13. However, the Commission observes that the ALJ did not explain why she chose to utilize the $115 hourly rate instead of the $225 hourly rate under the Laffey Matrix for which, the Commission observes, there was substantial evidence in the record. *See* Order for Attorney's Fees at 3-5; R. at 212-14.

The Commission's review of the record reveals an obvious discrepancy between the Laffey Matrix hourly rate of $225 requested by the Tenant's counsel, *see* Memorandum of Points at 5; R. at 188, and the hourly rate of $115 also referred to in the same sworn and notarized Affidavit for Attorney's Fees. *See* Affidavit for Attorney's Fees at 1; R. at 183. The Commission's review of the record also reveals that the Tenant's counsel's calculation of his fees in the amount of $27,900 utilizes the $225 hourly rate, since $225 per hour multiplied by 124.00 hours equals $27,900. *See* Affidavit for Attorney's Fees at 6; R. at 178.

The record also reveals that ALJ did not evaluate whether either the $115 hourly rate or the $225 hourly rate under the Laffey Matrix were reasonable under the community rate standard, which takes into consideration the customary fees charged by attorneys who work in the specialized field of rental housing law when determining the reasonableness of the hourly rate, as articulated by the Commission in Loney II, SR 20,089 at 58-63, Town Center Management Corp., TP 23,538 at 8, and Hampton Courts Tenants' Ass'n, CI 20,176 at 9.

Thus, because the ALJ has failed to explain why she credited the $115 hourly rate over the $225 hourly rate under the Laffey Matrix as a reasonable hourly rate, the Commission is unable to determine whether the ALJ's determination of the reasonable hourly rate was supported by substantial evidence. 14 DCMR § 3807.1; *see* Order for Attorney's Fees at 3-5; R. at 212-14. For the foregoing reasons, the Commission reverses the ALJ's determination of the

reasonable hourly rate, and remands to the ALJ for providing the findings of fact and conclusions of law as to the reasonable hourly rate claimed by the Tenant's counsel, specifically addressing why either the $115 hourly rate or the $225 hourly rate under the Laffey Matrix is "reasonable" in accordance with the Act, and demonstrating consideration of the customary fee charged by attorneys who work in the specialized field of rental housing law. *See* 14 DCMR § 3825.8(a); Hampton Courts Tenants Ass'n, 599 A.2d at 1115 n.7; Loney II, SR 20,089 at 58-63; Town Ctr. Mgmt. Corp., TP 23,538 at 8; Hampton Courts Tenants' Ass'n, CI 20,176 at 9; Reid, TP 11,334 at 16-17.

Upon determination of the appropriate hourly rate, the ALJ is further instructed to recalculate the lodestar amount and award of attorney's fees, consistent with the Commission's decision herein.

2. The ALJ's adjustment of the lodestar amount under 14 DCMR § 3825.8(b).

The Housing Provider alleges that the Order for Attorney's Fees was unwarranted because (1) the Tenant was awarded fees for time spent on issues she lost; (2) an award of attorney's fees cannot be made when the Tenant did not prevail on every claim and the Affidavit for Attorney's Fees "did not separate time spent as to prevailing and non-prevailing issues;" (3) the award was "unreasonable given the nature of the case and the results obtained;" and (4) "[n]o special expertise was needed, nor extensive research warranted, nor motions filed, nor were there any factors justifying an attorney fee award larger than the underlying compensatory award."

Under the Act, the lodestar amount of attorney's fees may be adjusted following consideration of thirteen (13) factors contained in 14 DCMR § 3825.8(b). Determinations of whether adjustments are warranted are based upon review of the record, fee awards in other cases under the Act, and "past experience with attorney services in the rental housing area." *See*

Campbell II, RH-TP-09-29,715 at 12; Kuratu, RH-TP-07-28,985 at 14; Avila, RH-TP-28,799 at 15; Hampton Courts Tenants' Ass'n, CI 20,176 at 7. The Commission notes that the ALJ only made findings of fact and conclusions of law regarding the first, fourth, eighth, ninth, and thirteenth factors under 14 DCMR § 3825.8(b). *See* Order for Attorney's Fees at 5-12; R. at 204-12. The Commission proceeds to review the ALJ's determinations regarding these factors.

a. The ALJ's reduction of the lodestar amount by 10% based on her evaluation of the first and fourth factors.

The Commission observes that the ALJ combined her evaluation of the first factor, time and labor required, and the fourth factor, preclusion of other employment, and determined a 10% reduction of the lodestar amount was warranted. Order for Attorney's Fees at 6-7; R. at 210-11; *see also* 14 DCMR § 3825.8(b)(1), (4). The Commission observes that the ALJ stated that the Affidavit for Attorney's Fees demonstrated that over a period of "approximately 120 days, [the Tenant's counsel] worked a total of 45 days on [the Tenant's] case. During this time, only 19 of the 45 days required [the Tenant's counsel] to spend three or more hours in a given day on [the Tenant's] case." Order for Attorney's Fees at 6-7, R. at 210-11. The Commission observes that the ALJ found a 10% reduction in the lodestar amount was warranted because the "Tenant's case did not demand a significant amount of [the Tenant's counsel's] time and labor, and did not preclude [him] from accepting other employment." Order for Attorney's Fees at 7; R. at 210.

The Commission notes that the ALJ has significant discretion in determining an award of attorney's fees. *See* Hampton Courts Tenants Ass'n, 599 A.2d at 1115; *see also* Hensley, 461 U.S. at 437; Jerry M., 580 A.2d at 1280; Alexander v. D.C. Rental Hous. Comm'n, 542 A.2d 359, 361 (D.C. 1988). Based on its review of the record, the Commission is satisfied that the ALJ's 10% reduction of the lodestar amount was based on substantial evidence, including evidence in the Affidavit for Attorney's Fees as discussed *supra* at 41. *See* Affidavit for

Attorney's Fees; *see also* Fort Chaplin Park Assocs., 649 A.2d at 1079; Marguerite Corsetti Trust, RH-TP-06-28,207 at 14; Hago, RH-TP-08-11,552 & RH-TP-08-12,085 at 5. Thus, the ALJ is affirmed on this issue.

b. The ALJ's reduction of the lodestar amount by 10% based on her evaluation of the ninth factor.

The Commission observes that the ALJ considered the ninth factor—the experience, reputation, and ability of the attorney. 14 DCMR § 3825.8(b)(9). The ALJ determined that an additional 10% reduction was warranted due to the Tenant's counsel's "inexperience with rental housing law and his significant reliance on discussions with other attorneys to bring him up to speed." Order for Attorney's Fees at 7-8; R. at 209-10; *see also* 14 DCMR § 3825.8(b)(9). The Commission has noted that a fee award "should not be an occasion for counsel who are not experienced in [rental housing law] to educate themselves at the expense of the other party." Loney I, SR 20,089 at 10 (quoting Reid, TP 11,334 at 17). In Loney I, the Commission reduced an inexperienced attorney's hours under this factor because the attorney spent more time performing certain tasks than an attorney with experience practicing rental housing law would have. *See* Loney I, SR 20,089 at 11-12.

The Commission notes that the ALJ has significant discretion in setting the number of reasonable hours when awarding attorney's fees. *See* Hampton Courts Tenants Ass'n, 599 A.2d at 1115; *see also* Hensley, 461 U.S. at 437 (1983); Jerry M., 580 A.2d at 1280; Alexander, 542 A.2d at 361. The Commission, upon review of the record, is satisfied that the ALJ's 10% reduction of the lodestar amount for this factor was based on substantial evidence in the record that the Tenant's counsel was inexperienced in rental housing law and spent more time on the case than an attorney with experience in the field would have, including evidence that the

Tenant's counsel spent significant time discussing rental housing law with other attorneys.[23] *See* Affidavit for Attorney's Fees at 2-3; R. at 181-82; *see also* Fort Chaplin Park Assocs., 649 A.2d at 1079; Marguerite Corsetti Trust, RH-TP-06-28,207 at 14; Hago, RH-TP-08-11,552 & RH-TP-08-12,085 at 5. Thus, the ALJ is affirmed on this issue.

c. The ALJ's reduction of the lodestar amount by 33% based on her evaluation of the eighth and thirteenth factors.

The Commission observes that the ALJ concluded her adjustment of the lodestar amount by considering the eighth and thirteenth factors together: respectively, the amount involved and the results obtained (eighth factor), and the results obtained when the moving party did not prevail on all the issues (thirteenth factor). Order for Attorney's Fees at 8-9; R. at 208-09; *see also* 14 DCMR § 3825.8(b)(8), (13). The ALJ concluded that these factors merited a 33% reduction of the lodestar amount based upon a proportional adjustment described *infra*. Order for Attorney's Fees at 13; R. at 204.

The calculation of attorney's fees may be adjusted based on "the results obtained, when the moving party did not prevail on all the issues." 14 DCMR § 3825.8(b)(13). When a party requesting attorney's fees has prevailed on fewer than all claims made, an award of attorney's fees may be reduced proportionately to reflect the number of successful claims out of the total number of claims made. *See* Covington v. Foley Props., TP 27,985 (RHC June 12, 2007) at 7 (reducing fees by 20% when the Tenant prevailed on four out of five issues and the attorney did not delineate time based on issue); Dey v. L.J. Dev., Inc., TP 26,119 (RHC Nov. 17, 2003) at 5 (reducing counsel's hours by 25% to discount for issues where the Tenant did not prevail when

[23] The Commission notes that it is unable to determine the approximate amount of time the Tenant's counsel spent holding discussions with other attorneys, because, while the Affidavit for Attorney's Fees lists time spent on the Tenant's case per day, it does not list time spent on each task performed on a given day; rather, the Affidavit provides total time spent per day, alongside a list of tasks performed on that day. *See* Affidavit for Attorney's Fees at 2-3; R. at 181-82.

time spent on particular issues was not delineated); Londraville v. Kader, TP 21,748 (RHC Dec. 14, 1993) at 14 (reducing attorney's fees awarded to the Housing Provider for frivolous claims brought by the Tenant by 25% when the Tenant was successful on one of four issues raised). An award of attorney's fees based upon the proportion of successful claims out of the total number of claims has been used in the absence of specific, detailed records by an attorney of the time spent on each of the total number of claims. *See, e.g.*, Covington, TP 27,985 (making proportional reduction of fees when attorney failed to keep detailed records of time spent on each claim); Dey, TP 26,119 (reducing counsel's hours by 25% on basis of proportion of successful claims out of total number of claims when attorney failed to specify time spent on each issue).

The Commission's review of the record reveals that the ALJ determined that the Affidavit for Attorney's Fees lacked specificity in its description of the work completed within the number of hours claimed, making it "difficult to determine which hours were expended on which claims" and leaving "no way to separate the time spent on a claim by claim basis." Order for Attorney's Fees at 12; R. at 205. The record also indicates that, in the absence of specific, detailed time records for each claim, the ALJ attempted to calculate the lodestar amount of attorney's fees on the basis of the proportion of the successful (or, alternatively, unsuccessful) claims out of the total number of claims in the Tenant Petition. *See* Order for Attorney's Fees at 12-13; R. at 204-05.

Based on its review of the record and in the absence of specific, detailed records of the time spent on each claim in the Tenant Petition,[24] the Commission is satisfied that the ALJ's determination that a proportional reduction of the award of attorney's fees based upon the

[24] The Commission's review of the record confirms the ALJ's determination regarding the absence of specific, detailed written records of time spent on each of the Tenant's claims by the Tenant's attorney. *See* Affidavit for Attorney's Fees at 2-6; R. at 178-82.

number of successful claims out of the total number of claims in the Tenant Petition was based upon sufficient case precedent and was otherwise appropriate under the Act for the determination of the award of attorney's fees. *See* Order for Attorney's Fees at 8-12; R. at 205-09; *see also* 14 DCMR § 3825.8(b)(8), (13); Fort Chaplin Park Assocs., 649 A.2d at 1079; Marguerite Corsetti Trust, RH-TP-06-28,207 at 14; Hago, RH-TP-08-11,552 & RH-TP-08-12,085 at 5.

Furthermore, the Commission is satisfied that the ALJ's decision to reduce the award under 14 DCMR § 3825.8(b)(8)&(13), was supported by substantial evidence that the Tenant prevailed on some, but not all, of the claims presented in the Tenant Petition.[25] *See* Affidavit for Attorney's Fees at 2-6; R. at 178-82; *see also* Fort Chaplin Park Assocs., 649 A.2d at 1079; Marguerite Corsetti Trust, RH-TP-06-28,207 at 14; Hago, RH-TP-08-11,552 & RH-TP-08-12,085 at 5. As noted *supra*, an award of attorney's fees based upon the proportion of successful claims out of the total number of claims in a tenant petition is supported by case precedent and is otherwise appropriate under the Act. *See* Covington, TP 27,985 at 7; Dey, TP 26,119 at 5; Londraville, TP 21,748 at 14. However, for certain key reasons, the Commission's review of the record does not reveal the substantial evidence necessary to support the derivation of the proportion of "33%" as the appropriate and reasonable proportional amount for the reduction in the award of attorney's fees to the Tenant's counsel.

First, the Commission's review of the record indicates that the total number of claims in the Tenant Petition, as amended, is seven (7). *See* Tenant Petition at 1-2; Amended Tenant Petition at 1-2. Record (R.) at 16-17, 72-73. However, the Commission's review of the record

[25] The Commission notes that the Tenant raised seven (7) claims in the Tenant Petition. *See* Tenant Petition at 1-2; R. at 16-17; Amended Tenant Petition at 1-2; R. at 72-73. The Final Order indicates that, out of the seven (7) claims in the Tenant Petition, the Tenant prevailed on the following claims: (1) the building was not properly registered with the RAD; (2) services and/or facilities were reduced; (3) an improper notice to vacate was served on the Tenant, (4) the rent increase was larger than the increase allowed by the Act; (5) the rent increase was improperly filed with the RACD, and (6) the rent increase was made while the Housing Accommodation was not in substantial compliance with D.C. Housing Regulations. *See supra* at 2-21; *see also* Final Order at 7-18; R. at 151-62.

does not clearly confirm that the ALJ used seven (7) claims as the total number of claims in the Tenant Petition from which to determine the applicable proportion of successful claims. For example, the ALJ made the following determinations regarding the total number of claims:

> 18. We have four distinct sets of claims: (1) the rent increase larger than the increase allowed by any applicable provision of the Act and was not valid because of [sic] Housing Provider did not meet registration requirements pursuant to the Act; (2) Housing Provider substantially reduced Tenant's services and/or facilities; (3) Housing Provider took retaliatory action against Tenant; and (4) Housing Provider improperly served Tenant with a Notice to Vacate.
>
> 19. The second claim can be broken down into nine distinct subclaims regarding which services and/or facilities were reduced and under which law the reduction allegedly violated.

See Order for Attorney's Fees at 11; R. at 206 (emphasis added). *See also supra* at 19-20.

From the above determinations by the ALJ, and its review of the record, the Commission is unable to determine whether the "four [4] distinct sets of claims" resulted in a total number of seven (7) claims as contained in the Tenant Petition, whether the "nine distinct subclaims" were added to the seven (7) claims in the Tenant Petition for a total number of claims approaching sixteen (16), or whether the ALJ discounted or otherwise modified the total number of claims based upon other factors that are not clearly indicated in the record. *See* Order for Attorney's Fees at 2-14; R. at 203-15.

With respect to the ALJ's determination of the number of successful claims upon which the Tenant's attorney prevailed, and the ALJ's determination that the "Tenant prevailed on roughly two-thirds [2/3] of her case," ALJ made the following determinations:

> 22. . . . In the instant case, I have found that there were four groups of claims. Tenant has prevailed completely on two independent claims. I further found that Tenant completely prevailed on four and partially prevailed on the fifth services and/or facilities subclaim. Therefore, I find a reduction of 33% is appropriate, given Tenant prevailed on roughly two-thirds of her case.

23. I found that a 33% reduction in Tenant's counsel's lodestar is appropriate in view of the following considerations: (1) Tenant prevailed in a little over half of the claims that were asserted in the tenant petition. (2) Tenant only prevailed on half of the claims for substantial reduction in services and/or facilities, claims that accounted for a major part of the testimony at the hearing.

See Order for Attorney's Fees at 13; R. at 204 (emphasis added); *see also supra* at 19-20.

Based upon its review of the record, and the variety of references in the record to the total number of claims and sub-claims, the Commission is also unable to determine the substantial evidence supporting the ALJ's determination of the exact number of claims upon which the Tenant prevailed, since the number of prevailing claims is variously referred to as "two independent claims," "four and partially prevailed on the fifth services and/or facilities subclaim," "a little over half of the claims in the tenant petition," and "half of the claims for a substantial reduction in services." *See* Order for Attorney's Fees at 10-13; R. at 204-07; *see also supra* at 19-20.

In sum, the Commission's review of the record reveals (1) a variety of sets of claims that the ALJ identifies in addition to the claims in the Tenant Petition, (2) a confusing (if not conflicting) identification by the ALJ of the number of claims upon which the Tenant prevailed, and (3) a lack of clarity by the ALJ in providing a rationale in her determination that the Tenant prevailed on "roughly two-thirds" of her case, with a subsequent reduction of the lodestar amount by 33%. *See* Order for Attorney's Fees at 8-13; R. at 204-09 (emphasis added); *see supra* at 19-20. Although an ALJ has significant discretion in determining an award of attorney's fees, *see* Hampton Courts Tenants Ass'n, 599 A.2d at 1115; Jerry M., 580 A.2d at 1280, the Commission is unable to determine that substantial evidence supported the "reasonableness" of the ALJ's determination of the reduction of the lodestar amount of attorney's fees by 33% based upon her evaluation of 14 DCMR § 3825.8(b)(8), (13), or that the

ALJ's reduction of the lodestar by 33% in this case "flows rationally from the facts" in the record. *See* Munchison, 813 A.2d at 205; Ruffin, TP 27,982 at 10.

The Commission remands this issue to the ALJ for further findings of fact and conclusions of law on the total number of claims brought by the Tenant in the Tenant Petition and the number of claims out of the total upon which the Tenant prevailed, in accordance with 14 DCMR § 3825.8(b)(8), (13). *See* Covington, TP 27,985 at 7; Dey, TP 26,119 at 5; Londraville, TP 21,748 at 14. The ALJ is further instructed to calculate any proportional adjustment to the lodestar amount accordingly for the foregoing reasons.

d. The ALJ's failure to address all thirteen factors contained in 14 DCMR § 3825.8(b).

Under 14 DCMR § 3825.8(b), adjustments to the lodestar amount of attorney's fees may only be made after discussion and consideration of all thirteen factors. *See* Campbell II, RH-TP-09-29,715 at 11-16; Kuratu, RH-TP-07-28,985 at 14-18; Avila, RH-TP-28,799 at 14-19. The Commission's review of the record reveals that the ALJ considered only five (5) of the total of thirteen (13) factors in 14 DCMR § 3825.8(b) when calculating the adjustment of the lodestar amount. *See* Order for Attorney's Fees at 5-13; R. at 4-12. Based on its review of the record, the Commission is not satisfied that the ALJ properly applied 14 DCMR § 3825.8(b) in adjusting the lodestar amount since, as noted, the ALJ failed to consider and address all thirteen (13) factors to be considered for any adjustment to the lodestar amount. *See* Campbell II, RH-TP-09-29,715 at 11-16; Kuratu, RH-TP-07-28,985 at 14-18; Avila, RH-TP-28,799 at 14-19.

For the foregoing reasons, the Commission instructs the ALJ on remand to make findings of fact and conclusions of law on the remaining eight (8) factors in accordance with 14 DCMR § 3825.8(b). *See* Campbell II, RH-TP-09-29,715 at 11-16 (addressing all thirteen factors); Kuratu, RH-TP-07-28,985 at 14-18 (same); Avila, RH-TP-28,799 at 14-19 (same); Loney I, SR

20,089 at 6-12 (same). If the ALJ determines that a certain factor in 14 DCMR § 3825.8(b) is not applicable or relevant to her adjustment of the lodestar amount, the ALJ shall still list the factor and provide the reasons for its lack of applicability or relevance.

IV. CONCLUSION

For the foregoing reasons, the Commission dismisses the appeal by the Tenant *with prejudice* because the Tenant failed to appear at the scheduled Commission hearing and prosecute her appeal. *See supra* at 22-25.

Regarding the ALJ's calculation of attorney's fees in compliance with the Act, the Commission reverses the ALJ's determination of 124.00 hours as the "number of hours reasonably expended" for purposes of compliance with 14 DCMR § 3825.8(a) as the lodestar amount. The Commission remands the Final Order to the ALJ for further findings of fact and conclusions of law based upon the following considerations. First, the Commission instructs the ALJ to make findings of fact and conclusions of law on the specific date that the Tenant's counsel notified OAH that counsel for the Tenant would appear in the case, and for any adjustment to the total number of hours claimed that may be necessary to exclude any hours not directed expressly at representation of the Tenant, in accordance with 14 DCMR § 3825.6. Second, the ALJ may determine on remand that a particular number of hours other than 124.00 is reasonable on the basis of the evidence in the record, and is instructed to make findings of fact and conclusions of law to support any such determination. *See supra* at 33-36.

Regarding the ALJ's selection of an appropriate hourly billing rate, the Commission reverses the ALJ's determination that the Tenant's counsel is entitled to an hourly rate of $115, for purposes of the lodestar calculation, and remands to the ALJ for (1) selecting either the $115 hourly rate or the $225 hourly rate under the Laffey Matrix; (2) providing the reasons for

selecting a particular hourly rate; and (3) providing any supporting evidence for her selection from the record, including consideration of the fees customarily charged in the specialized field of rental housing. The Commission instructs the ALJ to recalculate the lodestar amount for attorney's fees, consistent with the instructions regarding the reasonable number of hours expended and the reasonable hourly rate in this Decision and Order. *See supra* at 37-40.

The ALJ's adjustment of the lodestar amount of attorney's fees based upon the first, fourth and ninth factors under 14 DCMR § 3825.8(b) is affirmed. *See supra* at 41-43.

Regarding the ALJ's reduction of the lodestar amount of fees by 33% on the basis of 14 DCMR § 3825.8(b)(8), (13), the Commission remands this issue to the ALJ for further findings of fact and conclusions of law on the total number of claims brought by the Tenant in the Tenant Petition and, second, the number of claims out of the total upon which the Tenant prevailed, in accordance with 14 DCMR § 3825.8(b)(8), (13). *See* Covington, TP 27,985 at 7; Dey, TP 26,119 at 5; Londraville, TP 21,748 at 14. The Commission further instructs the ALJ to apply any proportional determination of successful claims to the calculation of any reduction of the lodestar amount accordingly. *See supra* at 43-48.

Finally, the Commission instructs the ALJ on remand to make findings of fact and conclusions of law on all thirteen (13) factors in 14 DCMR § 3825.8(b), which are required for consideration and application to any adjustment of the lodestar amount. For any factors which the ALJ deems inapplicable or irrelevant, the ALJ is instructed to provide the reason(s) for such inapplicability or irrelevancy. *See supra* at 48-49.

With respect to any remands, the ALJ may, in her discretion, conduct further evidentiary proceedings as necessary to comply with this Decision and Order and applicable provisions of the Act and its regulations.

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 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-10-29,503 was mailed, postage prepaid, by first class U.S. mail on this **21st day** of **July, 2014** to:

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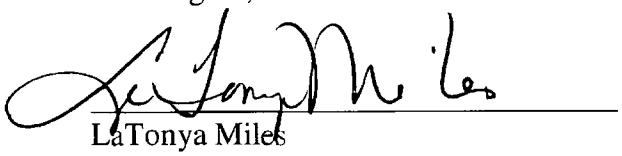

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