

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-12-30,182

*In re:* 2359-2401 Ontario Road, N.W.

Ward One (1)

**URBAN INVESTMENT PARTNERS XIII AT ONTARIO, LLC**  
Housing Provider/Appellant/Cross-appellee

v.

**2359-2401 ONTARIO ROAD TENANTS' ASSOCIATION**  
Tenant/Appellee/Cross-appellant

**ORDER DISMISSING APPEAL**

October 4, 2016

**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 Department of Housing and Community Development (“DHCD”).<sup>1</sup> 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 (2012 Repl.), the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. OFFICIAL CODE §§ 2-501-510 (2012 Repl.), and the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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<sup>1</sup> OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (“RACD”) of the Department of Consumer and Regulatory Affairs (“DCRA”) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to the RAD in DHCD by § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. Official Code § 42-3502.04b (2010 Repl.).

## I. PROCEDURAL HISTORY

On October 28, 2014, and October 30, 2014, respectively, housing provider/appellant/cross-appellee Urban Investment Partners XIII at Ontario, LLC (“Housing Provider”) and tenant/appellee/cross-appellant 2359-2401 Ontario Road Tenants’ Association, Inc. (“Tenants’ Association”) filed notices of appeal from a final order by the OAH: 2359-2401 Ontario Road Tenant Association v. Urban Investment Partners XIII at Ontario, LLC, 2012-DHCD-TP 30,182 (OAH August 28, 2014) (“Final Order”). On June 22, 2016,<sup>2</sup> the parties jointly filed two motions: (1) a stipulation of dismissal with prejudice (“Motion to Dismiss”); and (2) a motion to vacate the \$5,000 civil fine imposed by the Final Order (“Motion to Vacate”). The parties attached, as Exhibit A to the Motion to Vacate, a settlement agreement and release (“Settlement Agreement”).

On August 11, 2016, the Commission issued an order noting that the tenants of two units had apparently “settled claims separately” and that the civil fine is payable to the District government, not to the Tenants’ Association. See Urban Investment Partners XIII at Ontario, LLC v. 2359-2401 Ontario Rd. Tenants’ Assoc., Inc., RH-TP-12-30,182 (RHC Aug. 11, 2016) (“Order to Supplement”). The Order to Supplement requested that the parties supplement the joint motions by filing: (1) the separate settlement agreements executed with respect to claims by two tenants represented by the Tenants’ Association; and (2) briefing on the legal standards that should be applied to the Motion to Vacate. *Id.*

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<sup>2</sup> The Commission notes that, according to its internal records, on October 28, 2014, the Clerk of Court requested the record of this case be certified and transmitted to the Commission. See 14 DCMR § 3804.1. To date, the Commission has not received a complete, certified record, but has received a copy of the Final Order in response to a supplemental request by the Clerk.

On September 9, 2016, the parties jointly filed a response to the Order to Supplement (“Response”). The Response contains settlement agreements executed between the Housing Provider and the tenants of units 2401-205 and 2401-301. The Response also posits that the Commission, having the authority to issue fines, also has the authority to vacate them.

## II. DISCUSSION

The Commission’s rules provide the following with regard to the withdrawal of a pending appeal:

3824.1 An appellant may file a motion to withdraw an appeal pending before the Commission.

3824.2 The Commission shall review all motions to withdraw to ensure that the interests of all parties are protected.

14 DCMR § 3824 (2004). The Commission has consistently stated that settlement of litigation is to be encouraged. *See, e.g., Batts v. Sansbury*, RH-TP-14-30,474 (RHC Jan. 8, 2016); *Gordon v. United Prop. Owners (USA)*, RH-HP-06-20,806 (RHC May 15, 2015).

In *Proctor v. D.C. Rental Hous. Comm’n*, 484 A.2d 542, 548 (D.C. 1984), the District of Columbia Court of Appeals (“DCCA”) established the following five (5) factors for the Commission to use in evaluating settlement agreements:

1. The extent to which the settlement enjoys support among affected tenants;
2. Its potential for finally resolving the dispute;
3. The fairness of the proposal to all affected persons;
4. The savings of litigation costs to the parties; and
5. The difficulty of arriving at a prompt, final evaluation of the merits, given the complexity of law, and the delays inherent in the administrative and judicial processes.

*See, e.g., Batts*, RH-TP-14-30,474; *Crawford v. Dye*, RH-TP-30,472 (RHC Sept. 25, 2015).

In applying the Proctor factors, the Commission previously determined that the Settlement Agreement merits approval except with respect to the finality of the resolution for the tenants who settled separately and the resolution of the civil fines. *See* Order to Supplement at 3-4. Based on its review of the additional settlement agreements submitted in the Response, the Commission is now satisfied that the dispute is finally resolved with respect to all parties, including all tenants who settled separately.

With respect to the civil fines, the parties acknowledge that no authority directly controls the Commission's resolution of the Motion to Vacate. Response at 2. The parties maintain that, because the Commission has the authority to impose fines, *see Revithes v. D.C. Rental Hous. Comm'n*, 536 A.2d 1007, 1022 (D.C. 1987), the Commission, by implication, "must likewise have authority to vacate a fine," and should do so in the interest of promoting amicable resolution of disputes. Response at 2.

Regardless of whether the Commission does have the authority to vacate this fine solely on the agreement of the parties, the Commission is not satisfied, based on the incomplete record before it at this time, that the public interest would be served by vacating the fine. As the Commission previously noted, the fine was imposed in this case because "[t]he Housing Provider placed the Tenant Petitioners at risk of serious bodily harm every day that they did not have the appropriate fire prevention and control system in place." Final Order at 81. The ALJ determined that this was a willful violation of the Housing Code, and by extension the Act. *Id.* at 82.

A fine under the Act is a civil penalty payable to the District, unlike treble damages, which are payable to the aggrieved tenant. D.C. OFFICIAL CODE § 42-3509.01(a), (b); Bernstein Mgmt. Corp. v. D.C. Rental Hous. Comm'n, 952 A.2d 190, 196 (D.C. 2007); Burkhardt v.

Klinge Corp., RH-TP-10-29,875 (RHC Sept. 23, 2015) at 25-26.<sup>3</sup> The ALJ is authorized by the Act to impose civil fines when record evidence supports a finding of a willful violation of the Act. Bernstein Mgmt., 952 A.2d at 199; Revithes, 536 A.2d at 1022.

Based upon its review of the Response, the Commission is not persuaded that a negotiated settlement agreement between parties is legally sufficient to override, if not negate, an ALJ's enforcement of the Act through civil penalties and fines for violations of the Act that are determined to raise significant issues of public health and safety. The Commission further determines that, just as there is no legal bar for the Commission to revoke fines that it imposes for violations of the Act, there is no legal bar for the ALJ, who imposed fines based upon the preponderance of evidence from a contested case hearing, to revoke such fines. Finally, the Commission determines that the ALJ, and not the Commission, provides the appropriate legal venue and forum for revoking the fine at issue, because it was the ALJ who initially imposed the fine based on serious violations of the Act arising from the Tenant Association's claims.

Additionally, the Commission is satisfied that, in this case, the general policy in favor of settlement will not be undermined by denying in part the Motion to Vacate. See Batts, RH-TP-14-30,474; Gordon, RH-HP-06-20,806. As the Commission previously noted, the Settlement Agreement contains a severability clause, stating that if any portion of it is unenforceable, the remaining provisions "shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties." Settlement Agreement at 5. Moreover, the Settlement Agreement only requires the parties to jointly file the Motion to Vacate, which they have done, and it does not

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<sup>3</sup> Although the Commission's prior analogy to *qui tam* actions may be imperfect with respect to civil fines imposed in privately-brought litigation, the Commission's review of the parties' claim that "only a tenant . . . may recover an award in this case," when the fine at issue was imposed by and payable to the District of Columbia, does not support the parties' claim. See Response at 3.

condition any other terms on the Commission's disposition of the motion. See Settlement Agreement at 4. The Commission is therefore satisfied that, even if the civil fines are not vacated by Commission, the remainder of the issues on appeal may be dismissed and the Settlement Agreement may be otherwise enforced by the parties.

### **III. CONCLUSION**

For the foregoing reasons, the Commission denies the Motion to Vacate without prejudice and grants, in part, the Motion to Dismiss, with prejudice as to all issues except the \$5,000 civil fine. Also for the reasons stated herein, the Commission remands this matter to the ALJ, who imposed the fine following an evidentiary hearing, to determine whether both the imposition of the civil fine and the obligation to pay it remain legally effective, in light of the settlement by the parties of the underlying case from which the fine arose.<sup>4</sup>

**SO ORDERED.**

  
PETER B. SZEGEDY-MASZAK, CHAIRMAN

### **MOTIONS FOR RECONSIDERATION**

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

### **JUDICIAL REVIEW**

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

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<sup>4</sup> As noted *supra* at n.2, the Commission does not, at this time, have the benefit of the full, certified record on appeal.

the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

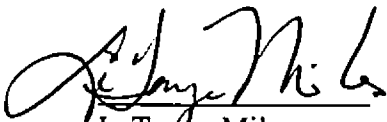
D.C. Court of Appeals  
Office of the Clerk  
430 E. Street, N.W.  
Washington, D.C. 20001  
(202) 879-2700

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing **ORDER** in RH-TP-12-30,182 was mailed, postage prepaid, by first class U.S. mail on this **4th day of October, 2016**, to:

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