DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,067

In re: 1801 16th St., NW

Ward One (1)

PATRICK DOYLE, et al.
Tenants/Appellants/Cross-Appellees

v.

PINNACLE REALTY MANAGEMENT
Housing Provider/Appellee/Cross-Appellant

DECISION AND ORDER

March 10, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from an order issued by the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD), based on a petition filed with the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA).[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 §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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[1] During the pendency of this case, the Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from 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 were transferred to RAD and DHCD by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.)). Therefore, although this case originated with RACD, it was subsequently transferred to RAD. *See infra* at n.3.

I. PROCEDURAL HISTORY[2]

On March 30, 2001, Patrick Doyle filed Tenant Petition TP 27,067 (hereinafter "Tenant Petition") on behalf of the Somerset Tenants Association (hereinafter, "Tenants Association") regarding the housing accommodation located at 1801 16th Street, N.W. (hereinafter "Housing Accommodation") alleging that Pinnacle Realty Management (hereinafter "Housing Provider") violated the Act as follows: "Services and/or facilities provided in connection with the rental of my/our unit(s) have been permanently eliminated." Tenant Petition at 1-4; Record for TP 27,067 (hereinafter "R.") at 57-60. Hearing Examiner Terry Michael Banks issued a decision on September 7, 2001 dismissing the Tenant Petition because none of the tenants of the Housing Accommodation, or a representative for the Tenants Association appeared at a scheduled RACD hearing. Doyle v. Pinnacle Realty Mgmt., TP 27,067 (RACD Sept. 7, 2001) at 1-2; R. at 63-64. The Tenants Association filed a notice of appeal of Doyle, TP 27,067 (RACD Sept. 7, 2001), with the Commission, upon which the Commission determined that the record did not contain evidence that the Tenants Association, or any of its members, were properly notified of the RACD hearing. Doyle v. Pinnacle Realty Mgmt., TP 27,067 (RHC Dec. 20, 2001) at 3-4 (citing D.C. OFFICIAL CODE § 42-3502.16(c) (2001)); R. at 101-102. The Commission reversed Doyle, TP 27,067 (RACD Sept. 7, 2001), and remanded for a hearing *de novo*. *Id.* at 4.

A hearing was held before Hearing Examiner Keith Anderson (hereinafter "Hearing Examiner") on March 18, 2003, and thereafter he issued a decision on August 15, 2003. Doyle, TP 27,067 (RACD Aug. 15, 2003) at 1. The Hearing Examiner concluded as follows, in relevant part: (1) the Tenants Association did not prove that it represented a majority of the tenants of the

[2] The Commission notes that a complete procedural history of this case prior to the RACD's March 29, 2010 Decision and Order is contained in the Commission's Decision and Order dated August 8, 2008. Pinnacle Realty Mgmt. v. Doyle, PT 27,067 (RHC Aug. 8, 2008). The Commission recites herein only the procedural history that is relevant to this current Decision and Order.

Housing Accommodation, and thus was not a proper party to the Tenant Petition; (2) the claims of tenants Linda Dalton, Afework Teklehaimanot, and Ruth Jones were barred by the doctrine of *res judicata*; (3) the removal of a roof deck from the Housing Accommodation was not a reduction in a related service or facility; (4) the claims regarding the removal of the roof deck were barred by the Act's statute of limitations. *Id.* at 10-15; R. at 333-38.

On September 3, 2003, the Tenants Association filed an appeal with the Commission, and the Commission issued its Decision and Order on August 2, 2005, providing as follows: (1) reversing the Hearing Examiner's determination regarding whether the Tenants Association represented a majority of the Tenants in the Housing Accommodation, and remanding for additional findings of fact and conclusions of law on which tenants the Tenants Association is authorized to represent; (2) reversing the Hearing Examiner's determination that the Act's statute of limitations bars the claim in the Tenant Petition; (3) reversing the Hearing Examiner's determination that the roof deck was not a related service or facility, and remanding for the Hearing Examiner to determine the value of the roof deck and make further findings of fact regarding the tenants' rents and rent ceilings and determine whether any rent refund or rent rollback is appropriate. Doyle, TP 27,067 (RHC Aug. 2, 2005) (hereinafter, "August 2005 Decision") at 4-18.

In response to the Commission's August 2005 Decision and Order, the Hearing Examiner issued a final order on May 31, 2007 (hereinafter "Final Order"), and made the following conclusions of law:

> 1. Pursuant to 14 DCMR Sect. $[sic]3904 (1991), the Somerset Tenant's [sic] Association represents a majority of the tenants at the subject property and shall appear in the case caption as the Petitioner [in] this matter. A 28-member majority of the 53 member Somerset Tenant's Association authorized Petitioner Doyle to represent them by proxy at the subject March 1[8], 2003

hearing. Twenty-three, 23, of those tenants testified at said hearing. Each of the 23 tenants is identified in Findings of Facts 4.

2. The roof deck in question is a related facility, pursuant to Section 103(27) of the Act, as determined by RACD and affirmed by the Commission in prior proceedings concerning the permanent elimination of the roof deck at the subject property.

3. Respondent permanently eliminated Petitioners['] roof deck related facility at the subject property, effective June 8, 1998, in violation of Sect. 211 of the Act, D[.]C[.] Official Code Sect. 42-3502.11 (2001) and 14 DCMR Sect. 4211 (1991).

4. Pursuant to Findings of Fact 7, Petitioners Teklehaimonot and Dalton were precluded from pursuing their claims under the doctrine of res judicata. Petitioner Page was rejected for lack of standing.

5. In accordance with the Act, the applicable regulations and case law, rent increase certificates contained in the RACD Registration File for the subject property, and the Commission's instructions on remand, Petitioners are entitled to a rent refund as set for the [sic] in Findings of Facts 9 and 10.

6. Pursuant to Sect. 901(a) of the Act, and applicable regulations and case law, Petitioners are entitled to [a] roll back in their monthly rent charged, equal to the rent overcharge they suffered, for the period from April 2003 to the end of their respective tenancies, due to Respondent's violation of the Act.

7. The [Hearing] Examiner took official notice of the RACD Registration File for 1801 – 16th Street, NW, at the March 18, 2003 hearing, pursuant to 14 DCMR Sect[.] 4007 (1991).

Final Order at 7-8; R. at 395-96.

On June 13, 2007 the Housing Provider filed a notice of appeal with the Commission, raising the following issues:

1. The Acting Rent Administrator erred in determining the rent ceilings because no evidence of rent ceilings was introduced into the record and there are insufficient Findings of Fact or Conclusions of Law with respect to the rent ceilings appearing in the Decision.

2. The Acting Rent Administrator violated the D.C. Administrative Procedures [sic] Act because he relied on documents that were never served upon or provided to counsel for the Housing Provider, i.e., "proxies," as stated by counsel for the Housing Provider in the hearing in this case on record.

3. The Acting Rent Administrator erred because the claims of the Tenant/Petitioners in this case are barred by the applicable statute of limitations in view of the fact that the roof deck was permanently removed on July 1, 1997.

4. The Acting Rent Administrator erred because the roof deck is not a related facility or service, as that term is defined in the Rental Housing Act, nor was its use authorized by the payment of rent or referenced in the Tenant/Appellee case.

5. The Acting Rent Administrator erred because he failed to make sufficient Findings of Fact and Conclusions of Law with respect to the interest awarded.

6. The Acting Rent Administrator erred in determining rents charged to the tenants because in most cases the tenant did not testify or present evidence of rents charged during the relevant period.

Pinnacle Realty Mgmt. v. Doyle, TP 27,067 (RHC Aug. 8, 2008) at 8-9. On December 10, 2007, the Tenants Association filed a "Motion to Correct the Record" (hereinafter "Motion to Correct the Record") requesting that the Commission make the following twelve (12) corrections to the record:

1. In regards to Jeffrey Jorge Cohen, let the record be corrected to show that he took possession of apartment 212 on March 14, 1983 and apartment 202 on September 26, 1995. He has continued to pay the rents from that time to this.

2. In regards to Gerry Kay Talton, apartment 604, let the record be corrected to show that the correct spelling of his name is Gerry Kay Talton and not Gerry Talton as it appeared on page 9, line 18 in the earlier decision.

3. Zerihun Tadesse would like the record corrected in regards to the spelling of her name and the computation of her award. I would ask that that be done[.]

4. In regards [to] Foday T. Jabbie, whose name was included in the original petition list, and who executed a proxy and who has lived in the building since 1981, [he] would like the record corrected to show that his name should be included with the rest of the petitioners on the reimbursement list.

5. In regards to Njoki Njoroge Njehu, apartment 6111 [sic], let the record be corrected to show that this is her correct name "Nicki Niehu,["] as it appears in the decision. Furthermore, let the record be corrected to show that the

period of time during which she occupied apartment 311 was also taken into consideration.

6. In regards to Danny Kelley, let the record be corrected to show that Danny Kelley has never lived in apartment 108. He has, however, at various times lived in units 105, 110, and 306. During eighteen of the months in which Tom Bernart lived in apartment 306, Danny Kelly [sic] also lived in apartment 306, paid half the rent and signed a lease. Petitioner would ask that the Berart [sic] award be corrected to give Danny Kelley that which should have been his share of the award.

7. In regards to Ferruccio Magatelli, apartment 409, who shared that apartment with Michael Mier, petitioner would ask that the record be corrected to insure that Ferruccio Magatelli receives his share of the award that went to apartment 409.

8. In regards to Lisa Bartolomei, apartments 712 and 212, let the record be corrected to show that both apartments were included in the calculation of her award and further in as much, as 'Mary Dee' deceased was survived by her sister Lisa Bartolomei who was the executrix of her estate as well as her sole heir, petitioner would ask that the record be corrected to show that Lisa Bartolomei who inherited her rent refund and had it properly awarded.

9. In regards to George Page, apartment 205, who was not awarded a refund even though he lived as a co-lessee with his mother from 1995 until her death at which time he became the sole lessee, petitioner would like the record corrected to show his status in regards to his tenancy and also in regards as the sole heir to her estate.

10. In regards to Mae Combs, apartment 201, the rent overcharge calculation is an error based upon the calculated value of the roof deck removal which would appear to be about eighty[-]five dollars per petitioner. Petitioner would ask that the record be corrected so that Mrs. Combs's award would be brought into line with those of the other tenants.

11. In regards to Sanho Tree, apartment 505, and Hailu Charnat, apartment 204, let the record be corrected to show that the [H]earing [E]xaminer took into account their full and actual tenancy in the Somerset Apartments during the time period under consideration in the decision.

12. In regards to Arnold J. Kingsbury, apartment 512, let the record be corrected to show that he moved into apartment 501 on September 30th, 1992 and that six months later he transferred from apartment 501 to apartment 512 and he resides in apartment 512 from that time to this, which is a period of more than fifteen years. Let the record be corrected to show that he was improperly

> overlooked in determining awards in this matter as he clearly has been present for a sizable portion of the affected period.

Motion to Correct the Record at 1-2.

The Commission issued a Decision and Order on August 8, 2008. Pinnacle Realty Mgmt., TP 27,067 (RHC Aug. 8, 2008). The Commission determined that the Tenants Association's Motion to Correct the Record raised issues that should have been raised in a notice of appeal; moreover, the Commission determined that the Motion to Correct the Record was not filed within the ten-day deadline for filing appeals, and thus the issues contained therein could not be addressed by the Commission. *Id.* at 7-8. In addressing the Housing Provider's issues on appeal, the Commission affirmed the Hearing Examiner on all issues except one: the Commission determined that the Hearing Examiner failed to adequately explain the interest calculations, and thus remanded the case to RACD for findings of fact and conclusions of law regarding the interest awarded. *Id.* at 14-15.

The Hearing Examiner issued a Decision and Order on March 29, 2010, containing revised findings of fact and conclusions of law on the respective awards of interest.[3] Doyle, TP 27,067 (RAD Mar. 29, 2010) (hereinafter "RAD Decision on Interest").

On April 14, 2010, the Tenants Association filed an appeal with the Commission (Tenants Association's Notice of Appeal), raising the following issues:

1. Petitioner believes that Lisa Bartolemei is entitled to a recovery in her capacity as executor of her late sister, Mary Dee Bartolemei, who resided in the building until her death. This recovery should reflect the duration of Mary Dee Bartolemei's tenancy in the building from the time the roof deck was removed until the date of her passing.

[3] The Commission notes that at this point in the proceedings, Hearing Examiner Keith Anderson was titled "Acting Rent Administrator." Doyle, TP 27,067 (RAD Mar. 29, 2010). Additionally, pursuant to the FY 2008 Budget Support Act of 2007, RACD was transferred from DCRA to the Department of Housing and Community Development (DHCD), and renamed the Rental Accommodations Division (RAD). D.C. Law 17-20, 54 DCR 7052 (Sept. 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008)).

2. Further, recovery should be allowed to those whose [sic] tenants who signed proxies in as much as those proxies were used by the RHAB [sic] in coming to the conclusion that the Somerset Tenants Association had the right to represent the tenants in this hearing. Proxy examples include Danny Kelley and Jeffrey Cohen and about twenty others. Fairness would dictate that if they can be counted for purposes of representation, it would follow that they are therefore entitled to a recovery.

Tenants Association's Notice of Appeal at 1. On April 15, 2010, the Housing Provider filed a cross-appeal with the Commission (Housing Provider's Notice of Appeal), raising the following issues:

1. The Acting Rent Administrator erred in determining rent ceilings because no evidence of rent ceilings was introduced into the record and there are insufficient Findings of Fact or Conclusions of Law with respect to the rent ceilings appearing in the Decision.

2. The Acting Rent Administrator violated the D.C. Administrative Procedures [sic] Act because he relied upon documents which were never served upon or provided to counsel for the Housing Provider, i.e., "proxies", as stated by counsel for the Housing Provider in the hearing in this case on the record.

3. The Acting Rent Administrator erred because the claims of the Tenant/Petitioners in this case are barred by the applicable statute of limitations in view of the fact that the roof deck was permanently removed on July 1, 1997.

4. The Acting Rent Administrator erred because the roofdeck is not a related facility or service, as that term is defined in the Rental Housing Act, nor was its use authorized by the payment of rent or referenced in the Tenant/Appellee case.

5. The Acting Rent Administrator erred because he failed to make sufficient Findings of Fact and Conclusions of Law with respect to interest awarded.

6. The Rent Administrator has no authority to award interest in Decisions and Order; even assuming he has such authority, the way he calculated interest here was in error.

7. The Acting Rent Administrator erred in how he went about calculating interest on the awards to the Tenant[/]Petitioners. The [H]earing [E]xaminer calculated interest based on § 28-3302(c) at 5% the rate in effect on the date of the proposed Decision. But interest runs in the proposed Decision at a

constant rate, from specific dates in 1998, rather than being adjusted for each period that the statutory interest rate on judgment changed. This was improper. *Bragdon v. Twenty-Five Twelve Associates* [sic] *LP*, 856 A.2d 1165 (D.C. 2004). The Court's interest rate on judgments changes on a regular basis.

8. The Acting Rent Administrator erred in determining that Tenants were entitled to withhold rent if Appellant does not pay Appellees the amount awarded in the Decision and Order.

9. The Acting Rent Administrator erred in Finding of Fact No. 1 and the related Conclusions of Law, by not having sufficient support for the Conclusion of Law and failing to make sufficient findings of fact to support the conclusion reached. There is not substantial evidence in the record to support the Conclusion of Law nor the Finding of Fact.

10. The Acting Rent Administrator erred in Conclusion of Law No. 1 identified in the March 29, 2010 Order, and the supporting Findings of Fact, by not having sufficient support for the Conclusion of Law and failing to make sufficient findings of fact to support the conclusion reached. There is not substantial evidence in the record to support the Conclusion of Law.

11. The Acting Rent Administrator erred in Conclusion of Law No. 2 identified in the March 29, 2010 Order, and the supporting Findings of Fact, by not having sufficient support for the Conclusion of Law and failing to make sufficient findings of fact to support the conclusion reached. There is not substantial evidence in the record to support the Conclusion of Law.

Housing Provider's Notice of Appeal at 1-3. Neither party submitted a brief; the Commission held its hearing on October 18, 2011.

II. PRELIMINARY ISSUES

A. The Tenants Association's Motion For Sanctions

On September 23, 2013, the Tenants Association wrote a letter to the Commission (Sept. 23, 2013 Letter) requesting an award of $25,000 per tenant, for a total of $225,000, as a result of the Housing Provider's bargaining "in bad faith or rather no faith at all," as well as sanctions. Sept. 22, 2013 Letter at 1. The Housing Provider filed an opposition (Opposition) on September

25, 2013, asserting that the Commission lacked the authority to award the relief requested. Opposition at 1.

The Commission notes initially that the Sept. 23, 2013 Letter, despite being filed by counsel, contained no legal authority or citations to the Act, its regulations, or controlling case law precedent, that would justify either the monetary relief requested, or the imposition of sanctions by the Commission. Sept. 23, 2013 Letter at 1. The Commission agrees with the Housing Provider that no such authority exists; the Commission's jurisdiction is limited to deciding appeals from the Rent Administrator or OAH, involving claims that arise under the Act. D.C. OFFICIAL CODE § 42-3502.02(a) (2001).[4] The Commission is not authorized to award relief for claims outside of the Act, nor has the Commission been granted the authority to impose sanctions. *Id.*; *cf.* D.C. OFFICIAL CODE § 42-3502.02(b).[5]

To the extent that the Tenants Association is asserting that the conduct of the Housing Provider during settlement negotiations created a binding agreement, the Commission notes that the proper forum to assert this seemingly contractual claim is in the District of Columbia

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[4] D.C. OFFICIAL CODE § 42-3502.02(a) provides in relevant part as follows: "The Rental Housing Commission shall: . . . (2) Decide appeals brought to it from decisions of the Rent Administrator[.]"

[5] D.C. OFFICIAL CODE § 42-3502.02(b) provides the following, in relevant part:

> (1) The Rental Housing Commission may hold hearings, sit and act at times and places within the District, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents as the Rental Housing Commission may consider advisable in carrying out its functions under this chapter.
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> . . .
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> (3) In the case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection by any person who resides in, is found in, or transacts business within the District, the Superior Court of the District of Columbia, at the written request of the Rental Housing Commission, shall issue an order requiring the contumacious person to appear before the Rental Housing Commission, to produce evidence if so ordered, or to give testimony touching upon the matter under inquiry. Any failure of the person to obey any order of the Superior Court of the District of Columbia may be punished by that court for contempt.

Superior Court, a court of general jurisdiction, rather than before the Commission. *See* D.C. OFFICIAL CODE § 11-921(a);[6] Nunnally v. D.C. Metro. Police Dep't, 80 A.3d 1004, 1008 (D.C. 2013) ("the Superior Court is a court of general jurisdiction").

For the foregoing reasons, the Commission is without jurisdiction under the Act to make any determination regarding the Tenants Association's request for monetary relief and sanctions contained in the September 23, 2013 Letter, and thus dismisses this issue with prejudice.

B. Plain Error

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

> The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

While the Commission's review of an issue is typically limited to the issues raised in the notice of appeal, it may always correct "plain error." 14 DCMR § 3807.4 (2004); Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994); Proctor v. D.C. Rental Hous. Comm'n, 484 A.2d 542, 550 (D.C. 1984); Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013); Munonye v. Hercules Real Estate Servs., RH-TP-07-29,164 (RHC July 7, 2011).

The Act's regulations provide as follows regarding the identity of parties to a tenant petition:

> 3904.1 Individual tenants involved in any proceeding shall be individually identified.

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[6] D.C. OFFICIAL CODE § 11-921(a) provides, in relevant part, as follows: "the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia."

3904.2 If a tenant association seeks to be a party, the hearing examiner shall determine the identity and number of tenants who are represented by the association.

3904.3 If a majority of the tenants are represented by the association, the association shall be listed in the caption.

14 DCMR § 3904 (1991).[7]

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[7] The Commission notes that 14 DCMR § 3904.2-.3 was amended on August 6, 2010 by the Tenant Organization Petition Standing Amendment Act of 2010, D.C. Act 18-470, 57 DCR 6920 (Aug. 6, 2010), and the amended provisions (Amended Provisions) currently in effect provides as follows:

> 3904.2 Any tenant association may file and shall be granted party status to prosecute or defend a petition on behalf of anyone or more of its members who have provided the association with written authorization to represent them in the action, or to seek on behalf of all members any injunctive relief available under the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 et seq.). No further inquiry into the membership of the association shall be permitted.
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> 3904.3 Any tenant association that is a party to the action pursuant to § 3904.02 shall be listed in the caption.

The Commission notes that the Amended Provisions were not in effect at the time that the Tenant Petition was filed in this case in 2001. With respect to the application of the Amended Provisions to this case, the Commission, like the District of Columbia Court of Appeals (DCCA), has recognized that, as a general rule, "statutes operate prospectively . . . ." Washington v. Guest Servs., 718 A.2d 1071, 1074 (D.C. 1998) (citing United States v. Security Indus. Bank, 459 U.S. 70, 79 (1982)); *see also* United Dominion Mgmt. Co. v. Hinman, RH-TP-06-28,728 (RHC June 5, 2013), *aff'd*, 101 A.3d 426 (D.C. 2014) (citing Columbia Plaza Ltd. P'ship v. Tenants of 500 23rd St. N.W., CI 20,266 (RHC Nov. 9, 1989) at 14 (citing Tenants of 1709 Capitol Ave., N.E. v. 17th & L St. Props., HP 20,328 (RHC Dec. 15, 1987))). The general rule favoring the prospective application of legislation occurs where substantive rights are affected by the change, *see* Bloom v. Beam, 99 A.3d 263 (D.C. 2014), or where a change alters an established rule. *See* Hinman, RH-TP-06-28,728 (citing Tenants of 2301 E St., N.W. v. D.C. Rental Hous. Comm'n, 580 A.2d 622, 627 (D.C. 1990) (finding that a rule that was not an unexpected departure from prior law could be applied retroactively).

The Commission is satisfied that the Amended Provisions affect the substantive rights of tenants to prosecute tenant petitions under the Act and alter the rules established in the 1991 codification of chapter 14 of the DCMR applicable to legal actions by tenant associations under the Act. The Commission's review of the Amended Provisions indicates that they altered the Act's established regulations applying to tenant associations in effect at the time that the instant Tenant petition was filed in 2001, in at least two ways: (1) by removing the requirements in 14 DCMR §§ 3904.1,-.2 (1991) that a hearing examiner determine the identity and number of tenants represented by a tenant association, and (2) by removing the requirement in 14 DCMR §§ 3904.3 (1991) that a tenant association is only allowed to be in the caption of a case under the Act if the Association represented a majority of tenants in a housing accommodation. *Compare* Amended Provisions, *with* 14 DCMR §§ 3904.1,-.2-..3 (1991). *See, e.g.*, Bloom, 99 A.3d at 265; Hinman, RH-TP-06-28,728. Borger Mgmt. RH-TP-06-28,854; Tenants of 2480 16th St., NW, RH-SF-09-20,098. The Amended Provisions only require that a tenant provide written authorization to a tenant association to represent such tenant, that no further independent inquiry into a tenant association's membership (including tenant identity and membership number) is permissible, and that a tenant association as a party to an action be automatically listed in a case caption. *See* Amended Provisions at 14 DCMR § 3904.2-.3. In short, the Amended Provisions remove certain procedural formalities regarding a tenant association's ability to

The Commission has identified the following two instances of plain error, and will discuss each in turn below: (1) whether the Hearing Examiner correctly determined that the Tenants Association should be listed in the caption, under 14 DCMR § 3904.3 (1991), and (2) whether the Hearing Examiner correctly determined which tenants of the Housing Accommodation are represented by the Tenants Association, under 14 DCMR § 3904.2.

(1) Whether the Hearing Examiner Correctly Determined that the Tenants Association Should be Listed in the Caption.

As recited *supra* at 12, the Act's regulations provide that a tenant association shall be listed in the case caption if the association represents a majority of the tenants. 14 DCMR § 3904.3. The Commission has explained that the phrase "a majority of the tenants" means a majority of the "'persons' residing in the housing accommodation, not a majority of the 'rental units' in a housing accommodation." *Id.*; Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009) (reversing the ALJ's finding that the tenant association represented a majority of the tenants, where the ALJ had determined only that the members of the tenant association resided in a majority of the rental units in the housing accommodation); *see also* Tenants of 2480 16th St., NW v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC Feb. 6, 2014) (affirming ALJ's determination that tenant association did not represent a majority of the tenants of the housing accommodation, and thus would not be named as a party); *cf.* Miller v. Daro Realty, RH-TP-08-29,407 (RHC Sept. 18, 2012) (where the ALJ determined that the tenants association had failed to prove that it represented a majority of the tenants of the housing accommodation, the

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represent tenant members, to be accorded party status in legal actions under the Act and to be listed in a case caption. For these reasons, the Commission determines that the Amended Provisions were intended to operate prospectively, not retroactively, and that the Act's regulations applicable to this case are contained in 14 DCMR § 3904 (1991). *See* Bloom, 99 A.3d at 265; Tenants of 2301 E St., N.W., 580 A.2d at 627; Hinman, RH-TP-06-28,728.

Commission determined it was error for the ALJ to include the tenant association in the case caption). Where a tenant association fails to satisfy the requirements of 14 DCMR § 3904.3, and thus may not be included in the case caption, the Commission has held that only those individual tenants who appeared and testified at an evidentiary hearing have standing as parties to the case. Lee, RH-TP-06-28,854 (determining that only those tenants who appeared and testified at the OAH hearing had standing as parties to the case); *see also* Miller, RH-TP-08-29,407 (determining that the only party with standing to appeal the ALJ's dismissal of the tenant petition was Glenn Miller, the tenant who had filed the tenant petition).

In response to the Commission's August 2005 Decision remanding for further findings regarding whether the Tenants Association represents a majority of the tenants, the Hearing Examiner made the following findings of fact in the Final Order:

> 1. On behalf of the Somerset Tenants Association, Petitioner Patrick Doyle submitted proxies from 52 tenants representing 53 units (Mr. Doyle rents two units) at 1801 – 16th Street, NW, subject housing accommodation. The total number of units in the subject housing accommodation is 85. The Somerset Tenants Association represents a majority plus one of the tenants in the building.
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> 2. Twenty-eight (28) members of the 52-member Somerset Tenants Association appeared and gave Petitioner Doyle authority to represent them at the March 18, 2003 hearing. Mr. Doyle had authority to represent a majority of the 52-member Somerset Tenant's [sic] Association at the March 18, 2003 hearing. Twenty-three (23) of these tenants provided testimony at the March 18, 2003 hearing.

Final Order at 3; R. at 400. The Hearing Examiner made the following conclusion of law related to whether the Tenants Association represents a majority of the tenants at the Housing Accommodation:

> 1. Pursuant to 14 DCMR Sect. $[sic]3904 (1991), the Somerset Tenant's [sic] Association represents a majority of the tenants at the subject property and shall appear in the case caption as the Petitioner [in] this matter. A 28-

> member majority of the 53 member Somerset Tenant's Association authorized Petitioner Doyle to represent them by proxy at the subject March 1[8], 2003 hearing. Twenty-three, 23, of those tenants testified at said hearing. Each of the 23 tenants is identified in Findings of Facts 4.

Id. at 7; R. at 396.

The Commission determines that the Hearing Examiner's findings of fact and conclusion of law regarding whether the Tenants Association represents a majority of the tenants in the Housing Accommodation, are not in accordance with the Act, and are contrary to the instructions in the Commission's August 2005 Decision, and thus constitute plain error. *Compare id.* at 3, 7; R. at 396, 400, *with* 14 DCMR § 3904.3, August 2005 Decision at 4-7, *and* Lee, RH-TP-06-28,854; *see also, e.g.,* 14 DCMR § 3807.4; Lenkin Co. Mgmt., 642 A.2d at 1286; Proctor, 484 A.2d at 550; Gelman Mgmt. Co., RH-TP-09-29,715; Munonye, RH-TP-07-29,164.

The Commission notes that the Hearing Examiner only considered whether the members of the Tenants Association inhabited a majority of the rental units at the Housing Accommodation; the Hearing Examiner failed to make any findings of fact or conclusions of law regarding the identity and number of members of the Tenants Association, and whether those members constituted a majority of the overall number of tenants living at the Housing Accommodation at the time the Tenant Petition was filed. Final Order at 3; R. at 400; *see* Lee, RH-TP-06-28,854; *see also* Tenants of 2480 16th St., NW, RH-SF-09-20,098; Miller, RH-TP-08-29,407. Accordingly, the Commission reverses the Hearing Examiner's conclusion that the Tenants Association represents a majority of the tenants of the Housing Accommodation, and remands for an evidentiary hearing and further findings of fact and conclusions of law limited to the following: (1) the total number of tenants living at the Housing Accommodation at the time the Tenant Petition was filed, (2) the identity and number of tenants that were members of the Tenants Association at the time the Tenant Petition was filed, and (3) whether the tenants who

are members of the Tenants Association constitute a majority of the total number of tenants living at the Housing Accommodation at the time the Tenant Petition was filed. 14 DCMR § 3904.3; Lee, RH-TP-06-28,854; *see* Tenants of 2480 16th St., NW, RH-SF-09-20,098; Miller, RH-TP-08-29,407. If the Hearing Examiner determines that substantial evidence supports a finding that the Tenants Association represents a majority of the tenants, the Hearing Examiner is instructed to include the Tenants Association in the caption. 14 DCMR § 3904.3; Lee, RH-TP-06-28,854; *see* Tenants of 2480 16th St., NW, RH-SF-09-20,098; Miller, RH-TP-08-29,407.

If, on remand, the Hearing Examiner determines that the Tenants Association did not represent a majority of the tenants living at the Housing Accommodation at the time the Tenant Petition was filed, the Commission further instructs the Hearing Examiner to make findings of fact and conclusions of law regarding the individual tenants that have standing as parties to the Tenant Petition, in accordance with Lee, RH-TP-06-28,854. *See supra* at 16-17; *see also* Miller, RH-TP-08-29,407.

(2) Whether the Hearing Examiner Correctly Determined Which Tenants Were Represented by the Tenants Association.

The DCAPA, at D.C. OFFICIAL CODE § 2-509(e), provides, in relevant part, as follows:

> Every decision and order adverse to a party . . . shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence.

The Commission has consistently held that conclusions of law must "flow rationally" from the findings of fact. *See, e.g.,* Perkins v. D.C. Dep't of Emp't Servs., 482 A.2d 401,402 (D.C. 1984); Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012). The DCAPA requires a detailed application of the applicable legal standards and tests to the facts of a case in order to allow the Commission to make a determination whether the conclusions of

law flow or follow rationally from the findings of fact. *See, e.g.,* Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 866 A.2d 41, 46 (D.C. 2004); Perkins, 482 A.2d at 402; Washington, RH-TP-11-30,151.

Regarding the identity of the tenants who were represented by the Tenants Association, the Hearing Examiner found that "proxies" were submitted by fifty-two (52) tenants, and that "[t]wenty-eight (28) members of the 52-member Somerset Tenants Association appeared and gave Petitioner Doyle authority to represent them at the March 18, 2003 hearing." Final Order at 3; R. at 400. As the Commission stated *supra* at 11, it will uphold the Hearing Examiner's decision so long as it is supported by substantial evidence and in accordance with the provisions of the Act. 14 DCMR § 3807.1.

Based on its review of the record, the Commission is not satisfied that the Hearing Examiner's findings of fact regarding the identity of the tenants represented by the Tenants Association, summarized above, are supported by substantial record evidence, or that his conclusion that the Tenants Association represents twenty-eight tenants flow rationally from the findings of fact, in violation of the DCAPA. D.C. OFFICIAL CODE § 2-509(e); *see* Majerle Mgmt., 866 A.2d at 46; Perkins, 482 A.2d at 402; Washington, RH-TP-11-30,151. For example, the Commission notes that the Hearing Examiner did not make any findings of fact regarding the nature or content of the 52 proxies submitted, nor did he make any findings of fact or conclusions of law regarding why the proxies were not legally sufficient under the Act to constitute an authorization to be represented by the Tenants Association for each of the 52 tenants who submitted a proxy. Final Order at 3; R. at 400. The Hearing Examiner also failed to explain, either based on substantial record evidence, or under the Act, why only those 28 tenants

who appeared at the RACD hearing had authorized the Tenants Association to represent them, rather than the 52 who submitted proxies. *Id.*

The Commission determines that the Hearing Examiner has failed to provide a "detailed application of the applicable legal standards and tests" to the facts of this case, and thus the Commission is unable to perform its review function. *See, e.g.,* Majerle Mgmt., 866 A.2d at 46; Perkins, 482 A.2d at 402; Washington, RH-TP-11-30,151. Accordingly, the Commission reverses the Hearing Examiner's determination that the Tenants Association only represented those 28 tenants that appeared at the RACD hearing as plain error. *See* 14 DCMR § 3807.4; Lenkin Co. Mgmt., 642 A.2d at 1286; Proctor, 484 A.2d at 550; Gelman Mgmt. Co., RH-TP-09-29,715; Munonye, RH-TP-07-29,164. On remand, if the Hearing Examiner finds that the Tenants Association is to be listed in the caption, *see supra* at 13-20, the Commission instructs the Hearing Examiner to make additional findings of fact and conclusions of law specifically identifying the nature and content of the 52 proxies that were submitted, whether the proxies were legally sufficient under the Act to constitute authorization for the Tenants Association to represent each of the tenants that submitted a proxy, the legal grounds supporting the approval of only 28 of the 52 tenants who submitted proxies to be represented by the Tenants Association, and finally, a comprehensive list identifying each of the tenants that the Tenants Association is authorized to represent.

VI. CONCLUSION

The Commission is without jurisdiction under the Act to make any determination regarding the Tenants Association's request for monetary relief and sanctions contained in the September 23, 2013 Letter. *See supra* at 13-15. The Commission thus dismisses this issue with

prejudice.

The Commission reverses the Hearing Examiner's conclusion that the Tenants Association represents a majority of the tenants of the Housing Accommodation, and remands for an evidentiary hearing and further findings of fact and conclusions of law limited to the following: (1) the total number of tenants living at the Housing Accommodation at the time the Tenant Petition was filed, (2) the identity and number of tenants that were members of the Tenants Association at the time the Tenant Petition was filed, and (3) whether the tenants who are members of the Tenants Association constitute a majority of the total number of tenants living at the Housing Accommodation at the time the Tenant Petition was filed. 14 DCMR § 3904.3; Lee, RH-TP-06-28,854; *see* Tenants of 2480 16th St., NW, RH-SF-09-20,098; Miller, RH-TP-08-29,407. If the Hearing Examiner determines that substantial evidence supports a finding that the Tenants Association represents a majority of the tenants, the Hearing Examiner is instructed to include the Tenants Association in the caption. 14 DCMR § 3904.3; Lee, RH-TP-06-28,854; *see* Tenants of 2480 16th St., NW, RH-SF-09-20,098; Miller, RH-TP-08-29,407.

If, on remand, the Hearing Examiner determines that the Tenants Association did not represent a majority of the tenants living at the Housing Accommodation at the time the Tenant Petition was filed, the Commission further instructs the Hearing Examiner to make findings of fact and conclusions of law regarding the individual tenants that have standing as parties to the Tenant Petition, in accordance with Lee, RH-TP-06-28,854. *See supra* at 16-17; *see also* Miller, RH-TP-08-29,407.

The Commission reverses the Hearing Examiner's determination that the Tenants Association only represented those 28 tenants that appeared at the RACD hearing as plain error.

See 14 DCMR § 3807.4; Lenkin Co. Mgmt., 642 A.2d at 1286; Proctor, 484 A.2d at 550; Gelman Mgmt. Co., RH-TP-09-29,715; Munonye, RH-TP-07-29,164. On remand, if the Hearing Examiner finds that the Tenants Association is to be listed in the caption, *see supra* at 13-20, the Commission instructs the Hearing Examiner to make additional findings of fact and conclusions of law as follows: (1) specifically identifying the content of the 52 proxies that were submitted; (2) determining whether the proxies were legally sufficient under the Act to constitute authorization for the Tenants Association to represent each of the tenants that submitted a proxy; (3) providing the legal grounds supporting the Hearing Examiner's approval of only 28 of the 52 tenants who submitted proxies to be represented by the Tenants Association, and (4) providing a list identifying each of the tenants that the Tenants Association is authorized to represent.

In light of the Commission's remand of this appeal to the Hearing Examiner for further findings of fact and conclusions of law regarding the identity of all of the parties to the Tenant Petition, the Commission determines that, absent appropriate identification of one of the parties to this appeal, the Commission is unable to address the merits of the any of the issues raised by both parties in their respective notices of appeal since they are not ripe for final determination at this time.[8] *See, e.g.,* Young v. Vista Mgmt., TP 28,635 (RHC Sept. 18, 2012) (the DCCA has established a two-prong test for determining whether a claim is ripe for judicial review: "(1) the 'fitness' prong is satisfied where no further factual development is necessary to deal with the legal issues presented; and (2) the 'hardship' prong depends on the certainty of the alleged harm, and will not be satisfied where the alleged harm is too 'abstract, hypothetical and contingent.'" (quoting Local 36 Int'l Ass'n of Firefighters v. Rubin, 999 A.2d 894, 896-98 (D.C. 2010)));

[8] The issues raised on appeal are recited *supra* at 11-13.

Metro. Baptist Church v. D.C. Dep't of Consumer & Regulatory Affairs, 718 A.2d 119 (D.C. 1998). Consequently, the Commission dismisses all of the issues raised by both parties, without prejudice.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, 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, DC 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the **DECISION AND ORDER** in TP 27,067 was served by first-class mail, postage prepaid, this **10th day of March, 2015**, to:

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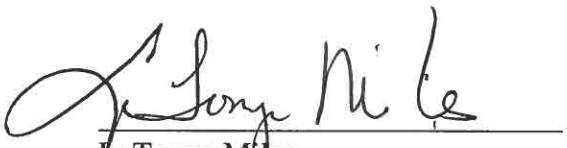

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