

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.

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 HISTORY²

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