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

ORDER ON RECONSIDERATION

April 15, 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 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. A final order was issued by Hearing Examiner Keith Anderson (Hearing Examiner) on May 31, 2007. *See* Doyle v. Pinnacle Realty Mgmt., TP 27,067 (RACD May 31, 2007) (Final Order). In the Final Order, the Hearing Examiner determined, in relevant part, that the Tenants Association represented a majority of the tenants at the Housing Accommodation, and would appear in the case caption. *Id.*

Subsequently, both the Tenants Association and the Housing Provider filed appeals with the Commission, which were addressed in a decision and order dated March 10, 2015: Patrick Doyle, et al. v. Pinnacle Realty Management, TP 27,067 (RHC Mar. 10, 2015) (Decision and Order). In the Decision and Order, the Commission determined that the Hearing Examiner had committed plain error by determining that the Tenants Association should be named in the case caption, and in his identification of the members of the Tenants Association. Decision and Order at 13. Accordingly, the Commission ordered that this case be remanded to RAD for further proceedings.

[2] The Commission notes that a complete procedural history of this case prior to the Motion for Reconsideration is contained in the Commission's Decision and Order dated March 10, 2015. Doyle v. Pinnacle Realty Mgmt., TP 27,067 (RHC Mar. 10, 2015). The Commission recites herein only the procedural history that is relevant to the Motion for Reconsideration.

II. MOTION FOR RECONSIDERATION

On March 27, 2015, the Tenants Association filed a timely Motion for Reconsideration with the Commission, stating as following bases for reconsideration: (1) "Change in rules regarding representation;" and (2) "No indication that the legislative history was given consideration." Motion for Reconsideration at 1. It is the assertion of the Tenants Association that the Commission should have applied the version of the Act currently in effect, rather than the version that was in effect at the time the Tenant Petition was filed, with regard to the participation of the Tenants Association.[3] *Id.* No opposition was filed by the Housing Provider.

The Motion for Reconsideration is governed by 14 DCMR § 3823.1-.2, which provides the following:

> 3823.1 Any 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; provided, that an order issued on reconsideration is not subject to reconsideration.
>
> 3823.2 The motion for reconsideration or modification shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful.

III. DISCUSSION

The Tenant Petition in this case was filed on March 30, 2001, at which time the Act's regulations provided the following regarding the participation of tenant associations in cases arising under the Act:

> 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.

[3] Despite being filed by counsel for the Tenants Association, the Commission observes that the Motion for Reconsideration does not cite any supporting statutory or regulatory provisions, or case law precedent.

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

14 DCMR § 3904.2-.3 (1991). Subsequently, the regulations were 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) (Tenant Organization Act of 2010), and the amended provisions currently in effect provide 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 . . . . No further inquiry shall be permitted.
>
> 3904.3 Any tenant association that is a party to the action pursuant to § 3904.2 shall be listed in the caption.

As the Commission stated in its Decision and Order, 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 sub nom.* United Dominion Mgmt. Co. v. D.C. Rental Hous. Comm'n, (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). 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)).

As determined in the Decision and Order, the Commission is satisfied that the amendments to 14 DCMR § 3904.2-.3 affect the substantive rights of tenant associations to participate in tenant petition proceedings under the Act. *Compare* 14 DCMR § 3904.2-.3 (1991), *with* 14 DCMR § 3904.2-.3 (2010); *see also* Decision and Order at 12 n.7. Additionally, the Commission observes that the amendments to 14 DCMR § 3904 alter an established rule in at least two ways: first, by removing the requirement that a hearing examiner determine the identity and number of tenants represented by a tenant association, and second by removing the requirement that the tenant association represent a majority of the tenants in order to be listed in the case caption. *Compare* 14 DCMR § 3904.2-.3 (1991), *with* 14 DCMR § 3904.2-.3 (2010); *see also* Decision and Order at 12 n.7.

For these reasons, the Commission determined that the 2010 amendments to 14 DCMR § 3904.2-.3 were intended to operate prospectively, and thus are not applicable to the instant case, where the Tenant Petition was filed in March, 2001, well before the amendments were enacted. Decision and Order at 12 n.7 (citing Bloom, 99 A.3d 263; Tenants of 2301 E St., N.W., 580 A.2d at 627; Hinman, RH-TP-06-28,728).

Where the Tenants Association has not offered any statutory provision, regulatory provision, or case law precedent contradicting the Commission's determination in the Decision and Order that the amendments to 14 DCMR § 3904.2-.3 apply prospectively, the Commission is satisfied that its determination was neither erroneous nor unlawful. 14 DCMR § 3823.2; Bloom, 99 A.3d 263; Washington, 718 A.2d at 1074; Tenants of 2301 E St., N.W., 580 A.2d at 627; Hinman, RH-TP-06-28,728.

The Commission observes that the Tenants Association cites an additional issue in Motion for Reconsideration, stating that the Decision and Order showed "[n]o indication that the

legislative history was given consideration." Motion for Reconsideration at 1. The Commission first notes that this statement in the Motion for Reconsideration does not meet the requirements of 14 DCMR § 3823.2, *supra* at 3, because it is overly broad and vague. *See* 14 DCMR § 3823.2 ("The motion for reconsideration or modification shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful."); Jackson v. Peters, RH-TP-07-28,898 (RHC Sept. 21, 2011) ("[d]enial of a motion for reconsideration will result from a party's failure to set forth such specific grounds of error or illegality in the Commission's decision"); *see also* Stone v. Keller, TP 27,033 (RHC Mar. 24, 2009) at 11 – 14; Tenants of 5112 MacArthur Blvd., N.W. v. 5112 MacArthur L.P., CI 20,791 (RHC July 2, 2004); Byrd v. Reaves, TP 26,195 (RHC Aug. 8, 2002).

For example, the Motion for Reconsideration does not specify the statute whose legislative history purportedly supports the Motion for Reconsideration. Motion for Reconsideration at 1. Based upon its review of the record, the Commission is reasonably uncertain whether the Tenants Association is referring to the legislative history of the Tenant Organization Act of 2010, the Act in effect at the time of the filing of the Tenant Petition in March 2001, or even other enacted legislation which may reasonably affect tenant associations, such as the Rent Control Reform Amendment Act of 2006, D.C. Law 16-145 (Aug. 5, 2006). Motion for Reconsideration at 1; *see, e.g.*, Johnson v. Dorchester House Assocs., LLC, RH-TP-07-29,077 (RHC July 31, 2012) at 2-3 (dismissing issues raised in tenant's motion for reconsideration where they failed to set forth a clear and concise statement of the Commission's alleged error); Mitchell v. Salarbux, RH-TP-09-29,686 (RHC Mar. 2, 2012) at 3-4 (observing that "[g]eneral allegations by the Tenant that she has a different recollection of events at the Commission's . . . hearing, that the Order did not address all of the questions raised at the

hearing, or that the Order did not address all the arguments in a reply brief, are insufficiently specific . . .").

Finally, even assuming *arguendo*, that the Tenants Association is referring to the legislative history associated with the Tenant Organization Act of 2010, the Commission's review of that legislative history, including the Introduction and Committee Report, does not indicate that the Tenant Organization Act of 2010 was intended to apply retrospectively. *See, e.g.*, Bill 18-0598, "Tenant Organization Petition Standing Amendment Act of 2010" (Introduction, Dec. 15, 2009); Council of the District of Columbia, Committee on Housing & Workforce Development, Committee Report, Bill 18-0598, "Tenant Organization Petition Standing Amendment Act of 2010" (Apr. 29, 2010). Therefore, the Commission is satisfied that its determination was neither erroneous nor unlawful, on the grounds of legislative history. *See* 14 DCMR § 3823.2; *see, e.g.*, Johnson, RH-TP-07-29,077; Jackson, RH-TP-07-28,898.

Accordingly, the Motion for Reconsideration is denied. 14 DCMR § 3823.2.

VI. CONCLUSION

For the foregoing reasons, the Motion for Reconsideration is denied.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

CLAUDIA L. McKOIN, COMMISSIONER

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 **ORDER ON RECONSIDERATION** in TP 27,067 was served by first-class mail, postage prepaid, this **15th day of April, 2015**, to:

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