

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,838

In re: 1701 16<sup>th</sup> Street, N.W., Unit # 320

Ward Two (2)

**KAREN BOWER**  
Tenant/Appellant

v.

**CHASTLETON ASSOCIATES**  
Housing Provider/Appellee

**DECISION AND ORDER**

**March 27, 2014**

**SZEGEDY-MASZAK, CHAIRMAN.** This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD), Housing Regulation Administration (HRA), of the Department of Consumer and Regulatory Affairs (DCRA). 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), 14 DCMR §§ 3800-4399 (2004) govern the proceedings.<sup>1</sup>

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<sup>1</sup> The Office of Administrative Hearings (OAH) assumed jurisdiction over the conduct of hearings on tenant petitions from the RACD and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE §2-1831.01, - 1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the RACD were transferred to the Rental Accommodations Division (RAD) of the Department of Housing and Community Development (DHCD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008).

## I. PROCEDURAL HISTORY

On May 16, 2003, Tenant/Appellant, Karen Bower (Tenant) filed Tenant Petition (TP) 27,838 with RACD, regarding 1701 16<sup>th</sup> Street, N.W., Unit # 320 (Housing Accommodation), claiming that Chastleton Associates/American Rental Mgmt. Co. (Housing Provider) violated the Act as follows: (1) the Housing Provider took a rent increase larger than the amount of increase which was allowed by any applicable provision of the Act; (2) failed to provide the Tenant with a proper thirty (30) day notice of rent increase before the rent increase became effective; (3) failed to file the proper rent increase forms with RACD; and (4) charged rent exceeding the legally calculated rent ceiling for her unit. Record for TP 27,838 (R.) at 9. The Housing Provider contested the claims in TP 27,838 under D.C. OFFICIAL CODE § 42-3502.05(a)(1) (2001) and 14 DCMR § 4106.10 (2004) on the grounds that the Housing Accommodation was and remains exempt from the Act because the Housing Accommodation had been continually receiving mortgage subsidy assistance from the District of Columbia Housing Finance Agency (DCHFA) from November 1986 through the time when the Tenant Petition was filed.<sup>2</sup>

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<sup>2</sup> D.C. OFFICIAL CODE § 42-3502.05(a)(1) (2001) states as follows, in relevant part:

(a) §§ 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District except:

(1) Any rental unit in any federally or District-owned housing accommodation or in any housing accommodation with respect to which the mortgage or rent is federally or District-subsidized except units subsidized under Subchapter III; ...

The 1981 codification of this provision in effect at the time when the exemption was originally filed with the Rent Administrator on November 6, 1986 was at D.C. OFFICIAL CODE § 42-2525(a)(1) (1981). The text of the provision in the 2001 codification is identical with respect to paragraph "(1)", and only differs from that in the 1981 codification in its reference to "§§ 42-3502.05(f) through 42-3502.19, except § 42-3502.17" instead of "sections 45-2515(f) through 45-2529, except 45-2527", respectively. The reason for the difference is that the sections in the 1981 codification were renumbered in the 2001 codification. Despite different identifying section numbers, the section headings remained identical. Compare D.C. OFFICIAL CODE §§ 45-2515(f) through 45-2529, except § 45-2527 (1981) with D.C. OFFICIAL CODE §§ 42-3502.05(f) through 42-3502.19, except § 42-3502.17 (2001). In this

A hearing was held on March 15, 2004, before Hearing Examiner Gerald J. Roper (Hearing Examiner). The Hearing Examiner issued a Decision and Order on March 21, 2005. Bower v. Chastleton Associates/American Rental Mgmt. Co., TP 27,838 (RACD March 21, 2005) (Final Order).<sup>3</sup>

The Hearing Examiner explained his analysis of this case as follows, in relevant part:<sup>4</sup>

1. Petitioner, Karen Bower [(Tenant)], brought this petition to challenge two rent increases: a \$390 rent increase taken in July 2001 and a \$125 rent increase taken in July 2002. At the time both increases were implemented, Respondent [(Housing Provider)] claimed to be exempt, by virtue of an "Amended Registration/Claim of Exemption" form filed on May 30, 2001.

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Decision and Order, the Commission will primarily cite to the applicable provisions of the 2001 codification of the D.C. OFFICIAL CODE, and, if necessary, to the parallel provisions of the 1981 codification.

The current codification of 14 DCMR § 4106.10 (2004) is identical to the earlier codification of this regulation, in effect at the time of TP 27,838 – namely, 14 DCMR § 4106.10 (1991). All citations hereafter to this regulation will refer to the codification currently in effect, which provides as follows:

The Rent Administrator shall approve a claim of exemption under §205(a)(1) of the Act, where a housing accommodation or rental unit is enrolled in a formal program of the federal or District of Columbia government under which the operating expenses or a mortgage are subsidized and the rents charged the tenant(s) are determined and regulated by formula.

See 14 DCMR § 4106.10.

<sup>3</sup> The parties proceeded on the basis of submitting stipulations and briefs in lieu of a hearing on the merits. See Final Order at 2. The Final Order lists the following as "Evidence and Pleadings Considered:"

1. Tenant Petition Complaint # 27,838.
2. The Petitioner's and Respondent's written briefs, stipulations and responses.
3. The financing and regulatory agreement (Financing Agreement) between the District of Columbia Housing Finance Agency and Chastleton Apartments Associates.

*Id.* at 2-3. Present at the hearing were the Tenant, Tenant's counsel and counsel for the Housing Provider.

<sup>4</sup> The Hearing Examiner presented his analysis of the case in two sections of the Final Order entitled "Summary of the Case," and "Whether the building in which the rental unit is located is to not [sic] properly registered with the RACD," respectively. The text of these sections of the Final Order is presented herein in language identical or substantially similar to that in the Final Order.

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2. Respondent claims exemption because (1) it was receiving financing from the D.C. Housing Finance Agency and (2) the building had been continuously vacant since January 1, 1985. The exemption based on financing from the D.C. Housing Finance Agency was first filed in 1986 and most recently filed in 2001. Petitioner does not challenge the 1986 claim of exemption.
3. Petitioner claims that Respondent's 2001 claim of exemption is invalid because (1) Respondent was no longer receiving financing from the Housing Finance Agency, having paid off its subsidized mortgage in December 2000; (2) Respondent was not entitled to claim that the building was continuously vacant from January 1, 1985, on its 2001 Landlord Registration/Claim of Exemption because the building was occupied for several years before the claim of exemption was filed; and (3) Respondent did not perfect its claim of exemption in May 2001 because it did not post the Amended Registration/Claim of Exemption in the building, nor did it mail notice of the claim of exemption to the tenants.  
...
4. The facts in this case are not disputed. Petitioner became a tenant in 1995. At that time, Respondent had on file a Registration/Claim of Exemption, file stamped November 6, 1986. The basis for the exemption is mortgage subsidy or financing from the District of Columbia Housing Finance Agency (DCHFA). Petitioner does not challenge this claim of exemption, nor does she challenge any increase in the rent from 1995 through 2000.
5. The financing by the DCHFA took the form of a mortgage subsidy. The Housing Provider and DCHFA entered into a Financing and Regulatory Agreement<sup>5</sup> dated July 1, 1985. In December 2000, Respondent paid off the mortgage subsidy and DCHFA released Respondent from the terms of its Financing Agreement, and the Housing Provider obtained a new mortgage from a private lender.
6. On May 30, 2001, the Housing Provider filed an Amended Registration/Claim of Exemption based upon the property being continuously vacant since January 1, 1985, and financing provided by the District of Columbia Housing Finance Agency.  
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<sup>5</sup> Hereinafter in the text of this Decision and Order, this "Financing and Regulatory Agreement" shall be referred to as "Financing Agreement."

7. According to the stipulated facts there was a deed of trust [sic] issued by DCHFA in December 2000.<sup>6</sup> The Housing Provider obtained a private mortgage and DCHFA and the Housing Provider signed a Release of Deed of Trust and Termination of the Financing Agreement (Deed of Release), which cancelled the mortgage subsidy. The restrictive covenant remained in effect ...
8. Exhibit C, [(included at R. at 72),] of the Financing Agreement, section 10 entitled Declaration of Restrictive Covenants,<sup>7</sup> provides in the last full sentence that:

Except as specifically provided in section 5 hereof, or unless sooner terminated in accordance with section 9 hereof, such covenants, reservations, agreements and restrictions as are contained herein shall continue in full force and effect during the Rental Period, it being expressly agreed and understood that the provisions hereof are intended to survive the expiration of the Financing Agreement and the payment of the loan, if such expiration or payment occurs prior to the termination of the Rental Period.

9. Based on this provision, the Hearing Examiner finds the Financing Agreement obligation survives the release of the DCHFA Agreement releasing the mortgage subsidy in December 2000, evidenced by the 2001 [sic] original Deed of Trust.<sup>8</sup> Therefore the claim of exemption provisions of the D.C. OFFICIAL CODE § 27-2703.08 (2001) [sic]<sup>9</sup> providing for housing projects

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<sup>6</sup> The Commission's review of the record indicates that, in December 2000, the Housing Provider secured private financing that enabled it to "pay off" or "cancel" the mortgage subsidy with respect to DCHFA, which was memorialized not in another "deed of trust" with DCHFA, but in a "Release of Deed of Trust and Termination of Financing and Regulatory Agreement" as correctly referred to in the following sentence of Paragraph 7 above. The "Release" above is referred to herein as "Deed of Release."

<sup>7</sup> Hereinafter in the text of this Decision and Order, this "Declaration of Restrictive Covenants" shall be referred to as "Declaration of Covenants."

<sup>8</sup> The Commission observes that the Hearing Examiner mistakenly referred in the Final Order to the year of the Housing Provider's "pay off" of the mortgage subsidy or "release" as "[December] 2001" instead of the correct "[December] 2000." Final Order at 7-8. The Commission is satisfied, based on the substantial record evidence, that the correct year that the Housing Provider paid off the mortgage subsidy was December 2000. See Housing Provider's Brief at p. 4.

<sup>9</sup> DCHFA was created by the "District of Columbia Housing Finance Agency Act," as amended, D.C. OFFICIAL CODE §§ 42-2701.01-2706.05 (2001) (DCHFA Act). It was created as an independent corporate body, not as a District government agency, and is an instrumentality of the District government to "effectuate certain public purposes." See D.C. OFFICIAL CODE § 42-2701.01.

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With respect to such public purposes, in its Declaration of Policy, D.C. OFFICIAL CODE § 42-2701.01(a), the DCHFA Act states that “a major cause of [the District’s] housing crisis is the cost of funds made available by mortgage lenders in the District to finance housing for low and moderate income families.” In order to address this issue, according to D.C. OFFICIAL CODE § 42-2701.01(b):

(b) The Council determines that a corporate instrumentality of the District shall be created and given authority to generate funds from private and public sources to increase the supply and lower the cost of funds, available for residential mortgages and construction loans and thereby help alleviate the shortage of adequate housing. The Council further determines that this purpose can be accomplished through programs whereby mortgage lenders and/or the Agency [DCHFA] make mortgage, construction and rehabilitation loans for single and multifamily rental and home ownership units on terms designed to expand available housing opportunities. The Council further determines that this purpose can also be accomplished through a program whereby the Agency issues bonds and lends the proceeds thereof to Eligible State and Local Government Units to enhance the Agency’s ability to generate revenues and to fulfill its duties under this chapter. The Council further determines that the goals of neighborhood and fiscal stability can be achieved through a policy of residential economic diversity.

(emphasis added). The Council declared that the creation of DCHFA, its authority and powers, and any expenditures it makes are to serve such “valid public purposes.” See D.C. OFFICIAL CODE § 42-2701.01(c).

In order to carry out its public purposes, DCHFA’s legal authority is specifically de-limited in D.C. OFFICIAL CODE § 42-2702.06 as follows:

The Council delegates to the Agency [DCHFA] the authority of the Council under [D.C. OFFICIAL CODE] § 1-204.90 [authority to issue, *inter alia*, taxable and tax-exempt revenue bonds] to issue revenue bonds, notes and other obligations to borrow money to finance or assist in the financing of undertakings authorized by this chapter. An undertaking financed or assisted by the Agency shall constitute an undertaking in the area of primarily low and moderate income housing if the housing project or homeownership program complies with the income restrictions, rent limitations, tenant income mixtures and other restrictions as established by the Internal Revenue Service [IRS], or the Department of Housing and Urban Development [HUD] as applicable under the plan of financing determined by the Agency at the time it approves the undertaking for financing or assistance, or State or Local Government Loans are made that generate revenues which benefit programs authorized under this chapter.

(emphasis added).

The DCHFA Act makes the following cross-reference to the Act in a section entitled “Exemption from Rent Control,” which provides as follows, in relevant part:

(a) Housing projects assisted by the Agency [i.e., DCHFA] or through the auspices of the Agency under the provisions of this chapter shall be exempt from the provisions of chapter 35 of this title [the Act]. . .

(d) Each owner of a rental accommodation subject to the provisions of this chapter shall file simultaneously with the Agency and with the Rental Housing Commission an exemption statement which shall contain the following information:

(1) The actual rent for each rental unit in the accommodation, the services included, and the facilities charges therefor;

assisted by the Housing Finance Agency or through the auspices of the Agency under the provisions of this chapter shall be exempt from the Rent Control Provisions of Chapter 35 is applicable to the Housing Provider and continues in effect from the 1986 filing until released. Therefore, the Hearing Examiner finds that the building in which the rental unit is located is properly registered with the RACD and is exempt from Title II of the Act, D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001). Thus, the Respondent is exempt from § 42-3502.05(f) through § 42-3502.19 of the CODE.

*Id.* at pp. 5-8.

The Hearing Examiner made the following specific Findings of Fact in the Final Order:<sup>10</sup>

1. The Housing Provider entered into a Financing and Regulatory Agreement with the DCHFA July 1, 1985.
2. The building in which the rental unit #320 is located, 1701-16<sup>th</sup> Street, NW, was registered with the RACD November 6, 1986 as exempt under financing provided by DCHFA.
3. The Petitioner took possession of apartment # 302 [sic] in 1995.<sup>11</sup>
4. The Housing Provider paid off the mortgage subsidy under the DCHFA Agreement on December 28, 2000.
5. The restrictive covenant provision of the Financing and Regulatory Agreement survived the payoff of the mortgage subsidy.

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(2) The number of bedrooms in the rental accommodation; and

(3) A list of the outstanding violations of the Housing Regulations of the District of Columbia, issued August 11, 1955 (C.O. 55-1503), applicable to such accommodation. . .

(f) Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit shall receive notice in writing advising him or her that rent increases for the accommodation are not regulated by Chapter 35 of this title.

*See* D.C. OFFICIAL CODE § 42-2703.08. The Act does not make any specific cross-reference to the DCHFA Act in any of its provisions. *See* D.C. OFFICIAL CODE §§ 42-3501.01-3509.07.

<sup>10</sup> The text of the Findings of Fact and Conclusion of Law, respectively, is presented as contained in the Final Order.

<sup>11</sup> The Commission's review of the record reveals that the Tenant's unit in the Housing Accommodation was #320, not "#302," as stated by the Hearing Examiner in Finding of Fact numbered 8. *See* Final Order at p. 9.

6. The restrictive covenant provision of the Financing and Regulatory Agreement [Financing Agreement] provides that at least 20% of the rental units in the housing accommodation shall rent or be held available for rent to lower-income tenants at a subsidy rent level.
7. On May 30, 2001, the Housing Provider filed an Amended Registration/Claim of Exemption. As grounds for this exemption the Housing Provider checked the box on the registration indicating “the property continuously vacant since January 1, 1985,” and also “Other,” [namely] “Financing provided by the District of Columbia Housing Finance Agency.”
8. The Housing Provider implemented a \$390 rent increase in July 2001 and a \$125 rent increase in July 2002 for rental unit # 302 [sic].
9. The building in which the rental unit is located is properly registered with the RACD and is exempt from Title II of the Act, D.C. OFFICIAL CODE § 42-3502.05(a)(3) [sic] (2001).<sup>12</sup> Thus, the Respondent is exempt from D.C. OFFICIAL CODE §§ 42-3502.05(f) - 42-3502.19.

*Id.* at pp. 8–9.

The Hearing Examiner made the following Conclusion of Law in the Final Order:

1. The Respondent has proven by preponderance of the evidence that it is properly registered in accordance with D.C. OFFICIAL CODE § 42-

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<sup>12</sup> D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001) provides, in relevant part, the following:

- (a) Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District except . . . (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not . . . .

The Commission observes that the Hearing Examiner’s reference to D.C. OFFICIAL CODE § 42-3502.05(a)(3) (referred to herein as the “small landlord exemption”) in Finding of Fact numbered 9 was the first and only reference to that section in the Final Order. *See* Final Order at 1-9. The Commission’s review of the record does not reveal any evidence, which supports the Hearing Examiner’s reference and citation to the “small landlord exemption” under D.C. OFFICIAL CODE § 42-3502.05 (a)(3), especially when the Brief of Housing Provider/Appellee Chastleton Apartments (Housing Provider’s Brief) (at p.1) states that the Housing Accommodation consists of “300 rental units,” the Brief of Appellant (Tenant’s Brief) (at p. 2) states that it is “a 315 unit building,” and the Tenant’s unit at issue in this case is identified as “#320.” *See* Tenant’s Brief at p. 2; Housing Provider’s Brief at 1. *See also* Final Order at 1, 8. The Commission is satisfied that the correct citation is: “D.C. OFFICIAL CODE § 42-3502.05(a)(1)” (referred to herein as the “mortgage subsidy exemption”), because the mortgage subsidy exemption has served as the primary basis of the Housing Provider’s claim of exemption in both the original 1986 filing and the 2001 Amended Registration/Exemption form. *See generally* Final Order at pp. 3, 5-6, 8-9.