DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TPs 27,995, 27,997, 27,998, 28,002, & 28,004

In re: 1401 N Street, N.W.

Ward One (1)

GELMAN MANAGEMENT COMPANY
Housing Provider/Appellant

v.

CHRISTINE GRANT, et al.
Tenants/Appellees

DECISION AND ORDER FOLLOWING REMAND

August 19, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the District of Columbia (D.C.) Department of Consumer & Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversions Division (RACD).[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- 2-510 (Supp. 2008), 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] The OAH assumed jurisdiction over tenant petitions from RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Supp. 2005). The functions and duties of the RACD were transferred to 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 (Sept. 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008)).

I. PROCEDURAL HISTORY[2]

On November 26, 2003 and December 1, 2003, respectively, six tenants/appellees (collectively, Tenants) residing at 1401 N Street, N.W. (Housing Accommodation) filed tenant petitions TP 27,995, TP 27,996, TP 27,997, TP 27,998, TP 28,002, and TP 28,004 (collectively, Tenant Petitions)[3] with RACD against Housing Provider/Appellant, Gelman Management Company (Housing Provider). An evidentiary hearing was held on February 17, 2004, and on July 12, 2004, Hearing Examiner Carl Bradford (Hearing Examiner) issued a decision and order, Grant v. Gelman Management Co., TP 27,995 (RACD July 12, 2004) (Final Order). Record (R.) at 37-53. In the Final Order, the Hearing Examiner found in favor of the Housing Provider on all of the claims, except that the Hearing Examiner determined that the Housing Provider had overcharged Tenant Gibbons $10 per month, and ordered a rent refund accordingly. *See id.* at 15; R. at 39.

The Tenants each filed an appeal of the Final Order with the Commission on July 29, 2004.[4] A hearing was held before the Commission on September 28, 2004, and on February 24, 2006, the Commission issued a Decision and Order, Grant v. Gelman Mgmt. Co., TP 27,995 (RHC Feb. 24, 2006) (Decision and Order) reversing the Hearing Examiner's Final Order and remanding the case to RACD. *See* Decision and Order at 27; R. at 56. The Commission

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[2] A detailed factual background prior to this appeal after remand is set forth in the Commission's Decision and Order in Grant v. Gelman Mgmt. Co., TPs 27,995, 27,997, 27,998, 28,002, & 28,004 (RHC Feb. 24, 2006). The Commission sets forth in this decision only the facts relevant to the issues that arise from the Housing Provider's appeal filed on June 16, 2010.

[3] The following tenant petitions were filed on November 26, 2003: TP 27,995, filed by Christine Grant, residing in Unit 204; TP 27,996, filed by Brenda Gibbons, residing in Unit 805; TP 27,997, filed by Jeannine Wray, residing in Unit 703; and TP 27,998, filed by Blaine Carvalho, residing in Unit 809. The following tenant petitions were filed on December 1, 2003: TP 28,002, filed by Donald Delauter, residing in Unit 804; and TP 28,004, filed by Tayo Olaniyan, residing in Unit 502.

[4] Tenant Brenda Gibbons's claims on appeal were dismissed by the Commission for want of prosecution, and thereafter Tenant Gibbons was neither a party to the RACD proceedings on remand, nor to these proceedings on appeal after remand. Gibbons v. Gelman Mgmt. Co., TP 27,996 (RHC Oct. 28, 2004).

instructed the Hearing Examiner to make findings of fact regarding the perfection of rent ceiling adjustments that were utilized to increase the Tenants' rents charged, and to disallow any rent charged increase that implemented a rent ceiling adjustment that the Housing Provider had failed to perfect, in accordance with 14 DCMR § 4204.9. *See* Decision and Order at 27; R. at 56.

On March 3, 2006 the Housing Provider filed a motion for reconsideration (Housing Provider's Motion for Reconsideration) of the Commission's Decision and Order, asserting that the Commission erred by instructing the Hearing Examiner to disallow rent increases that were based on unperfected rent ceiling increases that had been "filed with the Rent Administrator more than 3 years before the [T]enant [P]etitions," in violation of the Act's statute of limitations provision at D.C. OFFICIAL CODE § 42-3502.06(e) (2001).[5] *See* Housing Provider's Motion for Reconsideration at 1-2. The Commission entered an order denying the Housing Provider's Motion for Reconsideration on March 30, 2006. Grant v. Gelman Mgmt. Co., TP 27,995 (RHC Mar. 30, 2006) (Order on Reconsideration) at 1-11; R. at 84-94.

On May 12, 2008, Acting Rent Administrator Keith Anderson (ARA) issued a Proposed Decision and Order, Grant, TP 27,995 (RACD May 12, 2008)[6] (Proposed Order After Remand), awarding damages to each of the five (5) remaining Tenants.[7] *See* Proposed Order After Remand 1-33; R at 130-62.

The ARA made the following findings of fact in the Proposed Order After Remand:[8]

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[5] The text of D.C. OFFICIAL CODE § 42-3502.06(e) is recited *infra* at p. 18 n.16.

[6] The Commission notes the that Proposed Order After Remand was initially issued on April 7, 2008, *see* R. at 128; however, RACD reissued the order on May 12, 2008 because RACD had failed to mail the April 7, 2008 order to the Tenants' correct addresses.

[7] *See supra* at 2 n.4.

[8] The ARA's findings of fact are recited herein using the language of the Proposed Order After Remand.

1. All other Findings of Fact made by the hearing examiner in [the] previous decision and order on this [Tenant Petition] that are not in conflict are incorporated by reference in this section of **Findings of Facts**.

2. **Table 1** in the **Evaluation and Analysis of the Evidence** section of this decision and order is hereby incorporated by reference into this section which represents the Tenant/Petitioner['s,] in unit 204[,] rent ceilings and rent charges.

3. The Housing Provider/ Respondent overcharged the Tenant/Petitioner in unit 204 pursuant to **Paragraphs 1-13** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.

4. The Tenant/Petitioner in unit 204 is awarded 72 months of interest.

5. The judgment interest in effect on the date of this decision, which is the interest rate currently in use by the D.C. Superior Court, pursuant to D.C. Code Section 28-3302(c) is five percent (5%) per annum as authorized by the Commission Rule 14 DCMR [§] 3826.3 (1998 Amendments).

6. **Table 3** in the **Evaluation and Analysis of the Evidence** section of this decision and order is hereby incorporated by reference into this section which represents the Tenant/Petitioner['s,] in unit 804[,] rent ceilings and rent charges.

7. The Housing Provider/ Respondent overcharged the Tenant/Petitioner in unit 804 pursuant to **Paragraphs 15-23** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.

8. The Housing Provider/Respondent permanently reduce [sic] a facility and or service in violation of the Act pursuant to **Paragraph 24** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.

9. The Tenant/Petitioner in unit 804 is awarded 71 months of interest.

10. **Table 5** in the **Evaluation and Analysis of the Evidence** section of this decision and order is hereby incorporated by reference into this section which represents the Tenant/Petitioner['s,] in unit 703[,] rent ceilings and rent charges.

11. The Housing Provider/ Respondent overcharged the Tenant/Petitioner in unit 804 [sic] pursuant to **Paragraphs 28-35** in the **Evaluation and Analysis of**

the Evidence section of this decision and order which is hereby incorporated by reference into this section.

12. The Tenant/Petitioner in unit 703 is awarded 72 months of interest.

13. **Table 7** in the **Evaluation and Analysis of the Evidence** section of this decision and order is hereby incorporated by reference into this section which represents the Tenant/Petitioner['s,] in unit 502[,] rent ceilings and rent charges.

14. The Housing Provider/ Respondent overcharged the Tenant/Petitioner in unit 502 pursuant to **Paragraphs 39-53 and footnote 7** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.

15. The Tenant/Petitioner in unit 502 is awarded 55 months of interest[.]

16. **Table 9** in the **Evaluation and Analysis of the Evidence** section of this decision and order is hereby incorporated by reference into this section which represents the Tenant/Petitioner['s,] in unit 809[,] rent ceilings and rent charges.

17. The Housing Provider/ Respondent overcharged the Tenant/Petitioner in unit 809 pursuant to **Paragraphs 57-69** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.\ [sic]

18. The Tenant/Petitioner in unit 809 is awarded 68 months of interest.

Proposed Order After Remand at 25-27; R. at 136-38 (emphasis in original).

The ARA made the following conclusions of law in the Proposed Order After Remand:[9]

1. All other conclusions of law made by the hearing examiner in [the] previous decision and order on this [Tenant Petition] that are not in conflict are incorporated by reference in this section of **Conclusions of Law**.

2. The Housing Provider/ Respondent overcharged the Tenant/Petitioner in unit 204 pursuant to **Paragraphs 1-13** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.

[9] The ARA's conclusions of law are recited herein using the language of the Proposed Order After Remand.

3. The Tenant/Petitioner is awarded a rent refund and rent ceiling rollback based on the finding facts [sic] in **Paragraphs 1-13**[,] and **Table 2** is the calculation of the rent rolled back and the rent overcharged award.

4. The Tenant/Petitioner in unit 204 is awarded trebled damages based on the Housing Provider/Respondent's actions in **Paragraphs 1-13**.

5. **The Tenant/Petitioner in unit #204:** legal rent ceiling is $874.00 and her legal rent charged is $577.00.

6. **The Tenant/Petitioner in unit #204** is entitled to trebled damages since the Housing Provider/Respondent's actions were willful when it raised the Tenant/Petitioner's rent without properly perfecting the rent increased [sic] and where the Housing Provider charged the Tenant/Petitioner more than [the] CPI allowed from 2000-2002 in violation of the Act.

7. In the instant case, the judgment interest in effect on the date of this decision, which is the interest rate currently in use by the D.C. Superior Court, pursuant to D.C. Code Section 28-3302(c) is five percent (5%) per annum as authorized by the Commission Rule 14 DCMR [§] 3826.3 (1998 Amendments) [sic].

8. The Tenant/Petitioner in unit 204 is awarded a total of $ 9,071.22 for rent refund[s], trebled damages and interest where the Housing Provider/Respondent over charged [sic] her rent in violation of the Act.

9. The Housing Provider/ Respondent overcharged the Tenant/Petitioner in unit 804 pursuant to **Paragraphs 15-23** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.

10. The Tenant/Petitioner is awarded a rent refund and rent ceiling rollback based on the finding facts [sic] in **Paragraphs 15-23**[,] and **Table 4** is the calculation of the rent rolled back and the rent overcharged award.

11. The Tenant/Petitioner in unit 804 is awarded trebled damages based on the Housing Provider/Respondent's actions in **Paragraphs 15-23**.

12. **The Tenant/Petitioner in unit #804: l**egal [sic] rent ceiling is $955.00 and his legal rent charged is $600.00.

13. **The Tenant/Petitioner in unit #804** is entitled to trebled damages since the Housing Provider/Respondent's actions were willful when it raised the Tenant/Petitioner's rent without properly perfecting the rent increased [sic] and where the Housing Provider/Respondent charged the Tenant/Petitioner more than [the] CPI allowed from 2002-2003 in violation of the Act.

14. The Tenant/Petitioner in unit 804 is not entitled to a rent refund based on reduction of facilities since the rent ceiling is $955.00 and the Tenant[/]Petitioner['s] rent charged was $600.00.

15. The Acting Rent Administrator rolls back the Tenant/ Petitioner's rent ceiling to $955.00.

16. In the instant case, the judgment interest in effect on the date of this decision, which is the interest rate currently in use by the D.C. Superior Court, pursuant to D.C. Code Section 28-3302(c) is five percent (5%) per annum as authorized by the Commission Rule 14 DCMR [§] 3826.3 (1998 Amendments) [sic].

17. The Tenant/Petitioner in unit 804 is awarded a total of $ 9,717.47 for rent refund[s], trebled damages and interest where the Housing Provider/Respondent over charged [sic] him rent in violation of the Act.

18. The Housing Provider/ Respondent [sic] overcharged the Tenant/Petitioner in unit 703 pursuant to **Paragraphs 28-35** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.

19. The Tenant/Petitioner in unit 703 is awarded a rent refund and rent ceiling rollback based on the finding facts [sic] in **Paragraphs 28-35**[,] and **Table 6** is the calculation of the rent rolled back and the rent overcharged award.

20. The Tenant/Petitioner in unit 703 is awarded trebled damages based on the Housing Provider/Respondent's actions in **Paragraphs 28-35**.

21. **The Tenant/Petitioner in unit #703: l**egal [sic] rent ceiling is $1217.00 and her legal rent charged is $608.00.

22. **The Tenant/Petitioner in unit #703** is entitled to trebled damages since the Housing Provider/Respondent's actions were willful when it raised the Tenant/Petitioner's rent without properly perfecting the rent increased [sic] and where the Housing Provider charged the Tenant/Petitioner more than [the] CPI allowed from 2000-2002 in violation of the Act.

23. The Tenant/Petitioner in unit 703 is awarded a total of $ 8,939.74 for rent refund[s], trebled damages and interest where the Housing Provider/Respondent over charged [sic] her rent in violation of the Act.

24. The Housing Provider/ Respondent overcharged the Tenant/Petitioner in unit 502 pursuant to **Paragraphs 39-53** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.

25. The Tenant/Petitioner in unit 502 is awarded a rent refund and rent ceiling rollback based on the finding facts [sic] in **Paragraphs 39-53**[,] and **Table 8** is the calculation of the rent rolled back and the rent overcharged award.

26. The Tenant/Petitioner in unit 502 is awarded trebled damages based on the Housing Provider/Respondent's actions in **Paragraphs 39-53**.

27. **The Tenant/Petitioner in unit #502:** legal rent ceiling is $1142.00 and her legal rent charged is $712.00.

28. **The Tenant/Petitioner in unit #502** [is] entitled to trebled damages since the Housing Provider/Respondent's actions were willful when it raised the Tenant/Petitioner's rent without properly perfecting the rent increased [sic] and where the Housing Provider charged the Tenant/Petitioner more than the amount allowed by the CPI % increase from 2002-2003 [in] violation of the Act. The Housing Provider/Respondent correctly calculated the rent ceiling put [sic] failed to assess the proper rent charged. In addition, the Housing Provider/Respondent failed to wait one hundred [e]ighty (180) days before raising the Tenant/Petitioner[']s rent charged and rent ceiling in violation of the Act.

29. The Tenant/Petitioner in unit 502 is awarded a total of $ 9,125.69 for rent refund[s], trebled damages and interest where the Housing Provider/Respondent over charged [sic] her rent in violation of the Act.

30. The Housing Provider/ Respondent overcharged the Tenant/Petitioner in unit 809 pursuant to **Paragraphs 57-69** in the **Evaluation and Analysis of the Evidence** section of this decision and order which is hereby incorporated by reference into this section.

31. The Tenant/Petitioner in unit 809 is awarded a rent refund and rent ceiling rollback based on the finding facts [sic] in **Paragraphs 57-69[,] and Table 10** is the calculation of the rent rolled back and the rent overcharged award.

32. The Tenant/Petitioner in unit 809 is awarded trebled damages based on the Housing Provider/Respondent's actions in **Paragraphs 57-69.**

33. **The Tenant/Petitioner in unit #809:** legal rent ceiling is $1566.00 and her legal rent charged is $616.00.

34. **The Tenant/Petitioner in unit #809** [is] entitled to trebled damages since the Housing Provider/Respondent's actions were willful when it raised the Tenant/Petitioner's rent without properly perfecting the rent increased [sic] and where the Housing Provider/Respondent charged the Tenant/Petitioner more than the amount allowed by the CPI % increase from 2002-2003 [in] violation of the Act. The Housing Provider correctly calculated the rent

ceiling put [sic] failed to assess the proper rent charged, hi [sic] addition, the Housing Provider/Respondent failed to wait one hundred [e]ighty (180) days before raising the Tenant/Petitioner[']s rent charged and rent ceiling in violation of the Act.

35. The Tenant/Petitioner in unit 809 is awarded a total of $ 6,079.26 for rent refund[s], trebled damages and interest where the Housing Provider/Respondent over charged [sic] her rent in violation of the Act.

Proposed Order After Remand at 27-30; R. at 133-36 (emphasis in original).

The Housing Provider filed exceptions and objections to the Proposed Order After Remand (Housing Provider's Exceptions and Objections) on June 17, 2008. *See* Housing Provider's Exceptions and Objections at 1-7; R. at 204-10. The exceptions and objections were as follows:

1. The Proposed [Decision After Remand] disregards the three year limitations provision in D.C. Code § 42-3502.06(e) and decisions of the D.C. Court of Appeals interpreting that statutory provision.

2. There is no lawful basis for the Acting Rent Administrator to award treble damages to any of the [T]enant[/P]etitioners.

3. The Rent Administrator has no authority to award interest in its decisions; and, even assuming it does have such authority the calculation [sic] here are contrary to law.

4. The Hearing Examiner erred in finding that [the Housing Provider] raised certain rents and rent ceilings within 180 days of prior rent/rent ceiling increases[.]

Housing Provider's Exceptions and Objections at 1, 3-4, 6; R. at 205, 207-08, 210.

On June 4, 2010 the ARA issued an Order Denying Housing Provider's Exceptions and Objections, stating that the exceptions and objections were "without merit," and providing that

the Proposed Order After Remand was final. Grant, TP 27,995 (RACD June 4, 2010) (Final Order After Remand) at 1-3; R. at 218-20.[10]

The Housing Provider filed a notice of appeal of the Final Order After Remand with the Commission on June 16, 2010 (Housing Provider's Notice of Appeal). The Housing Provider's Notice of Appeal raised the following issues:[11]

1. In the [Final Order After Remand], under "Conclusions of Law," the Rent Administrator fails to explain his reasoning for his conclusory holding that "Respondent's Exceptions Objection's [sic] are without merit." The Rent Administrator's failure to explain in detail, beyond the summary statement in Paragraph 7 of the Order, that he "carefully and correctly" applied the law to the facts in this case, is arbitrary and capricious. That failure also violates [the Housing Provider's] Due Process right, expressed in the D.C. Administrative Procedures Act to a decision that sets forth the analysis engaged in by the Rent Administrator, in denying [the Housing Provider's] Exceptions and Objections, the D.C. Administrative Procedures Act.

2. The Rent Administrator, and the Rental Housing Commission in its [Decision and Order], pursuant to which it remanded the initial decision in this case, misconstrued and then failed to adhere to D.C. Court of Appeals and even the [Commission]'s own precedent on the three year statute of limitations/statute of repose in the Rental Housing Act. Based on that precedent, and the statutory provision with that limitation provision, the [T]enant[/P]etitioners' claims were all time-barred.

3. Neither the [Commission] nor the Rent Administrator may attempt to impose by decision an interpretation of a statutory provision that changes its earlier interpretations and application of the same provision, absent prior notice to those potentially affected thereby, and a reasoned explanation for its change in interpretation.

4. The award of trebled damages is contrary to law, both because there was no evidence that the alleged errors on which the damage awards were based, or the rents charged for all the years after those alleged errors were made, were motivated by bad faith.

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[10] For purposes of this Decision and Order Following Remand, the July 12, 2004 order issue by the Hearing Examiner, Grant, TP 27,995 (RACD July 12, 2004), shall be referred to herein as the "Final Order;" the May 12, 2008 order issued by the ARA, Grant, TP 27,995 (RACD May 12, 2008), shall be referred to herein as the "Proposed Order After Remand;" and the June 4, 2010 order issued by the ARA, Grant, TP 27,995 (RACD June 4, 2010), shall be referred to herein as the "Final Order After Remand."

[11] The issues on appeal are recited herein using the language of the Housing Provider's Notice of Appeal.

5. The Rent Administrator and the [Commission] have no statutory authority to award interest on rent refunds awarded to tenants, and the [Commission] had no authority to provide for interest on awards in its regulations. Even assuming such authority exists, the Rent Administrator's decision fails to take account of the fact that the Superior Court's judgment interest rate is recalculated every six months, and due to that, and inconsistency in his award in the applicable interest rate, the interest award was not calculatedly [sic] correctly.

Housing Provider's Notice of Appeal at 1-2.

On April 25, 2012 the Commission issued a Notice of Scheduled Hearing. In lieu of a brief, the Housing Provider submitted a Memorandum to support its contention regarding the applicability of the statute of limitations to the claims in the Tenant Petitions (Housing Provider's Memorandum). Attached to the Memorandum were past filings in this case and others.[12] The Tenants did not submit a brief. A hearing was held on May 22, 2012. No individual appeared at the hearing to represent the Tenants, including either the Tenants themselves, or the Tenants' counsel. Hearing CD (RHC May 22, 2012) at 11:12 a.m.

II. HOUSING PROVIDER'S ISSUES ON APPEAL[13]

A. Whether in the Final Order After Remand, under "Conclusions of Law," the ARA fails to explain his reasoning for his conclusory holding that "Respondent's Exceptions Objections are without merit."

B. Whether the ARA and the Commission in its Decision and Order, pursuant to which it remanded the initial decision in this case, misconstrued and then

[12] The attachments, according to the Memorandum, were: "(1) Motion for Reconsideration of Decision and Order filed by [the Housing Provider] on March 3, 2006 with the Rental Housing Commission, which motion [sic] was denied; (2) Housing Provider's Exceptions and Objections to Proposed Decision and Order entered April 17, 2008 with Exhibits thereto; and (3) Proposed Decision and Order in [Fahrenholz v. Carmel Partners Inc.-Park Plaza Apartments LLC,] TP 28,273 (RAD May 27, 2008)."

[13] The Commission, in its discretion, has rephrased the issues on appeal in this section of its Decision and Order to omit the Housing Provider's supporting assertions that were included in the statements of the issues on appeal. *See, e.g.,* Atchole v. Royal, RH-TP-10-29,891 (RHC Mar. 27, 2014); Gelman Mgmt. Co. v. Campbell, RH-TP-06-29,715 (RHC Dec. 23, 2013) at n.16; Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013) at n.12; Jackson v. Peters, RH-TP-12-28,898 (RHC Sept. 27, 2013). For the complete language of the Housing Provider's Notice of Appeal, see *supra* at 10-11. *See also* Notice of Appeal at 1-2.

failed to adhere to D.C. Court of Appeals and even the Commission's own precedent on the three year statute of limitations/statute of repose in the Act.

C. Whether the award of trebled damages is contrary to law, both because there was no evidence that the alleged errors on which the damage awards were based, or the rents charged for all the years after those alleged errors were made, were motivated by bad faith.

D. Whether the ARA's award of trebled damages is contrary to law.

E. Whether the Rent Administrator and the Commission have no statutory authority to award interest on rent refunds awarded to tenants, and the Commission had no authority to provide for interest on awards in its regulations. Even assuming such authority exists, the Rent Administrator's decision fails to take account of the fact that the Superior Court's judgment interest rate is recalculated every six months, and due to that, and inconsistency in his award in the applicable interest rate, the interest award was not calculated correctly.

IV. DISCUSSION OF THE HOUSING PROVIDER'S ISSUES ON APPEAL

A. Whether in the Final Order After Remand, under "Conclusions of Law," the ARA fails to explain his reasoning for his conclusory holding that "Respondent's Exceptions Objections are without merit."

The Housing Provider claims that the ARA erred by failing to explain his reasoning for determining in the Final Order After Remand that the Housing Provider's Exceptions and Objections were without merit. Housing Provider's Notice of Appeal at 1.

According to the DCAPA, D.C. OFFICIAL CODE § 2-509(d)-(e) (2001), in relevant part:

> (d) Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision . . . shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision . . . .
>
> (e) Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and 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 . . . .

D.C. OFFICIAL CODE § 2-509(d)-(e) (emphasis added); *see also* 14 DCMR § 4012.4 (2004).[14] *See, e.g.,* Butler-Truesdale v. Aimco Props., LLC, 945 A.2d 1170, 1171 (D.C. 2008) (holding that "[a]gencies are required to make findings upon each contested issue of fact"); Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment, 816 A.2d 41, 51 (D.C. 2003) (noting that "[g]eneralized, conclusory, or incomplete factual findings are insufficient" (citing Levy v. D.C. Bd. of Zoning Adjustment, 570 A.2d 739, 746 (D.C. 1990))); Branson v. D.C. Dep't of Emp't Servs., 801 A.2d 975, 979 (D.C. 2002) (determining that an agency must give "full and reasoned consideration to all material facts and issues" (quoting Dietrich v. D.C. Bd. of Zoning Adjustment, 293 A.2d 470, 473 (D.C. 1972))); Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012); Pena v. Woynarowsky, RH-TP-06-28,817 (RHC Feb. 3, 2012); Jackson v. Peters, RH-TP-07-28,898 (RHC Feb. 3, 2012).

In order to satisfy the requirements of the DCAPA "(1) the decision must state findings of fact on each material, contested issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings." Perkins v. D.C. Dep't of Emp't Servs., 482 A.2d 401, 402 (D.C. 1984). *See also* Butler-Truesdale, 945 A.2d 1170; Hedgman v. D.C. Hackers' License Appeal Bd., 549 A.2d 720 (D.C. 1988); Spevak v. D.C. Alcoholic Beverage and Control Bd., 407 A.2d 549, 553 (D.C. 1979); Washington, RH-TP-11-30,151. Where the administrative court has failed to demonstrate a full and reasoned consideration of all the material facts and issues in a case, the Commission is unable to perform

[14] 14 DCMR § 4012.4 provides: "Pursuant to the written delegation of authority issued under § 3900.3, if the person who renders the decision and order is not the same person who has heard the evidence, then the procedures of [D.C. OFFICIAL CODE § 2-509(d)], shall be followed."

its review function. 14 DCMR § 3807.1. *See, e.g.,* Parsons v. D.C. Bd. of Zoning Adjustment, 61 A.3d 650, 654 (D.C. 2013) (Schwelb, J., concurring) (stating the DCCA can only perform its review function where an agency "discloses the basis of its order by an articulation with reasonable clarity of its reasons for the decision." (quoting Dietrich, 293 A.2d at 473)); Butler-Truesdale, 954 A.2d at 1171 (noting that "[W]hen an agency has failed to consider and resolve each contested issue of material fact, we have remanded the case back to the agency for further proceedings"); Branson, 801 A.2d at 979 (explaining that the DCCA cannot "assume than an issue has been considered . . . when there is no discernible evidence that it has." (quoting Washington Times v. D.C. Dep't of Emp't Servs., 724 A.2d 1212, 1221 (D.C. 1999))).

The Commission's standard of review of the ARA's decision is contained at 14 DCMR § 3807.1 (2004), 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.

The Commission's review of the record reveals no substantial evidence that the ARA provided the parties with an opportunity to present argument on the Housing Provider's Exceptions and Objections. D.C. OFFICIAL CODE § 2-509(d). Moreover, the Commission notes that the ARA summarily dismissed the four exceptions and objections simply by stating that they were "without merit," with only the following additional explanation:

> RAD finds that the [Proposed Order After Remand] carefully and correctly applied [D.C. OFFICIAL CODE] Sect. 42-350[2].06(e) and applicable case law; properly applied the facts of the case to the standard for treble damages; applied interest in accordance with [D.C. OFFICIAL CODE] Sect. 42-3509.01 and applicable case law; and correctly cited rent adjustments that [the Housing Provider] implemented in violation of the "180 day" rule.

Final Order After Remand at 2; R. at 219. The Commission determines, based on its review of the record, that the ARA's determination that the Housing Provider's Exceptions and Objections were "without merit," without the requisite findings of fact and conclusions of law on each of the exceptions and objections, violated the DCAPA. D.C. OFFICIAL CODE § 2-509(d)-(e); 14 DCMR § 3807.1. *See* Butler-Truesdale, 945 A.2d 1170; Hedgman, 549 A.2d 720; Perkins, 482 A.2d at 402; Spevak, 407 A.2d at 553; Washington, RH-TP-11-30,151.

As the Commission explained *supra* at 13-14, where the record does not contain clear findings of fact and conclusions of law on each of the contested issues, the Commission is unable to perform its review function. 14 DCMR § 3807.1. *See, e.g.,* Parsons, 61 A.3d at 654; Butler-Truesdale, 954 A.2d at 1171; Branson, 801 A.2d at 979. Thus, where the Housing Provider has appealed issues that were not fully considered by the ARA in the Final Order After Remand, and require additional findings of fact and conclusions of law, the Commission determines that compliance with the APA and the Act requires it to remand those issues for further consideration. *See, e.g.*, Notsch v. Carmel Partners, LLC, RH-TP-06-28,690 (RHC May 16, 2014) (noting that "the Commission's role is not to weigh the testimony and substitute itself for the fact-finder"); Atchole v. Royal, RH-TP-10-29,891 (RHC Mar. 27, 2014); Covington v. Foley Props., Inc., TP 27,985 (RHC June 21, 2006). Nevertheless, where the Housing Provider's issues on appeal require a purely legal interpretation of the Act and its regulations, and do not require additional fact finding, the Commission may consider such issues without remanding to the ARA for further consideration. *See, e.g.,* Reyes v. D.C. Dep't of Emp't Servs., 48 A.3d 159, 164 (D.C. 2012) (noting that an appellate court must remand to the administrative law judge where factual findings are not supported by substantial evidence, but review of legal conclusions

is *de novo*); Hisler v. D.C. Dep't of Emp't Servs., 950 A.2d 738, 743-44 (D.C. 2008) (explaining that "[w]ith respect to issues of law . . . [the DCCA's] review is *de novo*").

The Commission observes that the Housing Provider's issues B and C on appeal, challenging the ARA's interpretation of the Act's statute of limitations, and part of issue E, challenging the ARA's authority to award interest, correspond to the Housing Provider's first and third exceptions and objections respectively, and require a purely legal interpretation of the language of specific provisions of the Act and do not require additional fact finding. *See* Notice of Appeal at 1-2; Housing Provider's Exceptions and Objections. Thus, the Commission addresses these two issues of purely legal interpretations of the language of specific provisions of the Act or its regulations as follows: whether the Proposed Order After Remand disregards the three-year statute of limitations provision in the Act, *infra* at 18, and whether there is a lawful basis under the Act for an award of interest, *infra* at 22. *See* Reyes, 48 A.3d at 164; Hisler, 950 A.2d at 743-44.

With respect to the remaining issue raised in the Housing Provider's Notice of Appeal, namely issue D which challenges the ARA's findings of fact regarding treble damages, the Commission further addresses this issue *infra* at 22, but determines here that where the Final Order After Remand does not contain the necessary findings of fact and conclusions of law, as required by the DCAPA, the Commission must remand this issue for further consideration. *See* 14 DCMR § 3807.1. *See, e.g.,* Parsons, 61 A.3d at 654; Butler-Truesdale, 954 A.2d at 1171; Branson, 801 A.2d at 979; Notsch, RH-TP-06-28,690; Atchole, RH-TP-10-29,891; Covington, TP 27,985.

Based on the foregoing, the Commission reverses the ARA's dismissal of the Housing Provider's Exceptions and Objections, and remands this issue to the ARA to give the parties an

opportunity to "present argument" on the exceptions and objections in compliance with the DCAPA, D.C. OFFICIAL CODE § 2-509(d), and for an issuance of a written findings of fact and conclusions of law, addressing the merits of the remaining exceptions and objections, as follows: (1) whether there is no lawful basis for an award of treble damages; (2) whether the award of interest was improperly assessed and calculated; and (3) whether the ARA erred in finding that the Housing Provider raised certain rents and rent ceilings within 180 days of prior rent and rent ceiling increases. D.C. OFFICIAL CODE § 2-509(d)-(e); 14 DCMR § 3807.1; Butler-Truesdale, 945 A.2d 1170; Hedgman, 549 A.2d 720; Perkins, 482 A.2d 401, 402; Spevak, 407 A.2d at 553; Washington, RH-TP-11-30,151.[15]

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[15] The Proposed Order After Remand contains the following respective Finding of Fact and Conclusion of Law:

> 1. All other Findings of Fact made by the hearing examiner in [the] previous decision and order on this [Tenant Petition] that are not in conflict are incorporated by reference in this section of **Findings of Facts**.
>
> . . .
>
> 1. All other conclusions of law made by the hearing examiner in [the] previous decision and order on this [Tenant Petition] that are not in conflict are incorporated by reference in this section of **Conclusions of Law**.

Proposed Order After Remand at 25-30; R. at 133-38 (emphasis in original). The Commission determines that it was error under the DCAPA for the ARA to "incorporate by reference" in the Proposed Order After Remand both Findings of Fact and Conclusions of Law from the Hearing Examiner's Final Order on the grounds that they "are not in conflict" with those in the Proposed Order After Remand. D.C. OFFICIAL CODE § 2-509(e). *See, e.g.*, Butler-Truesdale, LLC, 945 at 1171; Georgetown Residents Alliance, 816 A.2d at 51; Branson, 801 A.2d at 979; Pena, RH-TP-06-28,817; Jackson, RH-TP-07-28,898.

As the DCCA has noted:

> [T]his court has admonished administrative agencies on several occasions that a reiteration of the evidence is not a finding of fact. Neither will generalized, conclusory, or incomplete findings suffice. There must be a finding on each material fact necessary to support the conclusions of law . . . . We will continue to order that administrative agencies specify the precise findings and conclusions which support their decisions.

Newsweek Magazine v. D.C. Comm'n on Human Rights, 376 A.2d 777, 784 (D.C. 1977) (emphasis added) (quoted in Envoy Assocs. Ltd. P'ship v. 2400 Tenant Ass'n, TP 27,312 (RHC July 15, 2004) and Voltz v. Pinnacle Realty Mgmt. Co., TP 25,092 (RHC Sept. 28, 2001)); Collins v. Scwartz Mgmt. Co., TP 23,571 (RHC Feb. 10, 2000).

The Commission's review of the record leads it to conclude that the ARA's incorporation by reference of certain indiscernible, unspecified findings of fact and conclusions of law from the Final Order into the Proposed Order

B. Whether The Tenants' Claims Were Time-Barred Under The Act's Three-Year Statute Of Limitations.

C. Whether The Commission And The Rent Administrator Erred By Imposing An Interpretation Of The Act's Three-Year Statute Of Limitations That Changes Its Earlier Interpretation And Application Of The Same Provision.

The Commission observes that the Housing Provider's issues B and C on appeal, recited above, relate to the underlying issue of whether the Tenants' claims were barred by the Act's statute of limitations at D.C. OFFICIAL CODE § 42-3502.06(e) (2001).[16]

After Remand fails to meet the legal requirements under D.C. OFFICIAL CODE § 2-509(e) and the Act. First, the Proposed Order After Remand erroneously fails to contain the necessary concise statement regarding, or similar reference to, any identifiable, particular or specific finding of fact or conclusion of law from the Final Order that is being incorporated into the Proposed Order After Remand, as minimally required by D.C. OFFICIAL CODE § 2-509(e). *See, e.g.,* Butler-Truesdale, 945 A.2d at 1171; Georgetown Residents Alliance, 816 A.2d at 51; Branson, 801 A.2d at 979; Pena v. Woynarowsky, RH-TP-06-28,817; Jackson v. Peters, RH-TP-07-28,898.

Second, in light of the generality and vagueness of the incorporation by reference, the Commission is left to impermissibly speculate about, guess or infer which findings of fact and conclusions of law in the Final Order "are not in conflict with" the Proposed Order After Remand. *See* Dietrich, 293 A.2d at 472; Lee v. D.C. Zoning Comm'n, 411 A.2d 635, 639 (D.C. 1980) ; Citizens Ass'n of Georgetown, Inc. v. D.C. Zoning Comm'n, 402 A.2d 36, 42 (D.C. 1979); Envoy Assocs. Ltd. P'ship, TP 27,312. *See also* Durant v. D.C. Zoning Comm'n, 65 A.3d 1161, 1169 (D.C. 2013). As the Commission has expressly noted, it "cannot infer or ascertain findings of fact or conclusions of law that are not present in the decision and order." *See* Envoy Assocs. Ltd. P'ship, TP 27,312; Prosper v. Pinnacle Mgmt., TP 27,783 (RHC June 9, 1994); Meyers v. Smith, TP 26,129 (RHC Mar. 17, 2003); Voltz, TP 25,092.

Finally, in the absence of specific, identifiable findings of fact from the Final Order, the Commission is unable to determine whether there is any rational connection between such unspecified findings of fact and the Conclusions of Law in the Proposed Order After Remand. *See* Dietrich, 293 A.2d at 473; Taylor v. Chase Manhattan Mtge., TP 24,303 & TP 24,420 (RHC Sept. 9, 1999); Envoy Assocs. Ltd. P'ship, TP 27,312; Prosper, TP 27,783. In this regard, the Commission is equally unable to determine whether there is any rational connection between the conclusions of law from the Final Order and the Findings of Fact and Conclusions of Law in the Proposed Order After Remand. *See* Dietrich, 293 A.2d at 473; Taylor, TP 24,303 & TP 24,420; Envoy Assocs. Ltd. P'ship, TP 27,312; Prosper, TP 27,783.

For the foregoing reasons, the Commission instructs the ARA on remand not to incorporate by reference any findings of fact and conclusions of law from the Final Order, the Proposed Order After Remand, or the Final Order After Remand.

[16] D.C. OFFICIAL CODE § 42-3502.06(e) provides the following:

> A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No petition may be filed with respect to any rent adjustment under any section of this chapter, more than 3 years after the effective date of the adjustment, except that a tenant must challenge the new base rent as provided in § 42-

The Commission observes that the factual context in this case is virtually identical to that in United Dominion Mgmt. Co. v. Hinman, RH-TP-06-28,728 (RHC June 5, 2013). In this case, the Tenants challenged 2002 and 2003 adjustments in rent charged that implemented adjustments in rent ceiling from 1986, 1988, or 1991, respectively, that were not properly taken and perfected in violation of 14 DCMR § 4204.9.[17] *See* Proposed Order After Remand at 6-25; R. at 138-57. In Hinman, RH-TP-06-28,728, the tenant challenged a 2006 adjustment in rent charged that implemented a 2001 adjustment in rent ceiling that was not properly taken and perfected in violation of 14 DCMR § 4204.9-.10. *See* Hinman, RH-TP-06-28,728 at 7-8. In each case, the housing provider claimed that, because the contested rent ceiling adjustment occurred beyond the three-year limitations period of § 42-3502.06(e), the tenant's claim of an illegal increase in the corresponding rent charged was barred by § 42-3502.06(e), even though the allegedly improper adjustment in rent charged occurred within the limitations period of § 42-3502.06(e). *See* Notice of Appeal at 1-2; Hinman, RH-TP-06-28,728 at 4.

Having noted a virtually identical factual context in this case and Hinman, RH-TP-06-28,728, the Commission also observes that the over-arching legal issue raised in this case is identical to the issue addressed and determined by the Commission in Hinman, RH-TP-06-

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> 3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

[17] The Commission observes that previous, identical versions of the regulation governing the taking and perfecting of adjustments in rent ceilings were in effect at the time of the adjustments in rent ceiling at issue in this case – 14 DCMR § 4204.9 (1986) & (1991). This regulation provides the following:

> Except as provided in § 4204.10, any rent ceiling adjustment authorized by the Act and this chapter shall be taken and perfected within the time provided in this chapter, and shall be considered taken and perfected only if the housing provider has filed with the Rent Administrator a properly executed amended Registration/Claim of Exemption Form as required by § 4103.1, and met the notice requirements of 4101.6.

14 DCMR § 4204.9 (2004).

28,728: whether § 42-3502.06(e), as a matter of law, bars a tenant's claim of an improper adjustment in rent charged that occurs within the three-year limitations period of § 42-3502.06(e), when the allegedly improper corresponding adjustment in rent ceiling upon which the tenant's claim is based occurred beyond the three-year limitations period of § 42-3502.06(e). *See* Notice of Appeal at 1-2; Hinman, RH-TP-06-28,728 at 4.

Based upon its foregoing analysis, the Commission is satisfied that the relevant factual contexts in this case and in Hinman, RH-TP-06-28,728, are substantially similar, if not virtually identical, s*ee supra* at 19, and that the major legal issues raised in this appeal and in Hinman, RH-TP-06-28,728, regarding the interpretation and application of § 42-3502.06(e) with respect to such similar factual contexts, are also substantially similar, if not virtually identical. *See supra*. Due to the similarity of factual contexts and legal issues regarding the interpretation and application of § 42-3502.06(e) in this case and in Hinman, RH-TP-06-28,728, the Commission determines that its decision in Hinman, RH-TP-06-28,728, serves as appropriate and controlling legal precedent for its decision and order in this case.

In Hinman, RH-TP-06-28,728, the Commission determined that the "effective date" of an adjustment in rent ceiling is the date that it is implemented through a corresponding adjustment in rent charged, and not the date when it is "taken and perfected" through the filing of an amended registration form by a housing provider pursuant to 14 DCMR §§ 4204.9-.10. Hinman, RH-TP-06-28,728 at 23-24. *See also* Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013); United Dominion Mgmt. Co. v. Coleman, RH-TP-06-28,833 (RHC Sept. 27, 2013); United Dominion Mgmt. Co. v. Kelly, RH-TP-06-28,707 (RHC Aug. 15, 2013); United Dominion Mgmt. Co. v. Rice, RH-TP-06-28,749 (RHC Aug. 15, 2013). The Commission further concluded that, just as in this case, when a contested adjustment in rent

ceiling is beyond the three-year limitations period in § 42-3502.06(e), but the date of its implementation through a corresponding adjustment in rent charged is within the limitations period, any claims under the Act regarding an alleged impropriety in either the adjustment in rent charged or the adjustment in rent ceiling are not barred by § 42-3502.06(e). Hinman, RH-TP-06-28,728 at 23-24. *See also* Morris, RH-TP-06-28,794; Coleman, RH-TP-06-28,833; Kelly, RH-TP-06-28,707; Rice, RH-TP-06-28,749.

For the foregoing reasons, and on the basis of the legal standards and holdings on the same issues addressed by the Commission in Hinman, RH-TP-06-28,728, the Commission is satisfied that the ARA's Proposed Order After Remand and Final Order After Remand are not erroneous as a matter of law, and that the ARA correctly determined that the Tenants' claims that the Housing Provider implemented adjustments in rent charged in violation of the Act is not barred by the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e). *See* Hinman, RH-TP-06-28,728 at 7-44. Accordingly, the Commission affirms the ARA on this issue. *See* Morris, RH-TP-06-28,794; Coleman, RH-TP-06-28,833; Kelly, RH-TP-06-28,707; Rice, RH-TP-06-28,749; Hinman, RH-TP-06-28,728.

D. Whether The ARA's Award of Trebled Damages Is Contrary To Law.

In light of the Commission's decision on Issue "A," *supra* at 12-17, and as also noted *supra* at 16, remanding the Tenant Petition to the ARA for further consideration of the Housing Provider's Exceptions and Objections, including whether there is a lawful basis for an award of treble damages, the Commission dismisses this issue on appeal. The Commission cautions the ARA on remand to ensure that his consideration of whether there is a lawful basis for the award of treble damages includes both discussion and application of the applicable two-prong test to support a finding of bad faith: "first, there must be a determination that the housing provider

acted knowingly; and second, the housing provider's conduct must be 'sufficiently egregious' to warrant a finding of bad faith." Notsch v. Carmel Partners, LLC, RH-TP-06-28,690 (RHC May 16, 2014) (quoting Caesar Arms, LLC v. Lizama, RH-TP-07-29,063 (RHC Sept. 27, 2013)). *See also, e.g.,* 1773 Lanier Place, N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009); Smith v. Christian, TP 27,661 (RHC Sept. 23, 2005).

E. Whether the ARA's award of interest was authorized under the Act.[18]

The Commission's regulations provide that the "Rent Administrator or the [Commission] may impose simple interest on rent refunds, or treble that amount under § 901(a) and § 901(b) of the Act." 14 DCMR § 3826.1.[19] The Commission has long recognized the ARA's authority to award interest under 14 DCMR § 3826.1. *See, e.g.*, Schauer v. Assalaam, TP 27,084 (RHC Dec. 31, 2002) (affirming hearing examiner's award of simple interest on a rent refund); *see also, e.g.*, Nuyen v. De Guzman, TPs 27,452, 27,454 (RHC May 9, 2008) (reversing and remanding for proper calculation of interest, but upholding hearing examiner's award of interest); Joseph v.

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[18] In light of the Commission's decision on Issue "A," remanding the Tenant Petition to the ARA for further consideration of the Housing Provider's Exceptions and Objections, including whether the award of interest was improperly calculated, the Commission dismisses the portion of Issue "E" on appeal related to whether the ARA erred in the calculation of interest.

[19] Sections 901(a) and 901(b) of the Act provide the following:

> (a) Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back or the rent to the amount the Rent Administrator or Rental Housing commission determines.
>
> (b) Any person who wilfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than $5,000 for each violation.

D.C. OFFICIAL CODE § 42-3509.1(a)-(b).

Heidary, TP 27,136 (RHC July 29, 2003) (correcting an error in the hearing examiner's calculation of the interest); Rittenhouse, LLC v. Campbell, TP 25,093 (RHC Dec. 17, 2002) (affirming award of interest while reversing hearing examiner's use of a fluctuating interest rate in favor of applying the fixed interest rate in effect on the date of the decision).

The Commission has the authority to "[i]ssue, amend, and rescind rules and procedures for the administration of [the Act]." D.C. OFFICIAL CODE § 42-3502.02(a)(1). The DCCA has provided the Commission with considerable deference and discretion in its interpretation of the Act, holding that the Commission's interpretation of the Act will be upheld unless it is unreasonable, plainly wrong, or incompatible with the statutory purposes of the Act or embodies a material misconception of the law, even where a different interpretation may also be supportable. *See, e.g.*, Sawyer, 877 A.2d at 102-03; Kennedy v. D.C. Rental Hous. Comm'n, 709 A.2d 94, 97 (D.C. 1998); Jerome Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 682 A.2d 178, 182 (D.C. 1996); Winchester Van Buren Tenants Ass'n v. D.C. Rental Hous. Comm'n, 550 A.2d 51, 55 (D.C. 1988); Charles E. Smith Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 492 A.2d 875, 877 (D.C. 1985).

As previously stated, the Commission's standard of review is contained at 14 DCMR § 3807.1. The Commission will sustain the ARA's interpretation of the Act unless it is unreasonable or embodies a material misconception of the law, even if a different interpretation also may be supportable. *See* Barac Co. v. Tenants of 809 Kennedy St., N.W., VA 02-107 (RHC Sept. 27, 2013); Carpenter v. Markswright Co., Inc., RH-TP-10-29,840 (RHC June 5, 2013) (citing Dorchester House Assocs. Ltd. P'ship v. D.C. Rental Hous. Comm'n, 938 A.2d 696, 702 (D.C. 2007)); Falconi v. Abusam, RH-TP-07-28,879 (RHC Sept. 28, 2012) (citing Sawyer, 877 A.2d at 102-03); Jackson, RH-TP-07-28,898.

The Commission determines that it acted within its authority under the Act to promulgate regulations providing for awards of interest. *See* D.C. OFFICIAL CODE § 42-3502.02(a)(1). *See also, e.g.*, Nuyen, TPs 27,452, 27,454; Joseph v. Heidary, TP 27,136; Schauer, TP 27,084 (RHC Dec. 31, 2002); Rittenhouse, LLC, TP 25,093. Accordingly, the Commission is satisfied that the ARA's determination that the Tenants were entitled to interest on their respective awards of rent refunds, was in accordance with the Act, and was not "unreasonable, plainly wrong, incompatible with the statutory purposes of the Act [nor] embodie[d] a material misconception of the law," and thus affirms the ARA on this issue. 14 DCMR §§ 3807.1, 3826.1. *See also, e.g.*, Sawyer, 877 A.2d at 102-03; Kennedy, 709 A.2d at 97; Jerome Mgmt., Inc., 682 A.2d at 182; Winchester Van Buren Tenants Ass'n, 550 A.2d at 55; Charles E. Smith Mgmt., Inc., 492 A.2d at 877.

VII. CONCLUSION

In accordance with the foregoing, the Commission reverses the ARA's dismissal of the Housing Provider's Exceptions and Objections, and remands to the ARA to give the parties an opportunity to "present argument," in compliance with the DCAPA, D.C. OFFICIAL CODE § 2-509(d), and for an issuance of a written findings of fact and conclusions of law, addressing the merits of the following exceptions and objections: (1) whether there is no lawful basis for an award of treble damages; (2) whether the award of interest was improperly assessed and calculated; and (3) whether the ARA erred in finding that the Housing Provider raised certain rents and rent ceilings within 180 days of prior rent and rent ceiling increases. *See supra* at 12-17. The Commission instructs the ARA on remand not to incorporate by reference any findings of fact and conclusions of law from the Final Order, the Proposed Order After Remand, or the Final Order After Remand. *See supra* at pp.17-18 n.15.

The Commission affirms the ARA's determination that the Tenants' claims that the Housing Provider implemented adjustments in rent charged in violation of the Act are not barred by the statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e). *See supra* at 18-21.

Finally, the Commission affirms the ARA's authority to award interest to the Tenants on their respective awards of rent refunds. *See supra* at 22-24.

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, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER FOLLOWING REMAND** in TPs 27,995, 27,997, 27,998, 28,002, & 28,004 was mailed, postage prepaid, by first class U.S. mail on this **19th day** of **August, 2014** to:

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