

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 HISTORY²

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

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

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

⁶ The Commission notes that the 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:** legal [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:** legal [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