DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,510, TP 28,521, and TP 28,526

In re: 1629 Columbia Road, N.W., Units 613, 420, and 509

Ward One (1)

CARMEL PARTNERS, LLC
Housing Provider/Appellant

v.

KELLI M. BARRON,
KAREN L. TOWERS, and
LAUREN J. KRIZNER
Tenants/Appellees

DECISION AND ORDER

October 28, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from the Department of Housing and Community Development (DHCD), Rental Accommodations Division (RAD), based on petitions filed in Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion 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 -510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004), govern these proceedings.

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[1] The functions and duties of the former RACD were transferred to the RAD pursuant to § 2003 of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2008 Supp.). An evidentiary hearing on the petitions was held by the RACD before the Office of Administrative Hearings (OAH) assumed jurisdiction over rental housing cases pursuant to the OAH Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.).

I. PROCEDURAL HISTORY

The following tenant petitions are at issue in this case, regarding the housing accommodation located at 1629 Columbia Road, N.W. (Housing Accommodation): (1) TP 28,510, filed on January 19, 2006, by Kelli Barron (Tenant Barron), residing in Unit 613 of the Housing Accommodation; (2) TP 28,521, filed on January 30, 2006, by Karen Towers (Tenant Towers), residing in Unit 420 of the Housing Accommodation; and (3) TP 28,526, filed on January 31, 2006, by Lauren Krizner (Tenant Krizner), residing in Unit 509 of the Housing Accommodation (collectively, Tenant Petitions).

Each of the Tenant Petitions alleges that the Housing Provider/Appellant Carmel Partners, LLC (Housing Provider)[2] violated the Act as follows: (1) the Housing Provider increased the rent charged for the subject units higher than allowed by any applicable provision of the Act; (2) the rent ceiling filed with the RACD for the subject units was improper; (3) the Housing Provider increased the rent on the subject units while the units were not substantial compliance with the District of Columbia Housing Regulations; and (4) services and/or facilities provided in connection with the rental of the Tenants' units were substantially reduced. Record of TP 28,510 (R.) at 284.[3]

The three Tenant Petitions were consolidated, and a hearing was held before Hearing Examiner Gerald J. Roper on May 22, 2006. R. at 292-96. On February 28, 2007, Acting Rent

[2] The Commission notes that although filings by the Tenants have consistently been captioned with the Housing Provider named as "Carmel Partner, Inc," the Commission's review of the record indicates that the ALJ's identification of the Housing Provider as "Carmel Partners, LLC" is correct. *See* Proposed Order at 1; R. at 260; Housing Provider's Exceptions and Objections to Proposed Decision and Order at 1; R. at 268; Final Order at 1; R. at 285; Notice of Appeal at 1; Housing Provider's Brief on Appeal at 1.

[3] Although the Tenant Petitions were consolidated, the Commission was provided a certified record for each of the three tenant petitions, each containing mostly identical material. Except where stated otherwise, all citations to the record herein are to the record of TP 28,510.

Administrator Keith Anderson (Hearing Examiner)[4] issued a Proposed Decision and Order: Barron v. Carmel Partners, LLC, TP 28,510, TP 28,521, and TP 28,526 (RACD Feb. 28, 2007) (Proposed Order).[5]

The Hearing Examiner made the following findings of fact and conclusions of law in the Proposed Order:[6]

> ["Table 1: Rent Over-Charged Refund for Lauren Krizner" omitted, *see* Addendum]
>
> **Findings of Facts and Conclusions of Law for Lauren Judith Krizner (Unit - 509) TP 28,526**
>
> The Tenant/Petitioner in TP 28,526 challenges the following rent increases by the Housing Provider/Respondent:
>
> 1. The Tenant/Petitioner may challenge a rent ceiling overcharge in her unit from the date of her Tenant Petition back for three years. Therefore, this Tenant/Petitioner may challenge rent ceiling overcharges from January 2003 to January 2006 unless the holding in the [*Grant v. Gelman Mgmt. Co.*, TP 27-995 (RHC Feb. 24, 2006)] case is applicable. Thus any challenges to the rent ceiling in the instant case, which are beyond the three years statue [sic] of limitation[s] and/or are not applicable for review under the *Gelman* case are dismissed.
>
> 2. Tenant Notice of Increase in Rent Charge dated December 30, 2004, effective February 2, 2005[,] which was based on annual [sic] CPI effective 11/01/1993 in the amount of $26.00.
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> | | |
> |---|---|
> | Your Current Rent Ceiling is: | $2672.00 |
> | Your Current Rent Charge is: | $1033.00 |
> | Your Rent Ceiling is: | $2672.00 |

[4] The Final Order refers to Mr. Anderson as the Hearing Examiner, despite the Proposed Order's reference to his title of Acting Rent Administrator. For simplicity, the Commission will hereinafter solely use "Hearing Examiner" to refer to Mr. Anderson in his capacity as the author of the decision under appeal.

[5] *See* D.C. OFFICIAL CODE §2-509(d) (2001) (requirement for proposed order when persons issuing decision in contested case did not originally hear the evidence); *see also infra* at 38-42.

[6] The findings of fact and conclusions of law use the same numbering, language, terms, and emphasis as used by the Hearing Examiner in the Proposed Order. For administrative convenience, the Commission attaches the "Rent Over-charged Refund" tables from the Final Order as the Addendum to this Decision and Order. The Commission notes that the tables in the Proposed Order and Final Order are identical. *Compare* Final Order at 6-9; R. at 277-80; *with* Proposed Order at 12-13, 15-16, and 20-21; R. at 248-49, 245-46, and 240-41.

Your Rent Charge is: $1059.00

3. *The Housing Provider/Respondent perfected the document properly since the notice required that a[n] Amended Registration Form should be filed within 30 days of the any [sic] event which substantially affects the services, facilities, ownership and management of any rental unit in a registered housing accommodation. According to the Amended Registration Form the date of change in the housing accommodation was 11-1-93 and the RACD date stamp on the document is October 9, 1993, which is days [sic] before the effective change occurred in the housing accommodation. However, the Housing Provider/Respondent took the $20.00 of the $26.00 in 11/1/1993and [sic] thus the Housing Provider/Respondent is only eligible to take the remaining $6 and thus the rent charged increase on this document is illegal.*

4. Therefore the Tenant/Petitioner's rent charged is rolled back to $1033.00.

5. Amended Registration form dated January 30, 2004, effective November 11, 2003 based on a Comp [sic] vacancy.
Your Current Rent Ceiling is: $1866.00
Your Rent Ceiling is: $2672.00

6. *However, the Housing Provider/Respondent fail [sic] to perfect the document since the notice required that a[n] Amended Registration Form should be filed within 30 days of the any [sic] event which substantially affects the services, facilities ownership and management of any rental unit in a registered housing accommodation. According to the Amended Registration Form the date of change in the housing accommodation was 11-1-03 and the RACD date stamp on the document is January 30, 2004, which is passed [sic] the 30 days required by the Act (See Petitioner's Exhibit number 33). Therefore, the rent ceiling increase charge [sic] on this document is illegal.*

7. Therefore, the Tenant/Petitioner's rent ceiling is rolled back to $1866.00 in the instant case.

8. The Tenant/Petitioner also argued that a rent increase was taken while her unit was not in substantial compliance with the District of Columbia Housing Regulations. This issue is dismissed since the Tenant/Petitioner failed to provide any evidence at the hearing or in her [T]enant Petition of substantial reduction in services.

9. The Tenant/Petitioner in unit #509 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 CPI allowed from 2003-2006 in violation of the Act. Moreover, the Housing Provider charged the Tenant/Petitioner twice for the same CPI increase in [sic] 11/01/1993 in violation of the Act. Moreover, the Housing Provider failed to present an explanation for the rent ceiling or the rent charged illegal increase.

10. 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). Moreover[,] the amount of the interest assessed is calculated from the first date of the rent overcharge to the date of the [sic]

11. The Tenant/Petitioner in unit 509 is awarded $17,783.33 [sic] total refund[:] $15,624.00 in rent overcharge and $2,159.00 in interest.

["Table 2: Rent Over-Charged Refund for Kelli Barron" omitted, *see* Addendum]

Findings of [F]acts and Conclusions of Law for Kelli Barron (Unit -613) TP 28,510

The Tenant/Petitioner in TP 28,510 challenges the following rent increases by the Housing Provider/Respondent:

12. The Tenant/Petitioner may challenge a rent ceiling overcharge in her unit from the date of her Tenant Petition back for three years. Therefore, this Tenant/Petitioner may challenge rent ceiling overcharges from January 2003 to January 2006 unless the holding in the *Gelman* case is applicable. Thus any challenges to the rent ceiling in the instant case, which are beyond the three years statue [sic] of limitation[s] and/or are not applicable for review under the *Gelman* case are dismissed.

13. Certificate of Election of Adjustment of General Applicability effective May 1, 2004 based on an annual 2002 CPI of 2.9%.

Your Current Rent Ceiling is:	$2328.00
Your Current Rent Charge is:	$1850.00
Your Rent Ceiling is:	$2377.00
Your Rent Charge is:	$1885.00

14. *However, the Housing Provider/Respondent failed to perfect the document since the notice required that a[n] Amended Registration Form should be filed within 30 days of the any [sic] event which substantially affects the services, facilities, ownership and management of any rental unit in a registered housing accommodation. According to the Amended Registration Form the date of change in the housing accommodation was 5-1-04 and this CPI rent ceiling charged [sic] is based on the 2002 CPI but was filed two years later in 2004. Therefore, the rent ceiling increase and rent charges on this document is are [sic] illegal.*

15. Tenant/Petitioner's Notice of Increases [sic] in Rent Charged effective July 1, 2005 based on an annual CPI of 2.9% or $37.00 effective on 3/1/1992.

Your Current Rent Ceiling is:	$2337.00
Your rent Ceiling is:	$2026.00

16. *However, the Housing Provider/Respondent fail[ed] to perfect the document since the notice required that a[n] Amended Registration Form should be filed within 30 days of the any [sic] event which substantially affects the services, facilities, ownership and management of any rental unit in a registered housing accommodation. According to the Amended Registration Form the date of change in the housing accommodation was 3-1-02 and the RACD date stamp on the document is May 16, 2002, which is passed [sic] the 30 days required by the Act (See Petitioner's Exhibit number 3). Therefore, the rent ceiling increase charge [sic] on this document is illegal.*

17. Amended Registration form dated July 21, 2004, effective July 1, 2004 based on a Comparable unit vacancy.

Your Current Rent Ceiling is:	$2862.00
Your Rent Ceiling is:	$2377.00

$2328.00 (current rent ceiling) + $485.00 = 2813.00 (new rent ceiling) and $485.00 dollar amount reflects the total taken in the comp. vacancy increased in [sic] July 21, 2004 in the housing accommodation.

18. *The Housing Provider/Respondent perfect [sic] the document since the notice required that a[n] Amended Registration Form should be filed within 30 days of the any [sic] event which substantially affects the services, facilities, ownership and management of any rental unit in a registered housing accommodation. According to*

the Amended Registration Form the date of change in the housing accommodation was 7-1-04 and the RACD date stamp on the document was July 21, 2004, which is 30 days before [sic] the effective change occurred in the housing accommodation.

19. Therefore, the Tenant/Petitioner's rent charged is rolled back to $1850.00.

20. Therefore, the Tenant/Petitioner's rent ceiling is rolled back to $2263.00.

21. The Tenant/Petitioner in unit #613 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 and where the Housing Provider charged the Tenant/Petitioner more than CPI allowed from 2003-2006 in violation of the Act. Moreover, the Housing Provider failed to present an explanation for the illegal rent ceiling or the rent charged increase.

22. The Tenant/Petitioner alleges in her TP that her services and facilities have been reduce[d] in her unit since the current Housing Provider/Respondent purchased the subject housing accommodation. Specifically, the Tenant/Petitioner alleges that since the inception of her tenancy she has had repeated problems with the air conditioning in her unit.

    The previous Housing Provider/Respondent[] placed window air conditioning units in both of the Tenant/Petitioner[']s bedrooms but allegedly failed to properly fix the chiller. In addition, after the current Housing Provider/Respondent purchased the building the Tenant/Petitioner was told by on-site management personnel of the Housing Provider/Respondent that the chiller was fixed and that the problems with her air conditioning had been resolved. However in August of 2005, the Tenant/Petitioner came home after a long weekend to discover that her kitchen had flooded leaving water on the floor and countertops and that the AC had been leaking from the ceiling into the kitchen. The Housing Provider /Respondent responded to the complaint in (2) [sic] hours.

    Moreover, on September 17, 2005, the Tenant/Petitioner had a significant leak in one of the water pipes in the hallway closet of her unit and the wall in the closet had a black mold circle the size of a small dinner plate. The Housing Provider fixed the pipe but left the wall exposed (from floor to ceiling) and the wall was initially covered with cardboard. The Tenant/Petitioner called the

Housing Provider/Respondent several times before a maintenance person temporarily dry-walled the opening in the wall and after several calls and with the closet still unusable, it took the Housing Provider/Respondent approximately an additional week-and-a-half to properly seal and paint the wall in the hallway closet and the ceiling in the kitchen.

23. Thus in determining whether related services and/or facilities have been substantially reduced or eliminated, the Tenant/Petitioner must show: a) [t]he service or facility was a related service or facility; b) [t]he related service or facility was reduced and not promptly restored without a proportional reduction in the tenant's rent; c) [t]he landlord had knowledge of the reduction; and, d) [t]he reduction was substantial. See D.C. Code § 42-3502.11 (2001); 14 DCMR § 4211.6; Washington Realty Company v. 3030 30th Street Tenant Association, TP []20,749 (RHC January 30, 1991). Upon a showing of these four elements, the Examiner must then assess the value of the reduction. See George I. Borger, Inc. v. Woodson, TP 11,848 ([RHC] June 10, 1787); Zenith Trust v. Tenants of 3217 Connecticut Avenue, N.W., TP []20,510 (RHC 1989).

Under the Act, a "related facility" is any facility, furnishing, or equipment that is made available to a tenant by a housing provider, including, but not limited to, a kitchen and bath. D.C. Code § 42-3501.03(26). A "related service" is any service that is provided by a housing provider, which [sic] is required by law, including the provision of heat, hot and cold water, air conditioning, elevator services, janitorial services, and the removal of trash and refuse. D.C. Code § 42-3501.03(27). As a result, the Acting Rent Administrator determines that [a] screen door is a related services [sic] and/or facilities [sic] under the Act. The Acting Rent Administrator finds that the facilities and services alleged on the Tenant Petition[] does constitute a reduction in services and facilities without a proportional reduction in the tenant's rent.

24. The Acting Rent Administrator placed the value of reduction at the following:

A. $100.00 per month from June 2005 to September 2005 for the AC problems. [Footnote 1: "The current Housing Provider/Respondent did not began [sic] to manage the property at Park Plaza Apartments until October 2004 and the Tenant/Petitioner testified that she cut off the air condition [sic] in September of 2005 and never turned it back on."]

B. Flood in the Tenant/Petitioner's unit in August 2005, $50.00.

C. Mold and Mildew as result of the flood in September 2005, $50.00.

D. Leak in the Tenant/Petitioner's closet in September 2005, $25.00.

E. Hole in the Tenant/Petitioner's closet wall in September 2005, $25.00.

25. The Tenant/Petitioner['s] current rent ceiling is $2813.00 and the reduced rent ceiling is the following:

A.	June 2005	$100.00	$2713.00
B.	July 2005	$100.00	$2613.00
C.	August 2005	$10.000 [sic], $50.00	$2463.00
D.	September 2005	$10.000 [sic], $50.00, $50.00	$2263.00

26. Thus, in the instant case the Tenant Petitioner's [sic] is not entitled to a rent refund based on reduction of facilities since the reduce[d] rent ceiling is $2263.00 and the Tenant Petitioner rent charged was $1850.00[.] However the Acting Rent Administrator rolls back the Tenant/Petitioner's rent ceiling to $2263.00 until such time as the Housing Provider/Respondent has abate[d] the AC problems in the Tenant /Petitioner's unit.

27. Therefore, the Tenant/Petitioner's rent charged is rolled back for failure to abate the Air Conditioning violation by the Housing Provider/Respondent to $1850.00.

28. Therefore, the Tenant/Petitioner's rent ceiling is rolled back for failure to abate the Air Conditioning violation by the Housing Provider/Respondent to $2263.00.

29. The Tenant/Petitioner also argued that a rent increase was taken while her unit was not in substantial compliance with the District of Columbia Housing Regulations. The hearing examiner agrees that the Housing Provider/Respondent took a rent increase while her unit was not in substantial compliance with the District of Columbia Housing Regulations. However there is insufficient evidence on the record that the Housing/Respondent did not timely abate the housing code violation in the Tenant/Petitioner['s] unit. In addition the Housing Provider/Respondent gave a good faith effort when it abated each of the housing code violation[s].

30. 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). Moreover the amount of the interest assessed is calculated from the first date of the rent overcharge to the date of the decision.

31. The Tenant/Petitioner in unit 613 is awarded $10,248.26 [sic] total refund $8784.00 in rent overcharge and $1,463.26 in interest.

["Table 3: Rent Over-Charged Refund for Karen Towers" omitted, *see* Addendum]

Findings of Facts and Conclusions of Law for Karen Towers (Unit – 420) TP 28,521

The Tenant/Petitioner in TP 28,521 challenges the following rent increases by the Housing Provider/Respondent:

32. The Tenant/Petitioner may challenge a rent ceiling overcharge in her unit from the date of her Tenant Petition back for three years. Therefore, this Tenant/Petitioner may challenge rent ceiling overcharges from January 2003 to January 2006 unless the holding in the *Gelman* case is applicable. Thus any challenges to the rent ceiling in the instant case, which are beyond the three years statue [sic] of limitation[s] and/or are not applicable for review under the *Gelman* case are dismissed.

33. Certificate of Election of Adjustment of General Applicability effective June 1, 2004 based on an annual 2002 CPI of 2.9%.

Your Current Rent Ceiling is:	$2318.00
Your Current Rent Charge is:	$975.00
Your Rent Ceiling is:	$2385.00
Your Rent Charge is:	$1003.00

34. *However, the Housing Provider/Respondent fail[ed] to perfect the document since the notice required that a[n] Amended Registration Form should be filed within 30 days of the any [sic] event which substantially affects the services, facilities, ownership and management of any rental unit in a registered housing accommodation. According to the Amended Registration Form the date of change in the housing accommodation was 6-1-04 and the RACD date stamp on the document is May 6, 2004, which is*

passed [sic] the 30 days required by the Act (See Petitioner's Exhibit number 18). In addition, this CPI is based on the 2002 CPI but is filed on [sic] 2004. Therefore, the rent ceiling increase and rent charges on this document are illegal.

35. Therefore the Tenant/Petitioner's rent charged is rolled back to $975.00.

36. Therefore the Tenant/Petitioner's rent ceiling is rolled back to $2318.00.

37. Amended Registration form dated of change [sic] was June 1, 2004 based on a [c]omparable unit vacancy.

Your Current Rent Ceiling is:	$2385.00
Your Rent Ceiling is:	$2671.00

38. *However, the Housing Provider/Respondent fail[ed] to perfect the document since the notice required that a[n] Amended Registration Form should be filed within 30 days of the any [sic] event which substantially affects the services, facilities, ownership and management of any rental unit in a registered housing accommodation. According to the Amended Registration Form the date of change in the housing accommodation was 6-1-04 and the RACD date stamp on the document is July 21, 2004, which is passed [sic] the 30 days required by the Act (See Tenant Petition). Therefore, the rent ceiling increase charge on this document is illegal.*

39. Tenant/Petitioner's Notice of Increases in Rent Charged effective July 1, 2005 based on an annual CPI of 2.9% or $37.00 effective on 3/1/1992.

Your Current Rent Ceiling is:	$2671.00
Your Current Rent Charge is:	$995.00
Your Rent Ceiling is:	$2671.00
Your Rent Charge is:	$1022.00

40. *The Housing Provider/Respondent perfected the document properly since the notice required that a[n] Amended Registration Form should be filed with 30 days of the any [sic] event which substantially affects the services, facilities, ownership and management of any rental unit in a registered housing accommodation. According to the Amended Registration Form [sic] the date of change in the housing accommodation was 3-1-92 and the RACD date stamp on the document is March 1, 1992, which is within the 30 days required by Act. However, the*

Housing Provider/Respondent took the $25.00 in [sic] 3/1/1992and [sic] thus the Housing Provider/Respondent is not eligible to take the remaining this same [sic] rent ceiling charge [sic] twice and thus the rent charged increase on the Notice of Increase in Rent Charge Document dated May 26, 2005 is illegal.

41. The Tenant/Petitioner also argued that a rent increase was taken while her unit was not in substantial compliance with the District of Columbia Housing Regulations. This issue is dismissed since the Tenant/Petitioner failed to provide any evidence at the hearing or in her [T]enant Petition of substantial reduction in services.

42. The Tenant/Petitioner in unit #420 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 2003-2006 in violation of the Act. Moreover, the Housing Provider charged the Tenant/Petitioner twice for the same CPI increase effective in 3/01/1992 in violation of the Act and for failing to properly perfect the document as required by the [A]ct before taking a valid rent ceiling charge [sic]. Moreover, the Housing Provider failed to present an explanation for the illegal rent ceiling or the rent charged increase.

43. 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). Moreover the amount of interest assessed is calculated from the first date of the rent overcharge to the date of the [sic]

44. The Tenant/Petitioner in unit 420 is awarded $2202.89 [sic] total refund $1929.00 in rent overcharge and $272.89 in interest.

Proposed Order at 13-23; R. at 238-48.

On March 8, 2007, the Housing Provider filed its "Exceptions and Objections to [the] Proposed Decision and Order" (Housing Provider's Objections). R. at 262-68. On March 31, 2008, the Hearing Examiner[7] issued an Order on Respondent's Objections and Exceptions to

[7] *See supra* note 4.

Proposed Decision and Order and Final Decision and Order: Barron v. Carmel Partners, LLC, TP 28,510, TP 28,521, and TP 28,526 (RAD Mar. 31, 2008) (Final Order). The Final Order recited twenty-three (23) "determinations" made by the Hearing Examiner in the Proposed Order and made the following additional findings of fact and conclusions of law:[8]

Findings of Fact

1. The Examiner rejects Respondent's argument that Gelman lacks retroactive application and determines that the Gelman decision must therefore be applied to the instant case. Accordingly, the Examiner determines Respondent['s] argument has no merit.

2. In the present case, the Respondent's pattern of non-compliance with the provisions of the Act reflects egregious conduct by the Respondent. The Examiner determined that this is an appropriate case to exercise discretion. Accordingly, he awarded treble damages, for Respondent's failure to properly perfect rent and rent ceiling increases, as required by the Act. The evidence establishes that Respondent repeatedly took increases in violation of the Act and therefore acted in bad faith when it raised rents without properly perfecting the rent and rent ceiling increases.

3. Bad faith is not a specific act in itself. Rather it is a phrase, which defines the character or quality of a party's actions. The nature of bad faith is not immutable. Its presence or absence may vary depending on the context or the subject matter involved. Vickers v. Motte, 1 Ga. App. 615, 137 [S.E.] 2d 77, 81 (1964). The dictionary definition of bad faith offers several criteria, not all of[] which may be present or even relevant to a given situation. Black's Law Dictionary, 127 (5th ed. 1979) defines bad faith as follows:

> The opposite of "good faith[,"] generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation not [sic] duties, but by some interested or sinister motive. Term "bad faith" . . . [sic] because of dishonest motive or moral obliquity . . . [.] [omissions original]

[8] The findings of fact and conclusions of law use the same numbering, language, and terms as used by the Hearing Examiner in the Final Order. For administrative convenience, the "Rent Over-charged Refund" tables are attached as the Addendum to this Decision and Order.

4. This case make[s] it clear that the intent or state of mind of the actor is the most important factor in determining whether or not a party has acted in bad faith. Intent can be derived only through testimony as to objective facts or from inferences that can reasonably be drawn from objective facts. Bad faith may also denote a deliberate refusal to perform. In the instant case there are numerous instances where the Housing Provider/Respondent failed to perfect the document or took the rent charge or rent ceiling increase twice in violation of the Act[,] and thus, Respondent has taken illegal rents and rent charges [sic] in the Tenant/Petitioners['] unit[s] recklessly and in bad faith. Here, the Examiner also determines the Respondent failed to provide a valid reason for implementing the rent and rent ceiling increases. Accordingly, the treble award was correct.

5. Tenant/Petitioners' rent refund calculations are restated in the following charts below:

["Rent Over-charged Refund" tables omitted, *see* Addendum]

Conclusions of Law

After a careful evaluation of the evidence and finding[s] of fact, RAD concludes as a matter of law:

1. All other conclusions of law made by the hearing examiner in [the] previous decision and order on these TP[s] that are not in conflict with this Order are incorporated by references [sic] in this section of Conclusions of [L]aw.

2. The Housing Provider/Respondent's Exception and Objection that [Gelman] has no merit based on the theory that the Commission's decision to remand the case to the Rent Administrator is a non-final decision and therefore [Gelman] must be applied prospectively is dismissed.

3. The Housing Provider/Respondent's Exception and Objection that Petitioners were not entitled to treble damages based on the argument that the Petitioners did not provide any evidence in the record of bad faith is dismissed.

4. The Housing Provider/Respondent's Exception and Objection alleging that the table of refund and interest provided by the Examiner is incomprehensible and does not explain how the interest is calculated is dismissed.

5. The Tenant/Petitioner in unit 509 is entitled to a rent refund in the amount of $15,624.00 plus $2,159.00 interest for a total refund of $17,783.33 [sic] for respondent's failure to properly perfect rent increase in unit 509 in bad faith.

6. The Tenant/Petitioner in unit 613 is entitled to a rent refund in the amount of $8784.00 plus $1463.26 interest for a total refund of $10,248.26 [sic] for Respondent's failure to properly perfect rent increase in unit 613 in bad faith.

7. The Tenant/Petitioner in unit 420 is entitled to a rent refund in the amount of $1929.00 plus $272.89 interest for a total refund of $2202.89 [sic] for failure to properly perfect rent increase in unit 420 in bad faith.

Final Order at 5, 9-10; R. at 281, 276-77.

The Housing Provider filed a timely Notice of Appeal with the Commission on April 17, 2008, asserting the following errors in the Hearing Examiner's decision:

1. The Hearing Examiner erred in holding that the petitioners had the right to challenge rent and/or rent ceiling increases taken or for which the filings were made over three years prior to the filing of their petition or that the Rental Housing Commission[']s decision in [Gelman] controls in these cases. Further, the retroactive application of [Gelman] in this case is contrary to law, as established by the D.C. Court of Appeals and the U.S. Constitution.

2. The Hearing Examiner erred in awarding treble damages, inasmuch [as] there was no evidence whatsoever to support a finding of bad faith on Carmel LLC's part or a finding that Carmel LLC intentionally violated the law. To the contrary, all the evidence demonstrated Carmel LLC's good faith at all times.

3. The Hearing Examiner erred in finding Carmel LLC took a portion of a 1993 rent ceiling adjustment twice; no evidence to that effect was introduced at the hearing.

4. The Hearing Examiner erred in applying the interest rate applicable to judgments in the Superior Court on the date of the final Decision, March 31, 2007, rather than the rate or rates in effect at the time of each month's alleged overcharge.

5. The Hearing Examiner's Factual Findings are often confused, or unsupported by any evidence of record. For instance, in Paragraph 34, he ruled that an "Amended Registration Form" [sic] [original] filed May 6, 2004, to perfect a CPI ceiling increase to take effect June 1, 2004, "which is passed [sic] the 30 days required by the Act." May 6, 2004 is obviously several weeks before June 1, 2004.

6. The Hearing Examiner erred, as a matter of law, in failing to hold a hearing on Carmel LLC's request for hearing [sic] contained within its Exceptions and Objections to Proposed Order.

Notice of Appeal at 1-2. The Housing Provider filed its brief on appeal on May 7, 2008 (Housing Provider's Brief), and Tenant Krizner filed her responsive brief on June 5, 2008, accompanied by a Consent Motion to late file.[9] The Commission held a hearing in this matter on June 10, 2008.

II. PLAIN ERROR

The Commission's standard of review of the Hearing Examiner's decision is contained in 14 DCMR § 3807.1 (2004):

> 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.

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[9] The Commission notes that Kimberly K. Fahrenholz, Esq., filed a Notice of Appearance on behalf of Tenant Krizner on June 5, 2008. The brief filed that same day by Ms. Fahrenholz states that it is submitted only on behalf of Tenant Krizner. At the Commission's hearing, however, Ms. Fahrenholz informed the Commission orally that she was representing all three Tenants, although only Tenant Krizner was present. Hearing CD (RHC June 10, 2008) at 02:09:00-02:10:00. The Commission reminds the parties that 14 DCMR § 3812.6 (2004) provides that:

> Any individual who wishes to appear in a representative capacity before the Commission shall file a written notice of appearance stating the individual's name, local address, telephone number, District of Columbia Bar registration number, if applicable, and for whom the appearance is made. (emphasis added)

Because no Tenant has filed a cross-appeal in this matter, and because we remand these cases for plain error, the Commission is satisfied that Tenants Barron and Towers have not been prejudiced by Ms. Fahrenholz's failure to properly file an appearance on their behalf. The Commission, however, notes that any future representations of the Tenants shall comply with all applicable regulations under the Act, including 14 DCMR § 3812.6.

While the Commission's review of a decision is typically limited to the issues raised in the notice of appeal, we may always correct for "plain error." 14 DCMR § 3807.4; *see, e.g.*, Lenkin Co. Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994); Proctor v. D.C. Rental Hous. Comm'n, 484 A.2d 542, 550 (D.C. 1984) (the Commission, under its rules, is permitted, though not required, to consider issues not raised in the notice of appeal insofar as they reveal plain error); Bower v. Chastleton Assocs., TP 27,838 (RHC Mar. 27, 2014); Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012).

The Commission's review of the record reveals two bases of plain error on which these consolidated cases must be remanded: first, the Hearing Examiner did not apply the correct legal standard for awarding remedies to the Tenants under the Act; and second, the Commission is unable to identify distinct findings of fact and conclusions of law as required by the DCAPA.

1. The Hearing Examiner erred by awarding refunds that are not in accordance with the Act because the rents charged do not exceed the lawful rent ceilings

Based on its review of the record, the Commission determines that the Hearing Examiner committed plain error by awarding refunds to the Tenants that were not in accordance with the Act. *See* 14 DCMR § 3807.1. The Commission observes that a housing provider's liability for a refund of excessive rent under the Act, as applicable at all relevant times to the Tenant Petitions in this case, rests on the distinct concepts of actual, "rent" charged and the lawful "rent ceiling" of a particular rental unit. *See* D.C. OFFICIAL CODE § 42-3509.01(a) (2001).[10] The Act, in D.C.

[10] The Commission notes that the Rent Control Reform Amendment Act of 2006, effective August 5, 2006, D.C. Law 16-145, 53 DCR 4889, abolished rent ceilings. The Tenant Petitions in this case were filed, and the evidentiary hearing was held, several months before the effective date of the amendments, and each Tenant Petition relates entirely to conduct that occurred during the Act's former rent ceiling regime. *See, e.g.*, Dreyfuss Mgmt, LLC v. Harrington, RH-TP-07-28,895 (RHC Sept. 27, 2013) ("[T]he ALJ may only issue a rent refund for the period [ending] August 4, 2006 if the [adjustment for reduction in services] decreased the rent ceiling to a value below the rent charged, and the Tenants are then only entitled to the difference between the two values."). Section 2(a) of the amendment act substituted the phrase "rent charged" for "rent ceiling" throughout the Act, reflecting a new, unitary conception of lawful rent under the Act. D.C. Law 16-145; 53 DCMR § 4899. Unless otherwise noted, all

OFFICIAL CODE § 42-3501.03(28), defines "rent" as "[t]he entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities." The "rent ceiling," on the other hand, is defined in D.C. OFFICIAL CODE § 42-3502.06(a) (2001)[11] as "[t]he amount computed by adding to the base rent [as established in 1985] not more than all rent increases authorized after April 30, 1985, for the rental unit by [applicable law]." Most importantly, the Act provides that:

> [A]ny person who knowingly 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 [§ 42-3502.01 *et seq.*] . . . shall be held liable by the Rent Administrator or the Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling[12] or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or the Rental Housing Commission determines.

D.C. OFFICIAL CODE § 42-3509.01(a) (2001) (emphasis added); *see* Dreyfuss Mgmt, LLC v. Harrington, RH-TP-07-28,895 (RHC Sept. 27, 2013); Pinnacle Realty Mgmt. Co. v. Voltz, TP 25,092 at n. 16 (RHC Mar. 4, 2004); Kemp v. Marshall Heights Cmty. Dev., TP 24,786 (RHC Aug. 1, 2000) ("The housing provider is liable for a rent refund only if the rent charged is higher than the reduced rent ceiling. Where the rent actually charged is equal to or lower than the reduced rent ceiling, there was no excess rent collected and no refund is required."); Hiatt Place P'ship v. Hiatt Place Tenants Ass'n, TP 21,149 (RHC May 10, 1991) ("If the rent actually charged is equal to or lower than the reduced rent ceiling then there has been no excess rent

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references and citations to the Act in this decision and order are to the text as it existed at the time the Tenant Petitions were filed.

[11] D.C. OFFICIAL CODE § 42-3501.03(29) provides that "'Rent ceiling' means that amount defined in or computed under § 42-3502.06."

[12] *See supra* n. 10.

collected and no refund need be made."); *see also* 14 DCMR § 4217.1;[13] Afshar v. D.C. Rental Hous. Comm'n., 504 A.2d 1105, 1108-09 (D.C. 1986) (explaining distinction between prospective rent rollback and rent refund due to retroactive reduction in rent ceiling).

The Hearing Examiner states, in the Proposed Order,[14] that:

> There is no dispute in the instant case, that in order for a Housing Provider/Respondent to raise a tenant's rent charged and/or rent ceiling, under the Act it must file a Certificate of Election of Adjustment for [sic] General Applicability or an Amended Registration form with RACD thirty days after the date of substantial change in the housing accommodation or 30 days after increases in the rent charge become effective. . . . [I]n the instant case there are numerous instances where the Housing Provider/Respondent failed to perfect the document or took the rent charge or rent ceiling increase twice in violation of the Act and thus it has taken illegal rents and rent charges in the Tenants/Petitioners [sic] unit [sic]. Therefore the Tenants/Petitioners are entitled to a rent overcharge refund[,] and tables 1-3 are the calculation for these units.

Proposed Order at 11 (emphasis added); R. at 250. The Commission's review of the Proposed Order and Final Order shows that the total amounts of rent refunds, treble damages, and pre-judgment interest ordered by the Hearing Examiner are taken from the figures and calculations reflected in "Rent Over-Charged Refund" tables for each Tenant. *See* Final Order at 6-10; R. at

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[13] 14 DCMR § 4217.1 provides (emphasis added):

> Where it has been determined that a housing provider knowingly demanded or received rent above the rent ceiling for a particular rental unit, or has substantially reduced or eliminated services previously provided, the Rent Administrator or the Commission shall invoke any or all of the following types of relief:
>
> (a) A rent refund; and
>
> (b) Treble the amount of the rent refund ordered paid; or
>
> (c) A rent rollback for a specific period or until specific conditions are complied with.

[14] The Commission notes that, as described *infra* at 23-24, the Hearing Examiner committed plain error, in part, because the findings of fact and conclusions of law in this matter are not contained in a single order. Nonetheless, because the Commission determines that the Hearing Examiner intended the Final Order to incorporate the Proposed Order, *see* Final Order at 9; R. at 277, the Commission, in its discretion and for the purpose of conducting a complete review the record, will consider the determinations contained in the Proposed Order. *See, e.g.*, Atchole v. Royal, RH-TP-10-29,891 (RHC Mar. 27, 2014) (Commission has discretion to restate issues on appeal); Gelman Mgmt. Co. v. Campbell, RH-TP-06-29,715 (RHC Dec. 23, 2013) at n.16 (same); 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); Barac Co. v. Tenants of 809 Kennedy St., VA 02-107 (RHC Sept. 27, 2013).

276-80; Proposed Order at 13, 16, 21, 23-24; R. at 248, 245, 240, 237-38. For administrative convenience, the Commission attaches these tables, as presented in the Final Order, to this Decision and Order. *See* Addendum.

It is clear from the Commission's review of the record that the Hearing Examiner's rent refund calculations do not apply the standard provided in D.C. OFFICIAL CODE § 42-3509.01(a) because at no time in the three tables does the figure in the "rent charged" column exceed either the "rent ceiling" column or the "legal rent ceiling" column for the particular rental unit. *See* Addendum; *cf.* 14 DCMR § 4217.1; Harrington, RH-TP-07-28,895; Voltz, TP 25,092 at n. 16; Kemp, TP 24,786; Hiatt Place, TP 21,149.[15] Rather, the Commission's review of the record reveals that the Hearing Examiner awarded refunds based on the amount by which the "rent charged" columns exceed the "legal rent" columns in each of the three tables, without consideration of whether the rent charged exceeded the rent ceiling, in violation of D.C. OFFICIAL CODE § 42-3509.01(a). *See* Final Order at 6-9; R. at 277-80; Addendum; 14 DCMR § 4217.1; Hiatt Place, TP 21,149; Grayson v. Welch, TP 10,878 (RHC June 30, 1989) ("[Petitioners'] failure to distinguish rents from rent ceilings reveals that they are not clear on what they are asking for nor on the legal foundation for the relief."). Because the rents charged to the Tenants did not exceed the applicable, lawful rent ceilings, as required by D.C. OFFICIAL CODE § 42-3509.01(a), the Commission determines that the Hearing Examiner's order that the Housing Provider is liable to the Tenants for the amounts calculated in the Rent Over-Charged Refund tables constitutes plain error. *See* D.C. OFFICIAL CODE § 42-3509.01(a); 14 DCMR

[15] The Commission observes that the Hearing Examiner correctly states, after finding several rent ceiling reductions based on conditions in her unit, that Tenant Barron "is not entitled to a rent refund based on reduction of facilities since the reduce[d] rent ceiling is $2263.00 and the Tenant Petitioner rent charged was $1850.00[.]" Proposed Order at 19; R. at 242; *see* Harrington, RH-TP-07-28,895. The Commission, however, cannot determine whether those reductions in the rent ceiling are incorporated into the Rent Over-charged Refund table for Tenant Barron. *Compare* Final Order at 15-16; R. at 245-46, *with* Final Order at 19; R. at 242.

§ 4217.1; Harrington, RH-TP-07-28,895; Voltz, TP 25,092 at n. 16; Kemp, TP 24,786; Hiatt Place, TP 21,149.

Accordingly, the awards of rent refunds in the Final Order are vacated. These consolidated cases are remanded to the Rent Administrator for a recalculation of damages, consistent with D.C. OFFICIAL CODE § 42-3509.01(a) and this decision and order. Specifically, the Commission instructs the Rent Administrator to make further findings of fact and conclusions of law regarding whether any of the Tenants' rents charged exceeded their rent ceilings during the applicable time period, and thus whether any of the Tenants are entitled to any rent refunds under D.C. OFFICIAL CODE § 42-3509.01(a).

2. The Hearing Examiner erred by issuing a Final Order that is not accompanied by distinct findings of fact and conclusions of law, as required by the DCAPA

The Commission's review of the record reveals that the Final Order as issued by the Hearing Examiner fails to meet the legal requirements for findings of fact and conclusions of law in administrative decisions and orders set forth in the DCAPA and by the relevant precedent of the D.C. Court of Appeals (DCCA) and the Commission. The DCAPA provides that:

> Every decision and order adverse to a party to the 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. A copy of the decision and order and accompanying findings and conclusions shall be given . . . to each party or to his attorney of record.

D.C. OFFICIAL CODE § 2-509(e). Thus, an agency is required to show the basic facts upon which it has relied in reaching a decision. Citizens Ass'n of Georgetown, Inc. v. D.C. Zoning Comm'n, 402 A.2d 36, 42 (D.C. 1979); Collins v. Peter N.G. Schwartz Mgmt. Co., TP 23,571 (RHC Feb. 10, 2000); Thorpe v. Independence Fed. Sav. Bank, TP 24,271 (RHC Aug. 19, 1999) ("The

DCAPA requires the agency to issue a decision and order 'accompanied' by findings of fact and conclusions of law; not a decision and order one has to scour in an effort to identify the findings of fact."). Citations to the testimony, documents, or other evidence from the record that form the basis of each finding of fact are a critical component of a hearing examiner's order because the Commission is not permitted to make independent findings of fact, restate or edit findings, or rely on inferences from the record. *See* Notsch v. Carmel Partners, LLC, RH-TP-06-28,690 (RHC May 16, 2014); A&A Marbury, RH-TP-11-30,151; Pena v. Woynarowsky, TP 28,817 (RHC Feb. 3, 2012) (citing Georgetown Univ. Hosp. v. D.C. Dep't of Emp't. Servs., 916 A.2d 149, 151-52 (D.C. 2007)); Tenants of 710 Jefferson St., N.W. v. Loney, SR 20,089 (RHC Sept. 3, 2008) (citing Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1301 (D.C. 1990)); Butler v. Toye, TP 27,262 (RHC Dec. 2, 2004); Prosper v. Pinnacle Mgmt., TP 27,783 (RHC June 9, 2004). By the same token, a decision must contain distinct conclusions of law, made with appropriate citation to the relevant statutory provision, regulation, or cases under the Act or otherwise on which the Hearing Examiner bases his decision. *See* Perkins v. D.C. Dep't of Emp't Servs., 482 A.2d 401, 402 (D.C. 1984); A&A Marbury, RH-TP-11-30,151; Hemby v. Residential Rescue, Inc., TP 27,887 (RHC Apr. 16, 2004). The elements of the applicable legal standard must be systematically applied to the findings of fact on each issue. Perkins, 482 A.2d at 402; Allentruck v. D.C. Minimum Wage & Indus. Safety Bd., 261 A.2d 826, 833 (D.C. 1969); A&A Marbury, RH-TP-11-30,151.

Failure to make clear findings of fact and conclusions of law on all issues is not merely a formality or matter of convenience: when a Hearing Examiner fails to do so, the Commission has no legal foundation on which to conduct a meaningful review. Falconi v. Abusam, RH-TP-07-28,879 (RHC Sept. 28, 2012) ("If 'the examiner's decision was not sufficiently detailed to

demonstrate that the full record was considered, then the decision must be reversed.'") (quoting Cobb v. Charles E. Smith Mgmt. Co., TP 23,889 (RHC July 21, 1998)); A&A Marbury, RH-TP-11-30,151; Loney, SR 20,089 ("insufficient findings deprive the Commission of a 'basis for determining whether the conclusions of law followed rationally from the findings'") (quoting Hedgman v. D.C. Hackers' License Appeal Bd., 549 A.2d 720, 723 (D.C. 1988)); Tenants of 2724 Woodley Place, N.W. v. Lustine Realty Co., HP 20,781 (RHC June 25, 2007); Butler, TP 27,262; Hines v. Browner Co., TP 27,707 (RHC Sept. 7, 2004); Envoy Assocs. Ltd. P'ship v. 2400 Tenant Ass'n, TP 27,312 (RHC July 15, 2004). As the Commission has previously stated, an order that does not separately identify distinct findings of fact "complicates the Commission's review of such an order by requiring the Commission to identify distinct findings of fact and conclusions of law, identify particular findings of fact that support a particular conclusion of law, and to distinguish legal analyses from factual assertions." In Re: 70% Voluntary Agreement Application for Rent Level Adjustment 548 7th Street, S.E., VA 08,004 (RHC Dec. 27, 2012) at n. 2 (quoting Jackson v. Peters, RH-TP-07-28,898 (RHC Feb. 3, 2012) at n. 8); Thorpe, TP 24,271. Similarly, where an order contains headings entitled "Findings of Fact" and "Conclusions of Law," but such findings and conclusions do not appear exclusively under the respective headings, the Commission will have great difficulty determining that each material issue related to a claim or petition has been addressed. *See* A&A Marbury, RH-TP-11-30,151; In Re: 70% Voluntary Agreement, VA 08,004.

The Commission first observes that the Hearing Examiner's requisite factual and legal determinations in this matter are not contained in a single order. The Final Order expressly states, in the "Conclusions of Law" section, that it "incorporate[s] by reference" the conclusions of law in the Proposed Order, without stating specifically which conclusions of law were being

incorporated. *See* Final Order at 9; R. at 277. The Commission has previously noted that such "incorporation by reference" is not sufficient to meet the requirement that a decision be accompanied by clear findings of fact and conclusions of law, where the Commission is left to guess which specific findings of fact or conclusions of law are meant to be incorporated. Gelman Mgmt. Co. v. Grant, TP 27,995 (RHC Aug. 19, 2014) (Decision and Order Following Remand) at n. 15; Carmel Partners, Inc. v. Fahrenholz, TP 28,273 (RHC Oct. 9, 2012) (citing 14 DCMR § 4012.2(a));[16] *see also* D.C. Official Code § 2-509(e).

Moreover, the Commission's review of the record shows that, even considering the two Orders together, the Hearing Examiner's decision fails to meet the requirement that a final order contain distinct findings of fact supported by substantial evidence and conclusions of law on each issue. *See* D.C. OFFICIAL CODE § 2-509(e). For example, the Final Order contains a section captioned "Findings of Fact," in which the Commission's review of the record shows that four of the five numbered paragraphs therein are legal analysis and conclusions, rather than factual determinations.[17] *See* Final Order at 5; R. at 281; *see also supra* at 13-14.

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[16] 14 DCMR § 4012.2 provides:

> Each draft decision [transmitted by a Hearing Examiner to the Rent Administrator for review] shall contain the following:
>
> (a) Findings of fact and conclusions of law (including the reasons or basis of those findings) upon each material contested issue of fact and law presented on the record[.]

[17] To illustrate, the middle of paragraph 2, with no citation to any evidence on the record, declares that the "evidence establishes that Respondent repeatedly took increases in violation of the Act and therefore acted in bad faith when it raised the rents without properly perfecting the rent and rent ceiling increases." *Id.* Paragraph 4 similarly asserts the existence of "numerous instances where the Housing Provider/Respondent failed to perfect the document," (which is itself a legal conclusion about those unidentified documents), and instances where the Housing Provider "took the rent charge or rent ceiling increase twice in violation of the Act" (which, again, is in part a legal conclusion), but these assertions fail to identify to the specific instances in question, to address whether the parties made any arguments regarding the truth of these assertions, or to cite any applicable legal standard. *Id.*; *see* Perkins, 482 A.2d at 402; Citizens Ass'n of Georgetown, 402 A.2d at 42; Allentruck, 261 A.2d at 833; A&A Marbury, RH-TP-11-30,151; In Re: 70% Voluntary Agreement, VA 08,004; Thorpe, TP 24,271.

Furthermore, the Commission's review of the record fails to reveal distinct findings of fact on each issue in the Proposed Order.[18] Instead, the Proposed Order contains a section entitled "Findings of Fact and Conclusions of Law," directed, respectively, at each Tenant Petitioner. Proposed Order at 13-23; R. at 238-48. Commencing with the assertion that each respective Tenant "challenges the following rent increases by the Housing Provider[,]" the referenced section for each Tenant, respectively, contains a series of determinations that combines factual findings and legal conclusions in a manner that renders them indistinguishable from each other, in violation of the DCAPA. D.C. OFFICIAL CODE § 2-509(e); *see* Perkins, 482 A.2d at 402; Allentruck, 261 A.2d at 833; A&A Marbury, RH-TP-11-30,151; Hemby, TP 27,887; Thorpe, TP 24,271.[19]

Finally, the Commission's review of the record also indicates that the factual determinations by the Hearing Examiner lack clear evidentiary support because the Final Order

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[18] The Commission observes that, although the Proposed Order contains a section captioned "Evaluation and Analysis of the Evidence, that section contains only a legal analysis of the Act's statute of limitations, and does not address the relevance or credibility of any particular testimony or exhibits on the record. *See* Proposed Order at 5-11; R. at 250-56.

[19] For example, paragraph 3, relating to Tenant Krizner, addresses a "Notice of Increase in Rent Charge," described in paragraph 2, and states:

> *The Housing Provider/Respondent perfected the document properly since the notice required that a[n] Amended Registration Form should be filed within 30 days of the any* [sic] *event which substantially affects the services, facilities, ownership and management of any rental unit in a registered housing accommodation. According to the Amended Registration Form the date of change in the housing accommodation was 11-1-93 and the RACD date stamp on the document is October 9, 1993, which is days* [sic] *before the effective change occurred in the housing accommodation. However, the Housing Provider/Respondent took the $20.00 of the $26.00 in 11/1/1993and* [sic] *thus the Housing Provider/Respondent is only eligible to take the remaining $6 and thus the rent charged increase on this document is illegal.*

Proposed Order at 13-14; R. at 247-48 (italics original). This statement mixes the legal conclusions that the document was properly perfected and that it was nonetheless illegal with the factual findings of the date on which it was filed and that a previous (unidentified) rent charge increase had already implemented the 1993 CPI-W adjustment. The Commission's review of the record shows this pattern is repeated throughout the Proposed Order, with interspersed legal conclusions that either the rent charged or rent ceiling is "rolled back" to a certain amount. *See* Proposed Order at 13-23; R. at 238-48; *see also supra* at 3-12. As noted, these mixed "determinations" are restated, with less supporting detail, in the Final Order. *See* Final Order at 2-4; R. at 282-84.

lacks any consistent, reasonable identification of exhibits or testimony by reference to exhibit numbers, the hearing record, or other descriptions of such exhibits or testimony. *See* Notsch, RH-TP-06-28,690; A&A Marbury, RH-TP-11-30,151; In Re: 70% Voluntary Agreement, VA 08,004; Pena, TP 28,817; Loney, SR 20,089. Specifically, of the twenty-three (23) separate paragraphs containing mixed findings of fact and conclusions of law in the Final Order, only paragraphs 12 and 19 refer to specific evidence on the record, in the form of exhibits submitted by the Petitioners. Final Order at 3, 4; R. at 282, 283; *see also supra* at 5, 6. Similarly, the Proposed Order's forty-four (44) "Findings of Fact and Conclusion of Law," refer to specific record evidence only three times, in paragraphs 6, 16, and 34. Proposed Order at 14, 17, 21-22; R. at 247, 244, 239-40; *see also supra* at 4, 6, 10-11. Applying its standard of review to the Final Order, as required in 14 DCMR § 3807.1, the Commission is unable to determine that the findings of fact are supported by substantial evidence in the record of the proceedings before the Hearing Examiner. *See also* D.C. OFFICIAL CODE § 2-509(e); *see, e.g.,* Perkins, 482 A.2d at 402; Citizens Ass'n of Georgetown, 402 A.2d at 42; A&A Marbury, RH-TP-11-30,151; Pena, TP 28,817 (citing Georgetown Univ. Hosp., 916 A.2d at 151-52 (D.C. 2007)); Loney, SR 20,089 (citing Goodman, 573 A.2d at 1301); Butler, TP 27,262; Prosper, TP 27,783.

Accordingly, the Commission remands these consolidated cases to the Rent Administrator for reissuance of a final order that is accompanied by distinct findings of fact supported by citations to substantial evidence in the record, including exhibits or testimony, and distinct conclusions of law that reasonably follow from the application of the relevant legal standards in the Act to the corresponding findings of fact, as required by the DCAPA. D.C. OFFICIAL CODE § 2-509(e); Perkins, 482 A.2d at 402; A&A Marbury, RH-TP-11-30,151. The Commission further instructs the Rent Administrator to avoid the incorporation by reference of

findings of fact or conclusions of law made in prior orders into any final order following remand. Gelman, TP 27,995 (Order Following Remand); Fahrenholz, TP 28,273.

III. ISSUES ON APPEAL[20]

1. Whether the Hearing Examiner erred by awarding treble damages without substantial evidence to support a finding that the Housing Provider acted in bad faith.

2. Whether the Hearing Examiner erred in applying the interest rate applicable to judgments in the Superior Court on the date of the Final Order, March 31, 2008, rather than the rate or rates in effect at the time of each month's rent charge.

3. Whether the Hearing Examiner erred in finding that an Amended Registration form filed May 6, 2004, to take effect June 1, 2004, was filed past the 30 days required by the Act.

4. Whether the Hearing Examiner erred in finding that the Housing Provider took a portion of a 1993 rent ceiling adjustment twice.

5. Whether the Hearing Examiner erred in determining that the Tenants had the right to challenge rent ceiling increases for which the filings were made more than three years prior to the filing of the Tenant Petitions.

6. Whether the Hearing Examiner erred in failing to hold a hearing on the Housing Provider's Exceptions and Objections to the Proposed Order.

IV. ISSUES MOOT FOR PURPOSES OF THIS APPEAL

1. Whether the Hearing Examiner erred by awarding treble damages without substantial evidence to support a finding that the Housing Provider acted in bad faith

The Housing Provider appeals the Hearing Examiner's award of treble damages, asserting that no evidence in the record supports the requisite finding of bad faith. Notice of Appeal at 1; Housing Provider's Brief at 3-5; *see* D.C. OFFICIAL CODE § 42-3509.01(a). Because

[20] The Commission, in its discretion, has rephrased and reordered the Housing Provider's statement of the issues on appeal for ease of discussion, to clearly identify the allegations of the ALJ's error in the Final Order, and to group together claims that involve overlapping legal issues and the application of common legal principles. *See, e.g.* Atchole, RH-TP-10-29,891; Campbell, RH-TP-06-29,715; Morris, RH-TP-06-28,794; Jackson, RH-TP-12-28,898; Tenants of 809 Kennedy St., VA 02-107. For the complete language of the Housing Provider's Notice of Appeal, *see* Notice of Appeal at 1-2 and *supra* at 15-16.

the Commission determines, *supra* at 17-21, that the Hearing Examiner's assessment of the underlying damages is not in accordance with the Act, the trebling of such damages is moot for the purposes of this appeal. Hiatt Place, TP 21,149 ("[Because] there will be a remand on the reduction in services issue, we need not pursue the treble damage question at this time. The question of treble damages can be considered if any damages are awarded after remand."); *see also* Knight-Bey v. Henderson, RH-TP-07-28,888 (RHC Jan. 8, 2013) (where tenant/petitioner fails to appear at hearing, failure to afford due process through proper notice of hearing to housing provider/respondent is moot); Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Jan. 29, 2012) (where case remanded to determine remedy for violation of registration provision of the Act, issue of notice to tenant of reduction in services was moot on appeal); Oxford House-Bellevue v. Asher, TP 27,583 (RHC May 4, 2005) ("[T]here is no further relief the Commission may grant after reversing the hearing examiner's determination that the housing accommodation was exempt from Title II of the Act, and directing the hearing examiner to decide all issues raised in the tenant petition.").[21]

[21] The Commission cautions the Rent Administrator on remand to ensure that substantial evidence on the record supports any finding that the Housing Provider acted in bad faith, as defined under the Act. Bad faith refers to the "character and quality" of a prohibited act, and not to "a specific act in itself." *See* 1733 Lanier Pl. N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009); Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990). Intent or state of mind of the housing provider is "the most important factor" in determining "bad faith." Drell, TP 27,344, Young, TP 20,300.

While the Final Order spends three paragraphs describing the legal standard of bad faith, albeit without citation to any prior decisions of the DCCA or the Commission, the Commission notes that the only evidence the Hearing Examiner references in support of his findings are "numerous instances," which themselves are not identified with particularity, "where the Housing Provider[] failed to perfect the document or took the rent charge or rent ceiling increase twice in violation of the Act[.]" Final Order at 5; R. at 281. If the Rent Administrator determines, on remand, that the Tenants are entitled to any rent refunds, a more fully developed factual analysis with regard to the intent of the Housing Provider will be necessary to support a finding of bad faith and award of treble damages. *See* Fahrenholz, TP 28,273; Drell, TP 27,344; Young, TP 20,300.

The Hearing Examiner's finding that the Housing Provider "took the rent charge or rent ceiling increase twice," also described in the Proposed Order at 13-14; R. at 247-48, also lacks a clearly explained factual basis, and the Commission's review of the Record does not reveal that such conduct is alleged by the Tenants.

Accordingly, the Housing Provider's appeal of this issue is dismissed without prejudice.

2. Whether the Hearing Examiner erred in applying the interest rate applicable to judgments in the Superior Court on the date of the Final Order, March 31, 2008, rather than the rate or rates in effect at the time of each month's rent charge

The Housing Provider challenges, first, the authority of the Rent Administrator and the Commission to award interest and, second, the method by which the Hearing Examiner calculates the pre-judgment interest in the Orders. Housing Provider's Brief at 6-7. As with the issue of treble damages, *supra* at 27-29, the Commission determines that the issue of pre-judgment interest on the refunds is moot for the purposes of this appeal because the underlying damages assessed by the Hearing Examiner have been vacated by the Commission as not in

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Moreover, the Commission's review of the record shows, and the Tenants do not appear to contest, that the Housing Provider did not own the Housing Accommodation until mid- to late 2004. *See, e.g.*, R. at 91 (land transfer report dated June 30, 2004); R. at 92 (notice of management change stating effective date of October 1, 2004). The Commission was squarely presented with the issue of the 2004 transfer of ownership of the same Housing Accommodation in Fahrenholz, TP 28,273. In that case, the Commission determined that substantial evidence in the record did not support the imposition of liability against the named respondent, the Housing Provider in this case as well, for events prior to its assumption of ownership. *Id.* at 8. The Commission noted that our prior decisions "have established a precedent that a landlord may not, as a general rule, be held liable for the transgressions of his or her predecessor. *Id.* (quoting Binder v. Hawthorne, TP 11,1761 (RHC May 14, 1986)). Thus, case precedent does not necessarily support a determination in this case that it was the Housing Provider who "failed to perfect the document[s]." *See* Final Order at 5; R. at 281; Drell, TP 27,344; Young, TP 20,300.

The Commission notes that in Fahrenholz, TP 28,273, we ordered, based on plain error, that the case would be remanded to determine if the prior owner of the Housing Accommodation should be added as a party. The Rent Administrator is instructed on remand to apply the Commission's decision in Fahrenholz, TP 28,273, to determine if the allegations in the Tenant Petitions are directed in any way at the conduct fo the prior owner of the Housing Accommodation, or if the complaints relate entirely to the conduct of the currently named Housing Provider. If evidence presented supports claims against the prior owner, the Rent Administrator may only add the prior owner as a party in compliance with 14 DCMR § 3906.1 -.4 (2004).

Finally, the Tenants maintain on appeal that bad faith can be inferred by the Housing Provider's implementation of facially defective rent ceiling increases filed by its predecessor, which due diligence would have revealed to be unlawful. Hearing CD (RHC June 10, 2008) at 1:41:00-1:43:00. However, the Commission's review of the record leads it to conclude that the Hearing Examiner made no such findings of fact or conclusions of law in the Orders and instead based his determination on the thin factual summation which the Rent Administrator is directed above to further substantiate. *See* Final Order at 5; R. at 281.

accordance with the Act. Knight-Bey, RH-TP-07-28,888; Kuratu, RH-TP-07-28,985; Asher, TP 27,583; Hiatt Place, TP 21,149.[22]

[22] The Commission notes, as to the Housing Provider's first assertion, that Housing Provider's brief concedes that the Commission has promulgated regulations authorizing the award of interest. Housing Provider's Brief at 7; *see* 14 DCMR § 3826. The Housing Provider gives no content to its additional argument that the Commission exceeded its statutory authority in promulgating this rule, other than to cite a case where the DCCA held that the Commission had incorrectly interpreted an unrelated provision of the Act. *See id.* (citing Columbia Realty Venture v. D.C. Rental Hous. Comm'n, 590 A.2d 1043 (D.C. 1991) (proof of permits to make capital improvements). Moreover, DCCA has consistently determined that the Commission's interpretation of the Act will be upheld unless it is unreasonable, plainly wrong, incompatible with the statutory purposes of the Act, or embodies a material misconception of the law, even where a different interpretation may be supportable. *See, e.g.*, Sawyer, 877 A.2d at 102-03; Kennedy, 709 A.2d at 97; Jerome Mgmt., Inc. v. D.C. Rental Housing Comm'n, 682 A.2d 178, 182 (D.C. 1996). Accordingly, the Commission observes that the Housing Provider's argument on this point, if properly before us at this time, would be without merit.

Regarding the Housing Provider's second assertion, the Commission observes that the Hearing Examiner appears to have employed a generally accurate method for calculating the interest that would be applicable if the assessed damages were supported by substantial evidence on the record. The Commission's regulations provide:

> 3826.1 The Rent Administrator or the Rental Housing Commission may impose simple interest on rent refunds, or treble that amount under § 901(a) or § 901(f) of the Act.
>
> 3826.2 Interest is calculated from the date of the violation (or when service was interrupted) to the date of the issuance of the decision.
>
> 3826.3 The interest rate imposed on rent refunds or treble that amount, if any, shall be the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. Official Code § 28-3302(c) (2001), on the date of the decision.

14 DCMR § 3826. The Hearing Examiner found, and the Housing Provider states in its brief on appeal, that the Superior Court judgment interest rate (Superior Court Rate) on the day the Final Order was issued was 5% *per annum* and that the Final Order assesses interest at that rate from the date of each rent overcharge until the judgment date. Housing Provider's Brief at 7; *see* Proposed Order at 14, 20, 23; R. at 247, 241, 238.

The Housing Provider asserts, however, that this was error and that the applicable interest rate on each overcharge should have been the Superior Court Rate at the time of each overcharge. Notice of Appeal at 2; Housing Provider's Brief at 7. The Commission is satisfied that the Hearing Examiner did not err in this regard, because the plain text of 14 DCMR § 3826.2-.3 states that interest shall be assessed from the date of the violation to the date of judgment at the Superior Court Rate applicable *on the date of judgment*. The case cited by the Housing Providers, Bragdon v. Twenty-Five Twelve Assocs. L.P., 856 A.2d 1165, 1172-73 (D.C. 2004), *see* Housing Provider's Brief at 7, makes no reference to periodic adjustment in the Superior Court Rate. Rather, the DCCA merely states in Bragdon that, when assessed pursuant to D.C. OFFICIAL CODE § 15-108 (2001) (mandating pre-judgment interest on liquidated debts in actions brought in Superior Court), interest was to be assessed in that case on each overpayment from the date the overpayment occurred, and that such interest should be calculated according to the established rate. Bragdon, 856 A.2d at 1172-73. But the DCCA did not address what the proper interest rate on each overcharge was, nor did it construe the Commission's regulations. *See id.* The Commission is therefore satisfied that nothing in Bragdon is inconsistent with the approach the Commission has implemented by rulemaking. *See id.*; 14 DCMR § 3826.

Further, the Commission notes that, although the rent over-charge tables in the Proposed Order describe the interest rate in each month as "5% or .004," this is not, as the Housing Provider asserts, "two monthly interest rates." *See* Housing Provider's Brief at 7; Proposed Order at 12-13, 15-16, and 20-21; R. at 248-49, 245-46, and 240-41. The

Accordingly, the Housing Provider's appeal on this issue is dismissed without prejudice.

3. Whether the Hearing Examiner erred in finding that an Amended Registration form filed May 6, 2004, to take effect June 1, 2004, was filed past the 30 days required by the Act.

4. Whether the Hearing Examiner erred in finding that the Housing Provider took a portion of a 1993 rent ceiling adjustment twice.

The Housing Provider argues on appeal that the Hearing Examiner's findings "are often confused, or unsupported by any evidence of record." Notice of Appeal at 2; Housing Provider's Brief at 7. The Housing Provider points to, as specific examples: first, paragraph 34 of the

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Superior Court Rate is an annual interest rate, *see* D.C. Super. Ct., "Judgment Interest Rates," *available at* http://www.dccourts.gov/internet/documents/InterestRateSchedule.pdf (accessed Oct. 21, 2014) (historical list of Superior Court interest rates, each described as "Per Annum"), assessed simply (as opposed to compounding interest) pursuant to the 14 DCMR § 3826.1. A five percent (5%) *annual* simple interest rate, divided by twelve (12) months per year, is a rate of 0.41667% interest *per month*, or, rounded down, a multiplier of 0.004. Because interest is to be calculated from the time of each monthly rent charge to the date of the Final Order, the Commission observes that the Housing Provider's argument on this point, if properly before us at this time, would be without merit.

Nonetheless, the Commission cautions that, if the Rent Administrator on remand determines that the Tenants are entitled to damages, he or she is instructed to apply the correct judgment interest rate in effect on the date of his decision. The reason for this instruction is that the Commission's review of the record shows that the Hearing Examiner determined that "the judgment interest rate 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[.]" Proposed Order at 14, 20, 23; R. at 238, 241, 247. However, the Commission's review of publicly available information from the Superior Court reveals that, on the date of the Final Order, March 31, 2008, the Superior Court Rate was four percent (4%) annually, and on the date of the Proposed Order, February 28, 2007, it was six perfect (6%) annually. *See* D.C. Super. Ct., "Judgment Interest Rates," *available at* http://www.dccourts.gov/internet/ documents/InterestRateSchedule.pdf (accessed Oct. 21, 2014). Therefore, the Commission observes that, regarding this issue the Hearing Examiner's application of a five percent (5%) interest rate appears to have been erroneous.

Further, based on the Commission's review of the record, we are unable to determine the time period for which the Hearing Examiner assessed accrued interest. *See* Final Order at 6-9; R. at 277-80; *see also* Addendum. The full text of both Orders contains no reference to the starting or ending date of the interest period. *See generally* Proposed Order; R. at 234-60; Final Order; R. at 274-85. As described *supra*, the "Rent Over-charged Refund" tables for each Tenant calculate interest by applying an "interest factor" to each month's purported overcharge. Although each Tenant's purported overcharges began in different months, all three tables apply the same interest factor, 0.188, to the earliest month of overcharges for each Tenant. Final Order at 6-9; R. at 277-80; *see also* Addendum. The Commission observes that, based on the Hearing Examiner's apparent methodology, 0.188 would be the applicable interest factor for an overcharge that occurred forty-seven (47) months before the final judgment. However, the tables for each Tenant begin in January, July, and June of 2004, which are respectively twenty-six (26), twenty (20), and twenty-one (21) months prior to the date of the Proposed Order (Feb. 28, 2007) and thirty-eight (38), thirty-three (33), and thirty-two (32) months prior to the date of the Final Order (Mar. 31, 2008). *Id.* Therefore, the Commission observes that, if properly before us at this time, that the accrued interest calculated by the Hearing Examiner would be in error.

Proposed Order (Proposed Order at 21-22; R. at 239-40), which states that an Amended Registration was filed May 6, 2004, to take effect June 1, 2004, which is "passed [sic] the 30 days required by the Act," although May 6 is obviously several weeks before June 1," *see* Notice of Appeal at 1; Housing Provider's Brief at 7; and second, paragraph 3 of the Proposed Order (Proposed Order at 13-14; R. at 247-48),[23] which states that a 1993 adjustment of general applicability was implemented twice, with regard to which the Housing Provider asserts there was no evidence presented or even allegations made, *see* Notice of Appeal at 1; Housing Provider's Brief at 5-6.[24]

As noted, the Commission's standard of review provides that we will reverse final decisions of the Rent Administrator that contain findings of fact that are unsupported by substantial evidence on the record. 14 DCMR § 3807.1. However, the Commission has already determined, for the reasons set forth *supra* at 21-26, that these consolidated cases are remanded to the Rent Administrator because the Final Order is not accompanied by distinct findings of fact and conclusions of law supported by citation to substantial evidence on the record. *See* D.C. OFFICIAL CODE § 2-509(e); Perkins, 482 A.2d at 402; Citizens Ass'n of Georgetown, 402 A.2d at 42; Allentruck, 261 A.2d at 833; A&A Marbury, RH-TP-11-30,151; In Re: 70% Voluntary

[23] The Housing Providers' Brief on Appeal refers us to "Section 8 of the Procedural History set out in [the] Order." Housing Provider's Brief at 5. The Commission's review of the record reveals the actual reference to the 1993 CPI-W adjustment at issue to be paragraph 3 of the Findings of Fact and Conclusions of Law in the Proposed Order, as cited above.

[24] The Housing Provider further argued at the Commission's hearing that these are merely examples, that the Orders are "totally unclear as to what [the Hearing Examiner] is doing," and that it is unclear what facts the Hearing Examiner relied on to create the rent refund charts. Hearing CD (RHC June 10, 2008) at 2:10:00-2:11:00, 2:26:00-2:28:00. The Commission notes that, to the extent that the Housing Provider argued at the Commission's hearing issues five and six on appeal are merely examples of error, *see* Hearing CD (RHC June 10, 2008) at 2:10:00-2:11:00, 2:26:00-2:28:00, the Commission has consistently held that it will not review issues that are not clearly and concisely stated in the Notice of Appeal. 14 DCMR §§ 3802.5(b); 3807.4; *see, e.g.*, Notch v. Carmel Partners, LLC, RH-TP-06-28,690 (RHC May 16, 2014); Dreyfuss Mgmt. v. Beckford, RH-TP-07-28,895 (RHC Sept. 27, 2013); Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013); Daniel v. Thomas, Order on Motion for Reconsideration, TP 27,665 (RHC July 20, 2004).

Agreement, VA 08,004; Thorpe, TP 24,271. The Commission's remand for this reason prevents it from reviewing the record to determine whether the Hearing Examiner's decisions on these issues were supported by substantial evidence. *See* D.C. OFFICIAL CODE § 2-509(e); Georgetown Univ. v. D.C. Dep't of Emp't. Servs., 971 A.2d 909, 915 (D.C. 2009); Jimenez v. D.C. Dep't of Emp't. Servs., 701 A.2d 837, 838-39 (D.C. 1999); Perkins, 482 A.2d at 402; A&A Marbury, LLC, RH-TP-11-30,151; Pena, TP 28,817; Loney, SR 20,089 ("insufficient findings deprive the Commission of a 'basis for determining whether the conclusions of law followed rationally from the findings'") (quoting Tenants of 2724 Woodly Place, HP 20,781); Ruffin v. Sherman Arms, LLC, TP 27,982 (RHC July 29, 2005) ("absent a complete finding on all of the contested issues, the hearing examiner's decision and order regarding the alleged reduction of services and facilities is reversed and remanded for the hearing examiner to issue appropriate findings of fact and conclusions of law for the contested at issues"). Furthermore, because these consolidated cases are remanded, based on plain error, for the issuance of distinct findings of fact supported by substantial evidence on the record, the Commission is unable to provide the Housing Provider further relief on this matter for the purposes of this appeal. *See* Knight-Bey, RH-TP-07-28,888; Kuratu, RH-TP-07-28,985; Asher, TP 27,583; Hiatt Place, TP 21,149.[25]

[25] Both of these issues are further rendered unnecessary and moot for the purposes of this appeal by the Commission's determination, *supra* at 17-21, that the Hearing Examiner committed plain error by applying an incorrect legal standard in determining rent refunds owed to the Tenants. As to Housing Provider's allegations related to the Hearing Examiner's findings on the May 6, 2004, Amended Registration, the Commission observes that crux of the Housing Provider's argument is that the rent ceiling increase reflected in the Amended Registration should have been included in the calculation of the amount of the rent refunds, if any, owed to the Tenants. *See* Notice of Appeal at 1; Housing Provider's Brief at 7; D.C. OFFICIAL CODE §§ 42-3502.06(a), 42-3502.13(a); 42-3509.01(a); 14 DCMR § 4217.1; Hiatt Place, TP 21,149. However, as explained *supra* at 17-21, the rents charged to the Tenants did not exceed the applicable rent ceilings. *See* D.C. OFFICIAL CODE § 42-3509.01(a). Accordingly, the Commission can provide no further relief to the Housing Provider by determining now whether any of the Tenants' rent ceilings should have been greater than the amount used by the Hearing Examiner in calculating the refunds. *See id.*; Final Order at 6-9 (rent refund tables); R. at 277-280; Knight-Bey, RH-TP-07-28,888; Kuratu, RH-TP-07-28,985; Asher, TP 27,583; Hiatt Place, TP 21,149.

As to the Housing Provider's allegations of error related to the 1993 adjustment of general applicability, as implemented in a Notice of Increase in Rent Charge, dated December 30, 2004 (Notice), the Commission's review

Accordingly, the Housing Provider's appeal on these issues is dismissed without prejudice.

V. DISCUSSION OF REMAINING ISSUES

5. Whether the Hearing Examiner erred in determining that the Tenants had the right to challenge rent ceiling increases for which the filings were made more than three years prior to the filing of the Tenant Petitions

The Housing Provider argues that the Hearing Examiner "erred in holding that the petitioners had the right to challenge rent and/or rent ceiling increases taken or for which the filings were made over three years prior to the filing of their petition [because] the Rental Housing Commission[']s decision in [Gelman] controls in these cases." Notice of Appeal at 1. In Grant v. Gelman Mgmt. Co., TP 27,995 (RHC Feb. 24, 2006), and Grant v. Gelman Mgmt. Co., TP 27,995 (RHC Mar. 30, 2006) (Order Denying Motion for Reconsideration), the Commission determined that, where a housing provider fails to take and perfect an adjustment in a rent ceiling in accordance with 14 DCMR § 4204.9-.10,[26] the housing provider cannot

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of the record shows that the Hearing Examiner determined that, because that adjustment had been previously implemented, Tenant Krizner's "legal rent" at all times was the amount stated on Notice as the unadjusted rent. *See* Proposed Order at 13; R. at 248-49. As described *supra* at 17-19, the legal grounds for a rent refund under the Act, at all times applicable to these cases, existed when the rent charged exceeded the legal rent ceiling. *See* D.C. OFFICIAL CODE § 42-3509.01(a).[25] The Commission's determination of plain error in the Hearing Examiner's award of rent refunds to the Tenants, *supra* at 20-21, renders both unnecessary and moot a decision as to whether the Hearing Examiner made findings of fact related to the Notice or the 1993 adjustment of general applicability that are not supported by substantial evidence in the record, because it would have no effect on whether Tenant Krizner's rent charged exceeded the applicable rent ceiling. *See* D.C. OFFICIAL CODE § 42-3509.01(a); 14 DCMR § 4217.1; Harrington, RH-TP-07-28,895; Voltz, TP 25,092 at n. 16; Kemp, TP 24,786; Hiatt Place, TP 21,149.

[26] 14 DCMR § 4204 provides, in relevant part:

> 4204.9 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.
>
> 4204.10 Notwithstanding § 4204.9, a housing provider shall take and perfect a rent ceiling increase authorized by § 206(b) of the Act (an adjustment of general applicability) by filing with the Rent Administrator and serving on the affected tenant or tenants in the

thereafter use the unperfected adjustment in rent ceiling as the basis for a corresponding adjustment in rent charged, regardless of when the adjustment in rent ceiling was claimed. *See* Gelman, TP 27,995 (Reconsideration) (citing Sawyer Prop. Mgmt. v. D.C. Rental Hous. Comm'n, 877 A.2d 96 (D.C. 2005)).[27]

The Commission's review of the record shows that, in this case, the Hearing Examiner did allow the Tenants, in accordance with Gelman, TP 27,995, to challenge the validity of rent ceiling adjustments that were filed prior to January 2003, where such adjustments were used to justify rent charged increases that occurred within the three-year period prior to the filing of the Tenant Petitions (*i.e.*, between January 2003 and January 2006). Proposed Order at 13-14, 16-17, and 22; R. at 247-48, 244-45, and 239.[28] For each Tenant, the Hearing Examiner determined that:

> manner prescribed in § 4101.6 a Certificate of Election of Adjustment of General Applicability, which shall:
>
> (a) Identify each rental unit to which the election applies;
>
> (b) Set forth the amount of the adjustment elected to be taken, and the prior and new rent ceiling for each unit; and
>
> (c) Be filed and served within thirty (30) days following the date when the housing provider is first eligible to take the adjustment.

[27] Although the Commission has determined, supra at 21-26, that this case will be remanded for the issuance of new findings of fact and conclusions of law, the Commission is satisfied, based on its review of the record, that the Housing Provider's issue on this point raises "a purely legal question of the interpretation of the Act and its regulations, and [does] not require additional fact finding." Gelman, TP 27,995 (Order Following Remand) (citing Reyes v. D.C. Dep't of Emp't Servs., 48 A.3d 159, 164 (D.C. 2012); Hisler v. D.C. Dep't of Emp't Servs., 950 A.2d 738, 743-44 (D.C. 2008)).

[28] The Hearing Examiner, in the Final Order, also dismissed the Housing Provider's objection that Gelman does not apply "retroactively" because it was "non-final." Final Order at 5; R. at 281; *see also* Housing Provider's Exceptions and Objections to Proposed Order at 1; R. at 268. The Commission observes that the Housing Provider's argument on appeal that "the holding in Gelman is not final because the proceedings were remanded by the RHC" does not cite any supporting authority for this argument. *See* Housing Provider's Brief at 1. Moreover, the Commission has repeatedly affirmed that Gelman, TP 27,995, correctly interprets D.C. OFFICIAL CODE § 42-3502.06(e), the text of which has not changed. *See, e.g.*, Morris, RH-TP-06-28,794; 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. Hinman, RH-TP-06-28,728 (RHC June 5, 2013). The Commission determines that its holding in Gelman, TP 27,995, regarding D.C. OFFICIAL CODE § 42-3502.06(e), is final with

> The Tenant/Petitioner may challenge a rent ceiling overcharge in her unit from the date of her Tenant Petition back for three years. Therefore, this Tenant/Petitioner may challenge rent ceiling overcharges from January 2003 to January 2006 unless the holding in the *Gelman* case is applicable. Thus any challenges to the rent ceiling in the instant case, which are beyond the three years statue [sic] of limitation[s] and/or are not applicable for review under the *Gelman* case are dismissed.

Proposed Order at 13, 16, and 21; R. at 248, 245, and 240; *see also* Final Order at 5 ("the Gelman decision must therefore be applied to the instant case."); R. at 281.[29]

The Commission observes that the Housing Provider's arguments in this appeal, that the Tenants' challenges to rent ceiling increases are barred because they were filed outside of the Act's three-year statute of limitations in D.C. OFFICIAL CODE § 42-3502.06(e),[30] are substantially identical to the arguments the Commission rejected in United Dominion Mgmt. Co. v. Hinman, RH-TP-06-28,728 (RHC June 5, 2013). The Commission notes that the factual context of the Tenants' claims in this case is substantially identical to that in Hinman, RH-TP-06-28,728. 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. *See* Hinman, RH-TP-06-28,728. In Hinman, RH-TP-06-28,728, as in this case, the housing provider claimed that, because the contested rent ceiling adjustment occurred beyond the three-year limitations period of D.C. OFFICIAL CODE § 42-3502.06(e), the tenant's claim of a corresponding,

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respect to its interpretation of that provision of the Act. Morris, RH-TP-06-28,794; Coleman, RH-TP-06-28,833; Kelly, RH-TP-06-28,707; Hinman, RH-TP-06-28,728; Gelman, TP 27,995 (Order Following Remand).

[29] As addressed *supra* at 21-26, the Commission determines, for the purposes of its complete review of the record, that the Final Order is meant to incorporate the Proposed Order. *See supra* n.14.

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

> 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 § 42-3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

illegal increase in the rent charged was barred, even though the allegedly improper adjustment in rent charged occurred within the three-year limitations period. *See* Final Order at 5; R. at 281; Proposed Order at 5-11; R. at 250-56; Hinman, RH-TP-06-28,728.

In Hinman, RH-TP-06-28,728, the Commission thoroughly reviewed the plain language, statutory and regulatory context, and legislative history of D.C. OFFICIAL CODE § 42-3502.06(e), the underlying purposes of the Act, and prior interpretations of the statute of limitations by the DCCA and the Commission, including Sawyer, 877 A.2d 96; Kennedy v. D.C. Rental Hous. Comm'n, 709 A.2d 94 (D.C. 1998), and Gelman, TP 27,995. *See* Hinman, RH-TP-06-28,728. The Commission in Hinman explained that:

> [W]hen a contested adjustment in rent ceiling is beyond the limitations period in § 42-3502.06(e) – but the date of its implementation through a corresponding contested adjustment in rent charged is within the limitations period – the "effective date" of the contested adjustment in rent ceiling under § 42-3502.06(e) remains as the date of its implementation through the corresponding adjustment in rent charged, and any claims under the Act regarding either adjustment are permitted under § 42-3502.06(e).

Id. at 23-24 (emphasis original). The Commission in Hinman, essentially affirmed its prior decision in Gelman, TP 27,995. *See* Hinman, RH-TP-06-28,728.

The Commission is satisfied that the decision in Hinman, RH-TP-06-28,728, correctly interprets and applies the Act. *See* Gelman, TP 27,995 (Order Following Remand); Smith Property 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). Therefore, the Commission is satisfied that the Hearing Examiner's determination that the validity of the rent ceiling adjustment filings at issue in the Tenant Petitions that were improperly perfected outside of the three-year limitations period

could be challenged by the Tenants, if they were implemented through rent charged increases between January 2003 and January 2006, was in accordance with the Act. 14 DCMR § 3807.1; Gelman, Order Following Remand, TP 27,995; Morris, RH-TP-06-28,794; Kelly, RH-TP-06-28,707; Rice, RH-TP-06-28,749; Hinman, RH-TP-06-28,728.

Moreover, the DCCA has recently affirmed our decisions in Hinman, RH-TP-06-28,728, Kelly, RH-TP-06-28,707, and Rice, RH-TP-06-28,749, rejecting arguments nearly identical to those advanced by the Housing Provider in this case and affirming the Commission's interpretation of the term "effective date" in D.C. OFFICIAL CODE § 42-3502.06(e). United Dominion Mgmt. Co. v. D.C. Rental Hous. Comm'n, Nos. 13-AA-613, 13-AA-959, & 13-AA-960, slip op. at 11-17 (D.C. Oct. 16, 2014). The Commission therefore determines that the Housing Provider's appeal on this issue is without merit. *Id.*

Accordingly, the Hearing Examiner's determination on this issue is affirmed.

6. Whether the Hearing Examiner erred in failing to hold a hearing on the Housing Provider's Exceptions and Objections to the Proposed Order

The Housing Provider contends that the Hearing Examiner erred in ignoring its demand, contained the Housing Provider's Objections, for a hearing on its arguments. Notice of Appeal at 2; Housing Provider's Brief at 8; *see also* Housing Provider's Objections at 5; R. at 264. Pursuant to the DCAPA:

> 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 adverse to a party to the case (other than the Mayor or an agency) 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, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

D.C. OFFICIAL CODE § 2-509(d); *see* Meier v. D.C. Rental Accommodations Comm'n, 372 A.2d 566, 568 (D.C. 1977) (order under prior rental housing law reversed where "the Acting Rent Administrator heard no evidence or argument. Rather, the decision rendered by him was based on the evidence presented before the hearing examiner.").

The Commission notes that, in these consolidated cases, an evidentiary hearing on the Tenant Petitions was held by Hearing Examiner Roper, and Hearing Examiner/Acting Rent Administrator Anderson[31] issued the Proposed Order and Final Order, in accordance with D.C. OFFICIAL CODE § 2-509(d). *See supra* at 2-3; *see also* R. at 260, 285, and 296.

The Housing Provider does not cite any statute, regulation, or other legal authority providing that the "opportunity . . . to file exceptions and present argument to a majority of those who are to render the order or decision" under D.C. OFFICIAL CODE § 2-509(d) requires an in-person hearing on such arguments.[32] The Commission observes that the Housing Provider similarly does not give any content to its additional, bare assertion that an in-person hearing is required as a matter of due process of law under the Constitution. *See* Housing Provider's Brief at 8. The Commission is not required to consider claims that a party fails to support with any legal argument or citation. *See* 14 DCMR § 3802.5(b) (notice of appeal shall contain clear and concise statement of the alleged error(s)); Gardiner v. Charles C. Davis Real Mgmt. Realty, TP 24,955 (RHC May 11, 2001) (quoting Lustine Realty v. Pinson, TP 20,117 (RHC Jan. 13 1989)).

[31] As noted *supra* at n.4, the Commission solely uses "Hearing Examiner" to refer to Hearing Examiner/Acting Rent Administrator Keith Anderson in his capacity as the author of the decision under appeal.

[32] To the contrary, the Commission notes that the DCCA has expressly stated that § 2-509(d) "does not require oral argument, but argument *either* oral *or* in the form of memoranda or briefs must be allowed." Woodridge Nursery School v. Jessup, 269 A.2d 199, 202 n.14 (D.C. 1970) (emphasis added); Palisades Citizens Assoc., Inc. v. D.C. Zoning Comm'n, 368 A.2d 1143, 1145 & n.6 (D.C. 1977) (no procedural defect where request for oral hearing on exceptions denied); *see also* Burns v. Charles E. Smith Mgmt., Inc., TP 23,962 (RHC June 18, 1999) ("Agency due process consists of a minimum of four requirements: '(1) notice of issues presented; (2) an opportunity to present data and *arguments either in written or oral form*; (3) a decision by a neutral decisionmaker; and (4) a statement of reasons for the decision.'" (emphasis added)) (quoting Kenneth Culp Davis & Richard J. Pierce, Jr., Administrative Law Treatise, § 9.1 (3d ed. 1994)).

In Pinson, the Commission observed that the housing provider's appeal did not "set forth one case in support of any [of] the allegations and [did] not rely upon any statutory or regulatory basis," and noted that:

> [A]ppellants represented by counsel are not entitled to the extra efforts of the Commission in fashioning their appeals to fit the statutory and regulatory requirements. Accordingly, if the notice of appeal or briefs do not cite properly the statutory, regulatory, or case-law basis for the appeal, appellants represented by counsel may find their appeals dismissed for failure to meet the requirements of 14 DCMR [§] 3802.5[(b)].

Pinson, TP 20,117 at 3 and n.4.

Moreover, to promote the "principles of judicial economy," the DCCA and the Commission have adopted the threshold jurisdictional requirements of "ripeness" and "standing" before either will decide the merits of a party's claim. Grayson v. AT&T Corp., 13 A.3d 219, 229 (D.C. 2011) (stating that standing is a threshold jurisdictional question); Wash. Teacher's Union, Local # 6 v. District of Columbia Pub. Sch., 960 A.2d 1123, 1134 n. 25 (D.C. 2008) (finding claims are subject to dismissal for lack of ripeness); Young v. Vista Mgmt., TP 28,635 (RHC Sept. 18, 2012) (ripeness "depends on the certainty of the alleged harm, and will not be satisfied where the alleged harm is too 'abstract, hypothetical and contingent;'" for standing "a mere contingent or speculative interest in a problem is not sufficient"); Nelson v. B.F. Saul Prop. Co., RH-TP-10-29,994 (RHC Aug. 16, 2012) ("Tenants lacked standing to file an appeal because, although the Tenants may have been aggrieved by the December 1, 2010 Order, the Tenants actually appealed the February 24, 2011 Order despite the fact that they [neither] 'suffered [n]or will sustain some actual or threatened 'injury in fact' from the challenged agency action [in issuing the February 24, 2011 order].'") (quoting Maloff v. District of Columbia Bd. of Elections & Ethics, 1 A.3d 383, 391 (D.C. 2010)). Accordingly, the Commission will not address hypothetical questions on appeal or issue advisory opinions. Fidelity Props., Inc. v.

Tenants of 3446 Conn. Ave. N.W., HP 20,355 (RHC Apr. 10, 1995) ("'[c]ourts do not, or at least should not, issue generalized edicts'") (quoting Mims v. Mims, 635 A.2d 320, 325 n.12 (D.C. 1993)).

The Housing Provider does not assert in its Notice of Appeal or brief that the Hearing Examiner failed to issue a proposed order, or failed to provide the parties with an opportunity to file exceptions and objections and present argument, or failed to consider the Housing Provider's arguments, as expressly required by D.C. OFFICIAL CODE § 2-509(d). *See* Notice of Appeal at 2; Housing Provider's Brief at 8. The Commission's review of the record shows, for example, that the Hearing Examiner directly responded to the assertion in the Housing Provider's Objections that the decision in Gelman, TP 27,995, is not controlling and that the Proposed Order erred in finding that the Housing Provider acted in bad faith. *See* Housing Provider's Exceptions and Objections to Proposed Order at 1-4; R. at 265-68; Final Order at 4-5; R. at 281-82.[33] Therefore, the Commission is not satisfied that the Housing Provider alleges any concrete injury that resulted from the Hearing Examiner's failure to hold a hearing on the Housing Provider's Objections. *See* Grayson, 13 A.3d at, 229; Wash. Teacher's Union, 960 A.2d at 1134 n. 25; Young, TP 28,635; Nelson, RH-TP-10-29,994.

The Commission notes that due process is a fundamental requirement for the issuance of an order in a contested case, and that the Commission has frequently reversed or remanded decisions in which a party has been actually injured by a denial of process. *See, e.g.*, Highland Park Apts. v. Sutton, RH-TP-09-29,593 (RHC Sept. 27, 2013) (determining that housing provider had standing on appeal because of weight of "due process implications of the ALJ's

[33] As described *supra* at 27-29 and 34-38, the Commission, respectively, dismisses without prejudice the appeal of Hearing Examiner's determination on the Housing Provider's bad faith and affirms the Hearing Examiner's determination on the statute of limitations and the applicability of Gelman, TP 27,995.

failure to ensure that the Housing Provider was properly given notice of the OAH hearing"); Reaves v. Byrd, TP 26,195 (RHC July 24, 2002) (determining that housing provider was denied due process of law where DCRA mailed the notice of hearing to an incorrect address); Dias v. Perry, TP 24,379 (RHC Dec. 27, 1999) ("the record is devoid of proof of the procedural safeguard of proper notice in accordance with the Act"); *cf.* Willoughby Real Estate Co. v. Shuler, TP 28,266 (RHC Nov. 7, 2008) ("A petition must give a defending party fair notice of the grounds upon which a claim is based, so that the defending party has the opportunity to adequately prepare its defense and thus ensure that the claim is fully and fairly litigated.") (quoting Parreco v. District of Columbia Rental Hous. Comm'n., 886 A.2d 327, 335 (D.C. 2005)). However, as noted, the Housing Provider makes no allegation of actual or threatened "injury in fact" with respect to this issue, and therefore deprives the Commission of a basis for determining "the certainty of the alleged harm." *See* Young, TP 28,635; Nelson, RH-TP-10-29,994. The Commission will not "issue generalized edicts, nor . . . promulgate statute-like rules of law" when the facts of the case before it do not present the issue. Fidelity Props., HP 20,355 (quoting Mims, 635 A.2d at 325 n.12).

Accordingly, the Commission dismisses the Housing Provider's issue on appeal that the Hearing Examiner's erred by not holding an in-person hearing on the Housing Provider's Objections.

VI. CONCLUSION

In accordance with the foregoing, the Commission vacates the Hearing Examiner's award of rent refunds in the Final Order, and remands these consolidated cases for a recalculation of damages, consistent with D.C. OFFICIAL CODE § 42-3509.01(a) and this decision and order. Specifically, the Commission instructs the Rent Administrator to make further findings of fact

and conclusions of law regarding whether any of the Tenants' rents charged exceeded their rent ceilings during the applicable time period, and thus whether any of the Tenants are entitled to any rent refunds under D.C. OFFICIAL CODE § 42-3509.01(a). *See supra* at 17-21.

The Commission remands these consolidated cases to the Rent Administrator for reissuance of a final order that is accompanied by distinct findings of fact supported by citation to substantial evidence in the record and distinct conclusions of law that systematically apply the standards under the Act to the relevant findings of fact, as required by the DCAPA. D.C. OFFICIAL CODE § 2-509(e); Perkins, 482 A.2d at 402; A&A Marbury, RH-TP-11-30,151. The Commission further instructs the Rent Administrator that the final order after remand shall not incorporate by reference findings of fact or conclusions of law made in prior orders. Gelman, TP 27,995 (Order Following Remand); Fahrenholz, TP 28,273. *See supra* at 21-26.

The Commission determines that the Housing Provider's issue regarding the Hearing Examiner's award of treble damages is moot for the purposes of this appeal and dismisses the issue without prejudice. *See supra* at 27-29. On remand, if the Rent Administrator determines that the Tenants are entitled to rent refunds, the Rent Administrator is instructed to issue appropriate findings of fact and conclusions of law, including those on "bad faith," supporting treble damages as described *supra* n.21.

The Commission determines that the Housing Provider's issue regarding the Hearing Examiner's award of pre-judgment interest is moot for the purposes of this appeal and dismisses the issue without prejudice. *See supra* at 29-31. On remand, if the Rent Administrator determines that the Tenants are entitled to any damages, the Rent Administrator is instructed to issue appropriate findings of fact and conclusions of law supporting the assessment of interest, as described *supra* n.22.

The Commission determines that the Housing Provider's issues that specific findings of fact by the Hearing Examiner are unsupported by substantial evidence on the record are moot for the purposes of this appeal and dismisses these issues without prejudice. *See supra* at 31-34.

The Commission affirms the Hearing Examiner's determination that the Tenants' claims of illegal rent ceiling adjustments are permitted under D.C. OFFICIAL CODE § 42-3502.06(e) because the adjustments, which were improperly perfected outside of the three-year limitations period, were implemented through rent charged increases between January 2003 and January 2006. D.C. OFFICIAL CODE § 42-3502.06(e); United Dominion Mmgt., Nos. 13-AA-613, 13-AA-959, & 13-AA-960 (D.C. Oct. 16, 2014); Morris, RH-TP-06-28,794; Coleman, RH-TP-06-28,833; Kelly, RH-TP-06-28,707; Hinman, RH-TP-06-28,728; Gelman, TP 27,995. *See supra* at 34-38.

Finally, the Commission dismisses the Housing Provider's issue on appeal that the Hearing Examiner erred by not holding a hearing on the Housing Provider's Objections pursuant to D.C. OFFICIAL CODE § 2-509(d). *See supra* at 38-42.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, COMMISSIONER

CLAUDIA L. McKOIN, 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
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** in TP 28,510, TP 28,521, and TP 28,526 was mailed, postage prepaid, by first class U.S. mail on this **28th day** of **October, 2014** to:

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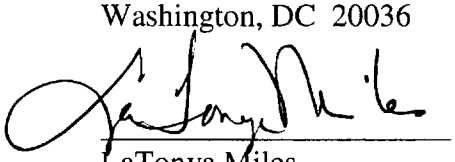

LaTonya Miles
Clerk of the Court
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ADDENDUM

"Rent Over-charged Refund" Tables, Barron v. Carmel Partners, LLC, TP 28,510, 28,521, and 28,526 (RAD Mar. 31, 2008); R. at 277-80.

Table 1: Rent Over-Charged Refund for Lauren Judith Krizner (Unit -509) TP 28,526

Month/year of Violation in the Tenant/ Petitioner's Unit	Rent Ceiling	Rent charged	Legal rent ceiling	Legal Rent	Rent over/ charged	Month held for over-charged	Trebled/ damages	Monthly interest rate	Interest Factor	Interest Due
January 2004	$2672	$1250	$1866	$1250	$0					
February 2004	$2672	$1250	$1866	$1033	$217	47	$651	0.004	0.188	$122.39
March 2004	$2672	$1250	$1866	$1033	$217	46	$651	0.004	0.184	$119.78
April 2004	$2672	$1250	$1866	$1033	$217	45	$651	0.004	0.180	$117.18
May 2004	$2672	$1250	$1866	$1033	$217	44	$651	0.004	0.176	$114.68
June 2004	$2672	$1250	$1866	$1033	$217	43	$651	0.004	0.172	$111.97
July 2004	$2672	$1250	$1866	$1033	$217	42	$651	0.004	0.168	$109.37
August 2004	$2672	$1250	$1866	$1033	$217	41	$651	0.004	0.164	$106.76
September 2004	$2672	$1250	$1866	$1033	$217	40	$651	0.004	0.160	$104.16
October 2004	$2672	$1250	$1866	$1033	$217	39	$651	0.004	0.156	$101.56.
November 2004	$2672	$1250	$1866	$1033	$217	38	$651	0.004	0.152	$98.95
December 2004	$2672	$1250	$1866	$1033	$217	37	$651	0.004	0.148	$96.35
January 2005	$2672	$1250	$1866	$1033	$217	36	$651	0.004	0.144	$93.74
February 2005	$2672	$1250	$1866	$1033	$217	35	$651	0.004	0.140	$91.14
March 2005	$2672	$1250	$1866	$1033	$217	34	$651	0.004	0.136	$88.54
April 2005	$2672	$1250	$1866	$1033	$217	33	$651	0.004	0.132	$85.93
May 2005	$2672	$1250	$1866	$1033	$217	32	$651	0.004	0.128	$83.33
June 2005	$2672	$1250	$1866	$1033	$217	31	$651	0.004	0.124	$80.74
July 2005	$2672	$1250	$1866	$1033	$217	30	$651	0.004	0.120	$78.12
August 2005	$2672	$1250	$1866	$1033	$217	29	$651	0.004	0.116	$75.52
September 2005	$2672	$1250	$1866	$1033	$217	28	$651		0.112	$72.91

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October 2005	$2672	$1250	$1866	$1033	$217	27	$651	0.004	0.108	$70.31
November 2005	$2672	$1250	$1866	$1033	$217	26	$651	0.004	0.104	$67.70
December	$2672	$1250	$1866	$1033	$217	25	$651	0.004	0.100	$65.10
January 2006	$2672	$1250	$1866	$1033	$217	24	$651	0.004	0.096	$62.50
Subtotal							$15,624			$2,159.00
Total										$17,783.33

Table 2: Rent Over-Charged Refund for Kelli Barron (Unit -613) TP 28, 510

Month/year of Violation in the Tenant/ Petitioner's Unit	Rent Ceiling	Rent charged	Legal rent ceiling	Legal Rent	Rent over/ charged	Month held for over-charged	Trebled/ damages	Monthly interest rate	Interest Factor	Interest Due
May 2004	2377	1885	2026	1850	$145			0.004		
June 2004					$145			0.004		
July 2004	2862	1995	2813	1850	$145	47	$435	0.004	0.188	$81.78
August 2004	2862	1995	2813	1850	$145	46	$435	0.004	0.184	$80.04
September 2004	2862	1995	2813	1850	$145	45	$435	0.004	0.180	$78.30
October 2004	2862	1995	2813	1850	$145	44	$435	0.004	0.176	$76.56
November 2004	2862	1995	2813	1850	$145	43	$435	0.004	0.172	$74.82
December 2004	2862	1995	2813	1850	$145	42	$435	0.004	0.168	$73.08
January 2005	2862	1995	2813	1850	$145	40	$435	0.004	0.164	$71.34
February 2005	2862	1995	2813	1850	$145	41	$435	0.004	0.160	$69.60
March 2005	2862	1995	2813	1850	$145	39	$435		0.156	$67.60
								0.004		
April 2005	2862	1995	2813	1850	$145	38	$435	0.004	0.152	$66.12
May 2005	2862	1995	2813	1850	$145	37	$435	004	0.148	$64.38

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June 2005	2862	1995	2813	1850	$145	36	$435	0.004	0.144	$62.64
July 2005	2862	1995	2813	2238	$145	35	$435	0.004	0.140	$83.16
August 2005	2862	2048	2813	1850	$198	34	594	0.004	0.136	$80.78
September 2005	2862	2048	2813	1850	$198	33	594	0.004	0.132	$78.41
October 2005	2862	2048	2813	1850	$198	32	594	0.004	0.128	$76.03
November 2005	2862	2048	2813	1850	$198	31	594	0.004	0.124	$71.28
December 2005	2862	2048	2813	1850	$198	30	594	0.004	0.120	68.90
January 2006	2862	2048	2813	1850	$198	29	594	0.004	0.116	66.52
Subtotal							$8784			1,463.26
Total										$10,248.26

Table 3; Rent Over-Charged Refund for Karen Towers (Unit - 420) TP 28,521

Month/year of Violation in the Tenant/ Petitioner's Unit	Rent Ceiling	Rent charged	Legal rent ceiling	Legal Rent	Rent over/ charged	Month held for over-charged	Trebled/ damages	Monthly interest rate	Interest Factor	Interest Due
June 2004	2385	$995	2318	975	$20	47	$60	0.004	0.188	$11.28
July 2004	2385	995	2318	975	$20	46	$60	0.004	0.184	$11.04
August 2004	2385	995	2318	975	$20	45	$60	0.004	0.180	$10.80
September 2004	2385	995	2318	975	$20	44	$60	0.004	0.176	$10.56
October 2004	2385	995	2318	975	$20	43	$60	0.004	0.172	$10.32
November 2004	2385	995	2318	975	$20	42	$60	0.004	0.168	$10.08
December 2004	2385	995	2318	975	$20	41	$60	0.004	0.164	$9.84
January 2005	2385	995	2318	975	$20	40	$60	0.004	0.160	$9.60
February 2005	2385	995	2318	975	$20	39	$60	0.004	0.156	$9.36
March 2005	2385	995	2318	975	$20	38	$60	0.004	0.152	$9.12
April 2005	2385	995	2318	975	$20	37	$60	0.004	0.148	$8.88
May 2005	2385	1022	2318	975	$47	36	$141	0.004	0.144	$20.30
June 2005	2671	1022	2318	975	$47	35	$141	0.004	0.140	$19.74

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July 2005	2385	1022	2318	975	$47	34	$141	0.004	0.136	$19.18
August 2005	2385	1022	2318	975	$47	33	$141	0.004	0.132	$18.61
September 2005	2385	1022	2318	975	$47	32	$141	0.004	0.128	$18.04
October 2005	2385	1022	2318	975	$47	31	$141	0.004	0.124	$17.48
November 2005	2385	1022	2318	975	$47	30	$141	0.004	0.120	$16.92
December 2005	2385	1022	2318	975	$47	29	$141	0.004	0.116	$16.35
January 2006	2385	1022	2318	975	$47	28	$141	0.004	0.112	$15.79
Subtotal							$1929			$273.89
Total										$2202.89

Conclusions of Law

After a careful evaluation of the evidence and finding of fact, RAD concludes as a matter of law:

1. All other conclusion of law made by the hearing examiner in previous decision and order on these TP's that are not in conflict with this Order are incorporated by references in this section of Conclusions of law.

2. The Housing Provider/Respondent's Exception and Objection that *Gelman v. Grant Mgmnt. Co.* has no merit based on the theory that the Commission's decision to remand the case to the Rent Administrator is a non-final decision and therefore *Gelman* must be applied prospectively is dismissed.

3. The Housing Provider/Respondent's Exception and Objection that Petitioners were not entitled to treble damages based on the argument that the Petitioners did not provide any evidence in the record of bad faith is dismissed.

4. The Housing Provider/Respondent's Exception and Objection alleging that the table of refund and interest provided by the Examiner is incomprehensible and does not explain how the interest is calculated is dismissed.

5. The Tenant/Petitioner in unit 509 is entitled to a rent refund in the amount of $15,624.00 plus $2,159.00 interest for a total refund of $17,783.33 for Respondent's failure to properly perfect rent increases in unit 509 in bad faith.

6. The Tenant/Petitioner in unit 613 is entitled to a rent refund in the amount of

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