DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

VA 02-107

In re: 809 Kennedy Street, N.W.

Ward Four (4)

THE BARAC COMPANY
Housing Provider/Appellant/Cross-Appellee

v.

TENANTS OF 809 KENNEDY STREET, N.W.
Tenants/Appellees/Cross-Appellants

DECISION & ORDER

September 27, 2013

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD),[1] Housing Regulation Administration (HRA), of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA). The applicable provisions of the Rental Housing Act of 1985 (the 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 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) govern the proceedings.

[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001, Supp. 2005). The functions and duties of RACD were transferred to the Department of Housing and Community Development (DHCD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. Code § 42-35002.03a (2001, Supp. 2008)).

I. PROCEDURAL HISTORY

On December 2, 2002, W&D, LLC (Housing Provider), filed Voluntary Agreement 02-107 ("VA 02-107") to adjust the rent ceilings at 809 Kennedy Street, N.W. (Housing Accommodation).[2] Record (R.) at 14. On April 8, 2003, the Rent Administrator issued an Order (April 8 Approval Order) simultaneously granting VA 02-107 and giving tenants thirty (30) days to file objections. April 8 Approval Order at 1-2; R. at 20-21. Tenant Joseph Adesioye filed timely objections to VA 02-107 on May 8, 2003 on behalf of the tenants living at the Housing Accommodation (collectively, "Tenants"). See Final Order at 1; Hearing Tape 1 (RACD Mar. 18, 2004); R. at 22, 139. The Rent Administrator Raenelle Zapata (hereinafter "Rent Administrator") subsequently issued an Order on February 20, 2004 (February 20 Hearing Order) setting a hearing on the Tenants' objections for March 18, 2004. R. at 25. On March 11, 2004, Joseph Adesioye submitted a letter to the Rent Administrator requesting a Spanish/English translator for the hearing. R. at 31. A hearing was held on March 18, 2004 before Hearing Examiner Keith Anderson (Hearing Examiner).[3] On September 16, 2004, the Hearing Examiner

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[2] The record reflects that W&D, LLC registered as the new owner of the Housing Accommodation on July 12, 2002. (R. at 4.) The Barac Company remained the property management company until September 2003, when Washington Communities, L.L.C. became the new property management company. Hearing Tape 4 (RACD Mar. 18, 2004); R. at 4.

[3] Under the Act, the Rent Administrator is authorized to delegate his authority to hold hearings and issue decisions on administrative petitions to a hearing examiner. D.C. OFFICIAL CODE § 42-3502.04(d) (2001) states in relevant part:

> (1) The Rent Administrator may employ . . . personnel and consultants, including hearing examiners . . . reasonably necessary to carry out this chapter.
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> (2) . . . the Rent Administrator may delegate authority to those employees appointed in conformity with paragraph (1) of this subsection. This authority may include, but is not limited to:
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> (A) Hearing administrative petitions filed or initiated under this chapter;
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> (B) Issuing decisions on the petitions; and

issued a final order, Tenants of 809 Kennedy St. v. The Barac Co., VA 02-107 (RACD Sept. 16, 2004) (Final Order).

The Final Order contained the following findings of fact:[4]

1. The subject property is a multi-unit dwelling located at 809 Kennedy St., NW. There are 16 rental units in the housing accommodation.

2. On December 2, 2002, the Housing Provider officially filed with RACD a 70% Voluntary Agreement, which was assigned RACD case file # VA 02-107.

3. Mr. Joseph Adesioye, Ms. Tracy C. Coleman, Ms. Francisca Quel, Ms. Sandra Perez, Mr. Mario Galdamez, Mr. Ned Parrish, Mr. John Young, and Ms. Joanna Williams, are tenants at 809 Kennedy Street, NW and the Petitioners [(Tenants)] in this matter. Washington Communities, through its agent Chris Hayes, owns and operates the subject housing accommodation and is the Respondent [(Housing Provider)] in this matter.

4. The 70% Voluntary Agreement Petition filed with RACD on December 2, 2002 contains two different Tenant Signature pages. There is a discrepancy as to the number of occupied and vacant units listed at the time the 70% Voluntary Agreement was filed with RACD. On the first Tenant Signature page, Apartments Nos. 2, 6, 7, and 23 are listed as vacant. On the second Tenant's signature page, Apartments Nos. 2, 4, 6, 7, 23, 25, 26, and 27 are listed as vacant.

5. Mr. Mario Galdamez has occupied Apartment No. 7 since November 2002.

6. Ms. Francisca Quel has occupied Apartment No. 6 since November 1, 2002.

7. Mr. Jose Bonilla and Ms. Maria Bonilla occupied Apartment No. 4 since October 5, 2002.

8. Ms. Joanna Williams has occupied Apartment No. 27 since June 1, 1997.

(C) Rendering final orders on any petition heard by those employees.

The Commission observes that after the Rent Administrator's February 20 Hearing Order setting a hearing on the Tenants' objections to VA 02-107, the hearing was conducted by, and all subsequent orders were issued by the Hearing Examiner.

[4] The findings of fact and conclusions of law are presented in the same language as in the Decision and Order.

9. As of December 2, 2002, at least Apartments No. 6, 4, 7, and 27 were occupied.

10. As of December 2, 2002, there were a total of 14 occupied units at 809 Kennedy Street, NW.

11. The Housing Provider submitted only 8 out of the 10 signatures required to reach the requisite 70% of tenants' signature [sic] in order to validate the 70% Voluntary Agreement.

12. The Housing Provider, through its agent Luis Afable, failed to distribute a complete information packet to all tenants on the proposed 70% Voluntary Agreement, as required under 14 DCMR Sect. 4213.3 [(2004)].

13. The Housing Provider, through its agent Mr. Luis Afable, failed to afford tenants a minimum of 14 days to consider the 70% Voluntary Agreement proposal, confer with other tenants and respond to housing provider, as required under 14 DCMR Sect. 4213.4 [(2004)].

14. The Housing Provider's only witness at the hearing was Christopher Hayes.

15. All other findings of fact made by the [Hearing] Examiner in this Decision and Order are incorporated by reference into this section of Findings of Fact.

Final Order at 11-12; R. at 128-29.

The Final Order contained the following conclusions of law:

1. The Housing Provider knowingly and intentionally underreported the number of occupied units when it filed the 70% Voluntary Agreement Petition at RACD on December 2, 2002.

2. As of December 2, 2002, the date in which the 70% Voluntary Agreement was filed with DCRA, there were a total of 14 occupied units and only two vacant units at 809 Kennedy Street, NW. Therefore, the 70% Voluntary Agreement is invalid because the Housing Provider failed to obtain the required 10 signatures to complete the requisite 70% of the tenants' signatures.

3. The Housing Provider failed to distribute to each tenant a copy of the Proposed Voluntary Agreement and did not provide the tenants with detailed information regarding the new rent ceiling, new rent to be charged

nor proposed repairs as required under 14 DCMR Sect. 4213.10 [(2004)] and 14 DCMR 4213.11 [(2004)].

4. The Housing Provider did not provide Petitioners [(Tenants)] with a minimum of 14 days to consider the proposal, confer with other tenants and to respond to Housing [P]rovider as required under 14 DCMR Sect. 4213.4 [(2004)].

5. Luis Afable, through fraud, deceit or misrepresentation of material facts, acquired 8 tenant signatures.

6. The rent ceiling and monthly rent increases taken pursuant to the 70% Voluntary Agreement approved by the Rent Administrator and vacated by this Decision and Order are rescinded.

6.[sic] All other conclusions made by the [Hearing] Examiner in this Decision are incorporated by reference into this section of Conclusions of Law.

Final Order at 12-13; R. at 127-28.

The Final Order granted the Tenants' objections to VA 02-107, vacated VA 02-107, and vacated the April 8 Approval Order of the Rent Administrator approving VA 02-107. Id.

On October 4, 2004, the Tenants filed a Motion to Reconsider (Motion to Reconsider) alleging that the Hearing Examiner committed error in failing to award a rent refund, treble damages, and attorney's fees, and requesting that a number of typographical errors in the Final Order be corrected. R. at 148-51. The Hearing Examiner entered an Order on the Motion for Reconsideration on October 19, 2004, in which he granted the Motion to Reconsider as to the correction of typographical errors, and stayed the Motion to Reconsider as to the issues of a rent refund, treble damages and attorney's fees. R. at 153-55.

On October 1, 2004, the Housing Provider filed a notice of appeal with the Commission. See Housing Provider's Notice of Appeal at 1. Thereafter, on October 4, 2004, the Tenants filed

a cross-appeal with the Commission[5] (Tenants' Notice of Cross-Appeal) and the Housing Provider filed an Amended Notice of Appeal (Housing Provider's Amended Notice of Appeal) with the Commission.[6] Housing Provider's Amended Notice of Appeal at 1; Tenants' Notice of Appeal at 1. The Housing Provider's Amended Notice of Appeal raises the following issues:[7]

1. Appellant respectfully suggests that the Hearing Examiner erred, during the hearing on March 4, 2004, when he allowed the admission [sic] Petitioners' [(Tenants')] Exhibits Numbers 6 and 7, despite the fact that Petitioners' [(Tenants')] testimony failed to lay a proper foundation. Accordingly, Petitioners' [(Tenants')] Exhibits Number[ed] 6 and 7 should not have been admitted to prove the Tenants' assertion that there were more tenants residing on the subject property than stated by Housing Provider, on the date of the filing of the 70% Voluntary Agreement.

2. Appellant respectfully avers that the Hearing Examiner incorrectly permitted the testimony of Petitioner [(Tenant)] Francisca Quel, because Tenants' counsel Alejandara Castille [sic], served as Ms. Quel's Spanish interpreter. This is particularly egregious in light of the fact that Petitioners' [(Tenants')] counsel, as part of their representation of the [T]enants, knew or should have known that it was their responsibility to arrange for an interpreter who was not an interested party, to be present at hearing [sic].

3. Appellant asserts that the Hearing Examiner erred when accepting the Tenants' Objections to Rent Increase as a valid objection to the [70% Voluntary] Agreement, because the Tenants failed to file a Tenant Petition. Tenants Joseph Adisioye [sic] and John Young filed tenant petitions individually well after the May 8th, 2003, deadline for objections. The Agency later dismissed these tenant petitions.

4. Appellant respectfully asserts that the Hearing Examiner was incorrect when he determined that the Housing Provider, in the 70% Voluntary

[5] The Commission notes that, although the Tenants styled their Notice of Appeal "Notice of Appeal of Tenant/Appellants," the Tenants in this case are the Appellees and the Cross-Appellants. See Tenants' Notice of Appeal.

[6] Housing Provider filed its first Notice of Appeal on October 1, 2004. Housing Provider's Notice of Appeal at 1. The Amended Notice of Appeal omits the claims numbered fifteen (15) and (16) in the Notice of Appeal, and adds a new claim numbered three (3). See id. at 1-5; Housing Provider's Amended Notice of Appeal at 1-5.

[7] The Housing Provider's issues on appeal are presented in the same language as in the Housing Provider's Amended Notice of Appeal.

Agreement at issue, failed to obtain the requisite amount of valid signatures for the [voluntary] agreement. The Hearing Examiner cannot overrule the Rent Administrator, who previously approved the agreement.

5. Appellant respectfully disagrees with the Hearing Examiner's determination that the Housing Provider obtained the Tenants' signatures for the [70%] Voluntary Agreement by fraud, because the Hearing Examiner incorrectly interpreted the facts. In addition, Appellant asserts that the aforementioned determination is erroneous because the Petitioners [(Tenants)] have failed to prove, by clear and convincing evidence that the Housing Provider obtained the signatures by fraud. Specifically, Petitioners [(Tenants)] have not met their burden of proof, for each specific element of fraud: (1) false representation (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) and [sic] the persons alleging fraud have taken action in reliance upon that representation. The [H]earing [E]xaminer erred in applying the wrong standard of proof.

6. Appellant respectfully asserts that the determination that, the Housing Provider had failed to give Petitioners [(Tenants)] a copy of the 70% Voluntary Agreement after filing it with the agency, is incorrect. Contrary to the testimony of Petitioners [(Tenants)] at the hearing, the Petitioners [(Tenants)] implicitly admitted in their Letter of Objection to the New Rent Increase, dated May 4, 2003, that they had received a copy of the instant [70% Voluntary] Agreement. See record, Respondent's Exhibit No. 5.

7. Appellant respectfully asserts that the Decision and Order was incorrect in invalidating the rent increases based upon the [70% Voluntary] Agreement, because the Housing Provider argues that the Tenants understood the [70% Voluntary] Agreement at the time that they signed it. Further, Appellant believes that the Tenants understood that in return for their consent to pay the increased rent, the Housing Provider would substantially upgrade the subject property.

8. Appellant respectfully advances that the Hearing Examiner's invalidation of the [70% Voluntary] Agreement was incorrect. When the Tenants signed the [70% Voluntary] Agreement, the Housing Provider had promised to execute significant capital improvements and much-needed and statutorily-required repairs, with the expectation that the increased rents would cover the costs of these improvements. Appellant argues that it had fully informed the Tenants of these extremely necessary improvements and repairs that it was going to implement. The Housing Provider has changed its position in reliance on the [70% Voluntary] [A]greement and but for the [70% Voluntary] [A]greement would not

have made the improvements. Indeed, Housing Provider asserts that these extensive improvements, which Appellant has since completed, served as a reasonable inducement for the [T]enants to consent to a rent increase. As it stands, the Decision and Order arrives at an inequitable result, in which Petitioners [(Tenants)] pay rent far below market rate, while they enjoy living in vastly improved physical surroundings. Presently, however, Appellant must pay for thousands of dollars of repairs without recouping the extra rent revenues that it had expected at the time that it had arranged to make these capital improvements.

9. Appellant strongly believes that it must appeal the Decision and Order because the Hearing Examiner failed to rule upon Respondent's Motion to Reopen the Record for Relief from Order Denying Oral Motion for Continuance. Counsel for Housing Provider made an oral motion for continuance, when he learned at the last minute that an essential witness, Louis Afable, who had collected the Tenants' signatures for the [70% Voluntary] Agreement, and who was the only person who could testify as to the validity of the [70% Voluntary] Agreement and to the Petitioners' [(Tenants')] comprehension of the [70% Voluntary] Agreement, had failed to appear at [the] hearing. Mr. Afable had no knowledge of the hearing date and time, because the Barac Company had never received the Notice of [H]earing. Prior counsel for Housing Provider in this matter, Anson Asaka, did not believe that it was necessary to issue a subpoena for Mr. Afable, because Mr. Afable always had been the only client representative that Landlord's counsel had consulted, regarding all matters arising out of landlord and tenant disputes at 809 Kennedy Street, N.W. Indeed, it was not unreasonable for Mr. Asaka to have assumed that Mr. Afable would be appearing, as if he had been named as a Housing Provider in his individual capacity. On dates of previous hearings and trials involving the Housing Provider, Mr. Afable had always appeared as a witness and a client representative. Mr. Afable's expected testimony very likely would have served as the linchpin of Appellant's defense during the hearing. Without Mr. Afable's integral testimony, the Housing Provider could mount only a weak defense, at best.

10. Appellant Asserts that the Hearing Examiner is incorrect for invalidating the rent increases, allegedly due to Housing Provider's fraud, because the Petitioners [(Tenants)], in their Objections to New Rent Increase, dated May 4, 2003, failed to raise fraud as an issue. Accordingly, Appellant had not been on notice up until the date of the hearing that the [T]enants were going to plead fraud as a defense. Though the Tenants later secured counsel, who were experienced in the field of tenants' rights in the District of Columbia, opposing counsel nonetheless neglected to amend the Tenants' Objections to the [70%] Voluntary Agreement to include the

fraud allegation. The Housing Provider therefore wholly was unprepared to defend against Petitioners' [(Tenants')] aforementioned assertion.

11. Finally, Appellant strongly believes that, because the Petitioners [(Tenants)] signed a Rehabilitation Agreement on August 19, 2003, they lost their rights to assert the foregoing arguments at the March, 2004 hearing, and their right to contest the validity of the [70%] Voluntary Agreement. Each individual Rehabilitation Agreement signed by Petitioners [(Tenants)], including Joseph Adisioye [sic], Francisca Quel, Jacqueline Galdamez (signing for her husband, Petitioner [(Tenant)] Mario Galdamez), Denise Taylor, Ned Parrish, Joel Villatoro, Maria Bonilla and John Young, states as follows: "Both the tenant and owner agree that, as of August 29, 2003, all major defects in the above-mentioned apartment have been depicted and no further issues preceding this date may be used to make a housing complaint and *file for rent abatement.*" (Emphasis supplied). Because Petitioners [(Tenants)] waived their right to contest the rate increase, Appellant believes that they could not then assert their aforementioned arguments at the hearing of March 4, 2004.

12. The Agency lacked jurisdiction to hear the petition and grant the relief. The Petitioners' [(Tenants')] remedy was to appeal the order granting the 70% Petition. No collateral attack is permitted.

13. The Hearing Examiner used the wrong burden of proof.

14. The statute does not confer jurisdiction for fraud claims on the Agency.

15. The [T]enants, having accepted the improvements, are estopped to deny their signatures.

Housing Provider's Amended Notice of Appeal at 1-5.

The Tenants, in their Notice of Cross-Appeal, allege the following errors:[8]

1. The [H]earing [E]xaminer erred in finding that there was no record evidence that any Tenants had paid the increase in their monthly rents based on VA 02-107. There is supporting evidence in the record to demonstrate that the Housing Provider both demanded, and received the higher rent from several [T]enants.

[8] The issues raised in the Tenants' cross-appeal are stated in the same language as in the Tenants' Notice of Cross-Appeal.

2. The [H]earing [E]xaminer erred in finding that Respondent did not file suit against any of the Petitioners [(Tenants)]. The record contains evidence to the contrary.

3. It was erroneous to find and conclude that monthly rent levels for each unit are below fair market value. There is no evidence in the record supporting this conclusion.

4. The [H]earing [E]xaminer erred in not ordering a rent refund to [T]enants for the months during which the Housing Provider charged and/or received rent at levels based on VA 02-107. Hudley v. McNair, TP 24,040 (June 30, 1999).

5. The [H]earing [E]xaminer erred in not ordering treble damages and attorneys' fees as a result of actions taken in bad faith by the Housing Provider.

6. The [H]earing [E]xaminer erred in not ordering the payment of fines due to the Housing Provider's violation of the Rental Housing Act.

Tenants' Notice of Cross-Appeal at 1-2.[9]

Tenants filed a brief in support of their cross-appeal on April 1, 2005;[10] no brief was filed by the Housing Provider. Tenants' Cross-Appeal Brief at 1. The Commission held a hearing on

[9] The Commission, in its discretion, will consolidate its discussion of issues 1-4 raised on cross-appeal, because each of these issues allege error related to the Hearing Examiner's failure to award rent refunds. See, e.g., Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012) at n.8; Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012) at n.9. Specifically, the Commission observes that, in the Tenants' brief on cross-appeal ("Tenants' Cross-Appeal Brief"), issues 1-3 are characterized as supporting issue 4, and the overarching allegation that the Hearing Examiner erred in failing to award the Tenants rent refunds. See Tenants' Cross-Appeal Brief at 5-7.

In its discretion, and based on its review of both the Tenants' Notice of Cross-Appeal and the Tenants' Cross-Appeal Brief, the Commission recasts the issues on cross-appeal as follows: (1) Whether the Hearing Examiner erred in not ordering a rent refund to the Tenants; (2) Whether the Hearing Examiner erred in not ordering treble damages; (3) Whether the Hearing Examiner erred in not awarding attorneys' fees; and (4) Whether the Hearing Examiner erred in not ordering the payment of fines. See, e.g. Ahmed, Inc., RH-TP-28,799 at n.8; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.9.

[10] The Tenants' Cross-Appeal Brief was date-stamped as received on March 32, 2005; however, the correct date, April 1, 2005, was handwritten above the date-stamp and initialed by the Commission's representative who received the filing.

this matter on April 27, 2005. The Commission entered an Order on April 29, 2005, directing the parties to respond in writing to five (5) preliminary questions:

1. Does the [Hearing Examiner] have the authority to stay a ruling on a motion for reconsideration pending resolution of the appeal by the Commission?

2. Does the [Hearing Examiner] retain jurisdiction over issues raised in the motion for reconsideration after the time period prescribed for resolving the motion for reconsideration expires?

3. How does 14 DCMR § 4013.4 [(2004)] impact the [H]earing [E]xaminer's decision to stay his ruling?

4. What is the effect of the [H]earing [E]xaminer's order staying resolution of the motion for reconsideration pending resolution of the appeal?

5. Is a remand with instructions to resolve the issue that the [H]earing [E]xaminer stayed an appropriate remedy?

The Barac Co. v. Tenants of 809 Kennedy St., N.W., VA 02-107 (RHC Apr. 29, 2005) at 2. The Commission observes that the Tenants responded in writing on May 25, 2005; the record does not reflect that the Housing Provider submitted a response in writing. *See* Tenants' Post-Hearing Brief at 1.

On July 8, 2005, the Commission issued an Order determining that the Hearing Examiner "did not have the authority pursuant to the Act and the regulations to stay a ruling on the issue of awarding damages raised in the [Tenants'] [M]otion for [R]econsideration." See The Barac Co., VA 02-107 (RHC July 8, 2005) at 7.

II. PRELIMINARY ISSUE

On June 19, 2008, Ann Marie Y. Hay, counsel for the Tenants, filed a motion asking for leave to withdraw as counsel ("Motion to Withdraw"). Motion to Withdraw at 1. Ms. Hay sought to withdraw because she was "leaving the Law Students in Court Program." Id. She

sought to withdraw only on behalf of herself, and stated that the Law Students in Court Program would continue to represent the Tenants in this matter, with Dorene M. Haney acting as the supervising attorney. Id. Ms. Hay represented that there would be no prejudice to the Tenants because they would continue to have counsel through the Law Students in Court Program. Id.

The Commission's applicable regulations on the withdrawal of counsel state, respectively, as follows:

> If an attorney or other person representing a party wishes to withdraw from a case pending before the Commission, a written motion for application to withdraw shall be filed.

See 14 DCMR § 3813.1 (2004).

> The motion shall state whether the party consents to or opposes the motion and whether the party will be unrepresented or will have substitute representation. A copy of the motion shall be served on the party and the party advised that he or she has the right to oppose the motion.

See 14 DCMR § 3813.2 (2004).

> The motion shall state the specific reasons for withdrawal and shall state whether the absence of representation will prejudice the rights of the party.

See 14 DCMR § 3813.3 (2004).

> Motions for application to withdraw shall be promptly decided.

See 14 DCMR § 3813.4 (2004).

In this case, the Commission is satisfied that Ms. Hay properly filed the Motion to Withdraw in accordance with 14 DCMR §§ 3813.1-.4 (2004). Furthermore, the Motion to Withdraw was unopposed by the Housing Provider. Accordingly, the Commission grants Ms. Hay's Motion to Withdraw and notes that the Tenants will still be represented by the Law Students in Court Program, with Dorene Haney acting as the supervising attorney.

III. THE HOUSING PROVIDER'S ISSUES ON APPEAL[11]

A. Whether the Hearing Examiner erred in his determination that the Housing Provider obtained the Tenants' signatures for the 70% Voluntary Agreement by fraud, because the Hearing Examiner incorrectly interpreted the facts and the Tenants have failed to prove, by clear and convincing evidence that the Housing Provider obtained the signatures by fraud.

B. Whether the Hearing Examiner erred in his determination that the Housing Provider had failed to give Petitioners [Tenants] a copy of the 70% Voluntary Agreement after filing it with the agency.

C. Whether the Hearing Examiner erred when he accepted the Tenants' Objections to Rent Increase as a valid objection to the 70% Voluntary Agreement, because the Tenants failed to file a Tenant Petition.

D. Whether the Agency lacked jurisdiction to hear the petition and grant the relief.

E. Whether the statute confers jurisdiction for fraud claims on RACD.

F. Whether the Hearing Examiner erred by overruling the Rent Administrator, who previously approved the [70% Voluntary] [A]greement.

G. Whether the Hearing Examiner erred in invalidating the rent increases based upon the 70% Voluntary Agreement, because the Housing Provider argues that the Tenants understood the Agreement at the time that they signed it.

H. Whether the Hearing Examiner erred by invalidating the 70% Voluntary Agreement, because when the Tenants signed the 70% Voluntary Agreement, the Housing Provider had promised to execute significant capital improvements and much-needed and statutorily-required repairs, with the expectation that the increased rents would cover the costs of these extremely necessary improvements and repairs that it was going to implement.

I. Whether the Tenants, having accepted the improvements, are estopped from denying their signatures.

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[11] The Commission has reworded the statement of the Housing Provider's issues on appeal in this section of its Decision and Order to omit the Housing Provider's supporting assertions that followed each of the stated issues in the Housing Provider's Amended Notice of Appeal, as well as to omit any typographical errors. See Housing Provider's Amended Notice of Appeal at 1-5. For the complete language of the Housing Provider's Amended Notice of Appeal, see supra at 6-9.

Additionally, the Commission, in its discretion, has reordered the Housing Provider's issues on appeal for ease of discussion, and to group together claims that involve overlapping legal issues and the application of common legal principles. See, e.g., Ahmed, Inc., RH-TP-28,799 at n.8; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.9.

J. Whether the Hearing Examiner erred by failing to rule upon Respondent's Motion to Reopen the Record for Relief from Order Denying Oral Motion for Continuance.

K. Whether the Hearing Examiner erred by invalidating the rent increases, allegedly due to Housing Provider's fraud, because the Tenants in their Objections to New Rent Increase, dated May 4, 2003, failed to raise fraud as an issue.

L. Whether the Tenants were barred from contesting the validity of the 70% Voluntary Agreement because they had signed a Rehabilitation Agreement on August 19, 2003.

M. Whether the Hearing Examiner erred during the hearing on March 4, 2004 when he allowed the admission of the Tenants' Exhibits numbered 6 and 7.

N. Whether the Hearing Examiner incorrectly permitted the testimony of Tenant Francisca Quel, because the Tenants' counsel, Alejandra Castillo, served as Ms. Quel's Spanish interpreter.

O. Whether the Hearing Examiner used the wrong burden of proof.

IV. THE TENANTS' ISSUES ON APPEAL[12]

A. Whether the Hearing Examiner erred in not ordering a rent refund to the Tenants;

B. Whether the Hearing Examiner erred in not awarding attorneys' fees;

C. Whether the Hearing Examiner erred in not ordering treble damages; and

D. Whether the Hearing Examiner erred in not ordering the payment of fines.

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

The Commission observes that this case involves a review of the Hearing Examiner's conclusions in the Final Order granting the Tenants' objections and exceptions to VA 02-107, and vacating VA 02-107. Final Order at 13; R. at 127. Therefore, before addressing the issues

[12] For the complete language of the issues raised in the Tenants' Notice of Cross-Appeal, see supra at 9-10. In its discretion, the Commission has reordered the issues on Cross-Appeal for ease of discussion. See, e.g. Ahmed, Inc., RH-TP-28,799 at n.8; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.9.

on appeal, the Commission will set forth the standards under the Act related to voluntary agreements.

Under the Act, "seventy (70) percent or more of the tenants of a housing accommodation may enter into a voluntary agreement with the housing provider . . . ." D.C. OFFICIAL CODE § 42-3502.15(a) (2001). The Commission observes that the relevant regulations governing voluntary agreements at 14 DCMR § 4213 (2004) provide the following mandatory procedural guidelines (with emphasis as indicated) that must be followed when tenants and housing providers seek to enter into a voluntary agreement:

> 4213.3 If a housing provider initiates a voluntary agreement, the housing provider shall distribute a copy of the proposed agreement to each tenant accompanied by a written notice that describes in detail the proposed rent ceilings that would be established, the proposed changes in related services or facilities, and the proposed capital improvements and ordinary maintenance and repairs.
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> 4213.4 Each tenant shall be permitted a minimum of fourteen (14) days to consider the proposal, confer with other tenants, and respond to the housing provider.
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> 4213.10 Before execution of a voluntary agreement by a housing provider and at least seventy percent (70%) of the tenants who reside in the housing accommodation, a copy of the final proposed agreement shall be distributed to each tenant eligible to sign.
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> 4213.11 A proposed voluntary agreement shall contain at least the following:
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> (a) The current and proposed rent ceilings and rent for each rental unit and the amount of the proposed rent change on both;
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> (b) The current and proposed levels of related services or facilities under the agreement;
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> (c) All other conditions (including specific repairs to be made) by which the housing provider agrees to be bound;
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> (d) All other conditions by which the tenants agree to be bound;

(e) A statement that the agreement is voluntary and that no form of coercion was imposed by the housing provider or any tenant in securing the signatures of the tenants; and

(f) A listing of all tenants in the housing accommodation by name and rental unit numbers or identifying letters, a space for each tenant's signature and telephone number, and a space for each tenant to approve or disapprove the agreement.

4213.19 The Rent Administrator may disapprove a voluntary agreement that has been approved by seventy percent (70%) of the tenants only in the following circumstances:

(a) If all or part of the tenant approval has been induced by duress, harassment, intimidation or coercion;

(b) If all or part of the tenant approval has been induced by fraud, deceit or misrepresentation of material facts; or

(c) If the voluntary agreement contradicts the provisions of § 102 of the Act or results in inequitable treatment of the tenants.

(emphasis added). The Commission will apply the aforementioned standards to determine the merits of the issues raised by the parties regarding the 70% Voluntary Agreement and the Final Order.

A. Whether the Hearing Examiner erred in his determination that the Housing Provider obtained the Tenants' signatures for the 70% Voluntary Agreement by fraud, because the Hearing Examiner incorrectly interpreted the facts and the Tenants have failed to prove, by clear and convincing evidence that the Housing Provider obtained the signatures by fraud.

In the Amended Notice of Appeal, the Housing Provider asserts as follows:

Petitioners have failed to prove by clear and convincing evidence...each specific element of fraud: (1) false representation (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) and [sic] the persons alleging fraud have taken action in reliance upon that representation.

Housing Provider's Amended Notice of Appeal at 2.[13] The Commission's review of the Housing Provider's Amended Notice of Appeal reveals that the Housing Provider has not provided any statute, regulation, or caselaw as precedent to support this contention. See id.

The Commission observes the applicable regulation provides as follows: "[t]he Rent Administrator may disapprove a voluntary agreement which has been approved by seventy percent (70%) of the tenants only in the following circumstances: . . . (b) [i]f all or part of the tenant approval has been induced by fraud, deceit or misrepresentation of material facts . . . ." 14 DCMR § 4213.19 (2004) (emphasis added). The Commission notes that, contrary to the Housing Provider's statement of this issue on appeal, fraud is not the only legal ground for disapproval of a voluntary agreement under 14 DCMR § 4213.19 (2004) – deceit and/or misrepresentation of material facts are additional, alternative grounds under the regulation.

The Commission's standard of review is contained at 14 DCMR § 3807.1 (2004), and provides the following:

> The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

Substantial evidence has been defined by the Commission as "such relevant evidence as a reasonable mind might accept as able to support a conclusion." See, e.g., Hago v. Gewirz, RH-TP-08-12,085 (RHC Feb. 15, 2012) (citing Fort Chaplin Park Assocs., 649 A.2d at 1079. See also Allen v. D.C. Rental Hous. Comm'n, 538 A.2d 752, 753 (D.C. 1988). The Commission has

[13] The Commission observes that, although the Housing Provider contends that the applicable burden of proof is "clear and convincing evidence," he is mistaken, because the Act provides that at an RACD hearing, "the proponent of a rule or order shall have the burden of establishing each finding of fact essential to the rule or order by a preponderance of evidence." See 14 DCMR § 4003.1 (2004) (emphasis added).

consistently stated that "[w]here substantial evidence exists to support the hearing examiner's findings, even 'the existence of substantial evidence to the contrary does not permit the reviewing agency to substitute its judgment for that of the [hearing] examiner.'" See Boyd v. Warren, RH-TP-10-29,816 (RHC June 5, 2013) (quoting Hago, TP 11,552 & 12,085 at 6); Loney v. Tenants of 710 Jefferson St., N.W., SR 20,089 (RHC Jan. 29, 2013) at n.13; Ahmed, Inc., RH-TP-28,799; Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012).

The Commission observes that, in the "Evaluation and Analysis of the Evidence" section of the Final Order, the Hearing Examiner significantly misstated the applicable standard under 14 DCMR § 4213.19(b) (2004), claiming that the Tenants' approval of VA 02-107 was induced by the Housing Provider "through misrepresentation of facts, deceit and fraud [under 14 DCMR § 4213.19(b) (2004)]" Compare Final Order at 8; R. at 132 (emphasis added), with 14 DCMR § 4213.19(b) (2004). Although the Commission notes that the Hearing Examiner's failure to correctly state the text of the Act's regulations constitutes "plain error" under 14 DCMR § 3807.4 (2004),[14] the Commission is satisfied that in this instance the error was harmless for a number of reasons.[15]

First, the Commission observes that the Hearing Examiner's initial misstatement of the text of 14 DCMR § 4213.19(b) (2004) was corrected in the Conclusions of Law section of the

[14] 14 DCMR § 3807.4 (2004) provides the following: "Review by the Commission shall be limited to the issues raised in the notice of appeal; provided, that the Commission may correct plain error."

[15] The Commission has defined harmless error as "[a]n error which is trivial . . . and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case . . . ." See Belmont Crossings v. Jackson, TP 28,292 (RHC Nov. 8, 2012) (quoting BLACK'S LAW DICTIONARY 646 (5th ed. 1975). See also Shipe v. Carter, RH-TP-08-29,411 (RHC Sept. 18, 2012) (determining ALJ's error was harmless where it did not affect the outcome of the final order); Smith v. Joshua, RH-TP-07-28,961 (RHC Feb. 2, 2012) at n.2 (determining that ALJ's misstatement of the date of an electrician's report was harmless error); Ford v. Dudley, TP 23,973 (RHC June 3, 1999) (determining that hearing examiner's misstatement of the tenant's burden of proof as "clear and convincing evidence" rather than "a preponderance of the evidence" was harmless error where the substantial evidence nevertheless supported the findings of fact).

Final Order, where he concluded that: "Luis [sic] Afable, through fraud, deceit or misrepresentation of material facts, acquired 8 tenant signatures." See Final Order at 13; R. at 127 (emphasis added). Furthermore, the Commission notes that the Hearing Examiner's initial statement that the Tenants' approval of VA 02-107 was induced "through misrepresentation of facts, deceit and fraud," arguably requires a more substantial evidentiary burden to support three legal standards as opposed to the evidentiary burden for one legal standard under 14 DCMR § 4213.19(b) (2004), which requires only a finding of fraud, deceit, or misrepresentation of material facts. Compare 14 DCMR § 4213.19(b) (2004), with Final Order at 8; R. at 132. See, e.g., Garcia v. United States, 469 U.S. 70, 73 (1984) ("Canons of construction indicate that terms connective in the disjunctive [(i.e., by "or")] . . . be given separate meanings"); Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979) ("Canons of construction ordinarily suggest that terms connected by a disjunctive [("or")] be given separate meanings, unless the context dictates otherwise"); Sanders v. Molla, 985 A.2d 439, 442 (D.C. 2009) (explaining that the separation of elements in a statute by the term "and" usually has a conjunctive connotation); Shipkey v. D.C. Dep't of Emp't Servs., 955 A.2d 718, 725 (D.C. 2008) (stating that the "use of 'or' instead of 'and' suggests that the factors enumerated [in a three-prong legal test] are to be considered separately, not in combination").

Furthermore, the Commission's review of the record confirms that the Hearing Examiner's conclusion that the Tenants' approval of VA 02-107 was induced by "fraud, deceit or misrepresentation of material facts," is supported by substantial record evidence.[16] 14 DCMR

[16] The Commission notes the use by the DCCA of the following broad, treatise-based definitions of the terms "fraud," "deceit," and "misrepresentation," when such legal standards are operative in a case: "Fraud is a generic term which embraces all of the multifarious means...resorted to by one individual to gain...an advantage over another by false suggestions or by suppression of the truth," In re Shorter, 570 A.2d 760, 768 n.12 (D.C. 1990)

§ 3807.1 (2004). See Final Order at 13; R. at 127. For example, the Commission's review of the record indicates that the Hearing Examiner considered the following evidence to support his conclusion that all or part of the Tenants' approval of VA 02-107 had been induced by fraud, deceit, or misrepresentation of material facts (see 14 DCMR § 4213.19 (2004)):

> Petitioner Mario Galdamez testified through a court interpreter, that...Luis Afable, employee of Respondent's agent, the Barac Company, came to his apartment requesting Petitioner's signatures. Petitioner Galdamez testified that he asked Mr. Afable why his signature was needed, to which Mr. Afable responded that his signature was needed to protect him should the Barac Company wish to raise his rent in the future. Mr. Galdamez testified that he was given a blank paper with a list of numbers written along the left-hand side of the sheet corresponding to each of the apartment units at 809 Kennedy Street, NW. Mr. Galdamez also stated that Mr. Afable assured him that while it is possible that the rent may be increase [sic] approximately $10.00 per year, by providing his signature, he would be protected from any future rent increases by the Barac Company. Petitioner Galdamez stated that Mr. Afable indicated that other tenants had signed the sheet (specifically Ms. Perez) and told him that he should sign too. Mr. Galdamez stated that he signed the blank paper next to the number representing his unit, No. 7.
>
> Petitioner Sandra Perez testified that Mr. Afable visited her apartment and requested her signature. Petitioner Perez stated that Mr. Afable explained that he was seeking every tenant's signature in order to register the building. Petitioner Perez stated that Mr. Afable spoke of repairs to her apartment and throughout the building. However, she testified that Mr. Afable never told her that her rent would increase, or that by signing the sheet of paper she would be entering into a 70% Voluntary Agreement. Ms. Perez stated that she asked Mr. Afable whether her rent would be increased to which he responded that she could expect an increase of $25.00 a year. Petitioner Perez stated that had she known her signature would be used to increase her rent she would not have signed.
>
> Petitioner Ned Parrish testified that Mr. Luis Afable came to his apartment and requested his signature. Petitioner Parrish explained that Mr. Afable stated that he

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(quoting 37 C.J.S. *Fraud* § 1 (1943)); "Deceit is the suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact," see id. (quoting 26 C.J.S. *Deceit* (1956)); "Misrepresentation is the statement made by a party that a thing is in fact a particular way, when it is not so; untrue representation; false or incorrect statements or account." See id. (quoting 58 C.J.S. *Misrepresentation* (1948)).

was collecting tenants' signatures in order to properly register the building under the new owners W&D, LLC.

Petitioner John Young testified that Mr. Luis Afable came to his apartment seeking his signature in order to approve repairs in his apartment. Petitioner Young stated that Mr. Afable did not advise him that the approval of repairs would also constitute an approval to a 70% Voluntary Agreement nor a rent increase.

Respondent, once again, claims that Mr. Afable provided each tenant with information regarding repairs and a rental increase. However, Mr. Afable was not available to provide any testimony, or to submit to cross-examination.

Final Order at 8-9; R. at 132-33 (emphasis added).

The Commission observes that, contrary to the Housing Provider's statement of this issue on appeal, the Hearing Examiner was not required to determine "fraud" as the sole basis for disapproving VA 02-107 under 14 DCMR § 4213.19 (2004). The Commission determines that substantial evidence in the record, as recited supra, supports the Hearing Examiner's conclusion that all or part of the Tenants' approval of VA 02-107 was induced by fraud or deceit or misrepresentation of material facts, pursuant to 14 DCMR § 4213.19 (2004), see supra at 19 n.16, and accordingly the Commission affirms the Hearing Examiner on this issue. 14 DCMR § 4213.19 (2004). See R. at 125-39; Hearing Tape (RACD Mar. 18, 2004).

B. Whether the Hearing Examiner erred in his determination that the Housing Provider had failed to give Petitioners a copy of the 70% Voluntary Agreement after filing it with the agency.

The Housing Provider contends that the Hearing Examiner erred in his determination that the Housing Provider had failed to provide the Tenants with a copy of VA 02-107 after filing it with the RACD, because, the Housing Provider asserts, the "[Tenants] implicitly admitted in their Letter of Objection to the New Rent Increase, dated May 4, 2003, that they had received a

copy of the instant [70% Voluntary] [A]greement." See Housing Provider's Amended Not. of Appeal at 3 (citing Respondent's Exhibit 5).

As the Commission previously explained, see supra at 14-16, the regulations at 14 DCMR § 4213 (2004) provide mandatory procedural safeguards that must be followed by a housing provider seeking tenant approval of a voluntary agreement, including that a housing provider must give the tenants prior written notice of a proposed voluntary agreement. See 14 DCMR § 4213.3 (2004).

As the Commission stated supra at 17, the Commission will uphold decisions by the Hearing Examiner that are supported by substantial evidence in the record. 14 DCMR § 3807.1 (2004). The Commission observes that the Hearing Examiner made the following finding of fact from the record regarding the Housing Provider's circulation and distribution of VA 02-107 to the Tenants:

> 12. The Housing Provider, through its agent, Luis Afable, failed to distribute a complete information packet to all tenants on the proposed 70% Voluntary Agreement, as required under 14 DCMR Sect. 4213.3.

See Final Order at 12; R. at 128. Additionally, the Hearing Examiner made the following conclusion of law regarding the Housing Provider's distribution of VA 02-107 to the Tenants:

> 3. The Housing Provider failed to distribute to each tenant a copy of the Proposed Voluntary Agreement and did not provide the tenants with detailed information regarding the new rent ceiling, new rent to be charged nor proposed repairs as required under 14 DCMR Sec. 4213.10 (2004) and 14 DCMR Sect. 4213.11 (2004).

Final Order at 12-13; R. at 127-28.

The Commission's review of the record reveals substantial evidence to support the Hearing Examiner's aforementioned finding of fact (numbered 12) and conclusion of law

(numbered 3), particularly the following unrebutted testimony given at the March 18, 2004 RACD hearing:[17]

1. Housing Provider handed Tenant Mario Galdamez a copy of "Respondent's Exhibit 1" – the 809 Kennedy St. VA and asked whether Mr. Galdamez had ever seen that document before. Mr. Galdamez replied "no."

2. During the testimony of Tenant Sandra Perez, Housing Provider asked "isn't it true that you received the entire [809 Kennedy St.] Voluntary Agreement?" Ms. Perez replied that she had never received it, and also stated that the first time she saw the 809 Kenney St. VA was at the March 18, 2004 hearing.

3. Housing Provider asked Tenant Ned Parrish whether the property manager hand-delivered a copy of the 809 Kennedy St. VA (Respondent's Exhibit 1) to him, and Mr. Parrish responded "no he did not."

5. Tenants' witness Wilber Beret (who resides with Tenant Joanna Williams) testified that neither he nor his mother Ms. Williams were approached regarding a

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[17] The Housing Provider asserts in the Amended Notice of Appeal that "Respondent's Exhibit 5," a "Letter of Objection to New Rent Increase, date[d] May 4, 2003" (hereinafter "Letter"), contradicts the Hearing Examiner's findings on this issue. See Housing Provider's Amended Notice of Appeal at 3. Having reviewed the record, the Commission determines that the Letter was not submitted as evidence at the March 18, 2004 RACD hearing, but was only submitted for the first time with "Respondent's Response to Petitioner's Proposed Decision and Order" on May 11, 2004. See R. at 113-24. The Commission's review of the record reveals that the Hearing Examiner left the record open after the March 18, 2004 RACD hearing for the sole purpose of allowing the parties to each submit a proposed decision and order, and thereafter a response, if any, to the other party's proposed decision and order – not for the submission of additional evidence. Hearing Tape 4 (RACD Mar. 18, 2004). Therefore, the Commission notes that the Letter was not admitted into evidence by the Hearing Examiner, and furthermore that the submission of the Letter after the evidentiary hearing deprived the Tenants of their due process rights to review and cross-examine such evidence, or to present rebuttal evidence in response to the Letter. See D.C. OFFICIAL CODE § 2-509(b) (2001) (. . . Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts . . . .). See also, e.g., Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug 15, 2013) (stating that under the DCAPA, due process requires that parties have the right to present rebuttal evidence and cross-examiner witnesses); Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012) ("In contested cases, due process considerations guarantee both a tenant and a housing provider the opportunity to present evidence and argument, the right to present rebuttal evidence and to cross-examine witnesses, and to receive a decision in writing, based on the record"); Borger v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009) (citing Richard Milburn Pub. Charter Alt. High Sch. v. Cafritz, 798 A.2d 531, 539 n.6 (D.C. 2002)) (explaining that due process standards require that parties be able to present oral and documentary evidence, and cross-examiner witnesses at a contested case hearing, in accordance with D.C. OFFICIAL CODE § 2-509 (2001)). Furthermore, the Commission notes that the Letter is new evidence that may not be considered on appeal. 14 DCMR § 3807.5 (2004) ("[t]he Commission shall not receive new evidence on appeal). See, e.g., Prosper v. Pinnacle Mgmt., TP 27,783 (RHC Jan. 19, 2012); Jared v. Easter, TP 28,159 (RHC Feb. 9, 2011); Hawkins v. Jackson, RH-TP-08-29,201 (RHC Aug. 31, 2009).

signature needed on the 809 Kennedy St. VA. Mr. Beret stated that the first time he learned of the 809 Kennedy St. VA was "in a letter dated April 8th."

6. Tenant Tracey Coleman testified that she had never received a copy of the 809 Kennedy St. VA, and that she first learned of the 809 Kennedy St. VA in a letter mailed out April 25, indicating a rent increase effective June 1.

7. Tenant Joseph Adesioye testified that he never received any request to sign the 809 Kennedy St. VA, and that the first time he learned of it was in a letter he received in April, 2003.

Hearing Tape (RACD Mar. 18, 2004).

The Commission is satisfied, based on its review of the record, that the Hearing Examiner's determination that "each tenant" of the Housing Accommodation was not given a copy of the proposed VA 02-107, as required by 14 DCMR § 4213.3 (2004), is supported by substantial evidence. See Final Order at 12-13; R. at 127-28; Hearing Tape (RACD Mar. 18, 2004). Accordingly, based on its review of the Act, the applicable regulation at 14 DCMR § 4213.3 (2004), and substantial record evidence, the Commission affirms the Hearing Examiner's conclusion that the Housing Provider did not comply with the Act's notice requirements. See 14 DCMR §§ 3807.1, 4213.3 (2004). See generally, Hearing Tape (RACD Mar. 18, 2004).

C. Whether the Hearing Examiner Erred When He Accepted the Tenants' Objections to Rent Increase As a Valid Objection to the 70% Voluntary Agreement.

D. Whether the Agency lacked jurisdiction to hear the petition and grant the relief.

E. Whether the statute confers jurisdiction for fraud claims on RACD.[18]

[18] The Commission, in its discretion, will combine its discussion of issues "C," "D," and "E," because it observes that these issues raise substantially similar contentions – namely, whether the Hearing Examiner had jurisdiction over the Tenants' written objections to VA 02-107, see Housing Provider's Amended Notice of Appeal at 2, 5, and because they involve overlapping legal issues and the application of common legal principles. See, e.g., Ahmed, Inc., RH-TP-28,799 at n.8; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.9.

The Housing Provider contends that the Hearing Examiner lacked jurisdiction to hear the Tenants' objections to VA 02-107, because the proper method under the Act to challenge a voluntary agreement is through either a tenant petition or an appeal of the Rent Administrator's order granting the voluntary agreement, not by filing exceptions and objections, as was done by the Tenants in this case. See Housing Provider's Amended Notice of Appeal at 2, 5. Additionally, the Housing Provider asserts generally that the Hearing Examiner lacks jurisdiction over fraud claims. See id. at 5.

The Act specifically delineates the jurisdiction of the Rent Administrator, and hearing examiners, as follows: "[t]he Rent Administrator shall have jurisdiction over those complaints and petitions arising under subchapter II, IV, V, VI, and IX of this chapter [35] and title [42] . . . of the Rental Housing Act . . . which may be disposed of through administrative proceedings."[19] D.C. OFFICIAL CODE § 42-3502.04(c) (2001). See supra at 2 n.3. The Commission observes that subchapter II of chapter 35, title 42, establishes voluntary agreements, and gives the Rent Administrator, and hearing examiners, jurisdiction over complaints and petitions arising out of such voluntary agreements. See D.C. OFFICIAL CODE §§ 42-3502.4, 3502.15 (2001).

Furthermore, applicable regulations under the Act governing voluntary agreements provide that tenants shall be given a reasonable opportunity to object to a voluntary agreement; if the Rent Administrator or a hearing examiner determines that there is substantial evidence that credible grounds exist for disapproving the voluntary agreement based upon a tenant's objections

[19] Subchapter II comprises D.C. OFFICIAL CODE §§ 42-3502.01-3502.21 (2001); subchapter IV comprises D.C. OFFICIAL CODE § 3504.01 (2001); subchapter V comprises D.C. OFFICIAL CODE §§ 3505.01-3505.05 (2001); subchapter VI comprises D.C. OFFICIAL CODE §§ 3506.01-3506.02 (2001); subchapter IX comprises D.C. OFFICIAL CODE §§ 3509.01-3509.07 (2001).

and exceptions, the Rent Administrator or a hearing examiner is required to hold a hearing for the presentation of testimony and documentary evidence from each party. See 14 DCMR §§ 4213.1, -.13, -.18 (2004).[20] Finally, the Commission notes that the regulations provide for the disapproval of a voluntary agreement where "all or part of the tenant approval has been induced by fraud, deceit or misrepresentation of material facts." See 14 DCMR § 4213.19 (2004). See also supra at 16-21.

The Commission is satisfied that in this case, both the Rent Administrator's April 8 Approval Order providing the Tenants with the option of filing written objections to VA 02-107, see 14 DCMR § 4213.13 (2004), as well as the Rent Administrator's February 20 Hearing Order setting a hearing on those objections, see 14 DCMR § 4213.18 (2004), were in accordance with the Act and the applicable regulations. 14 DCMR § 3807.1 (2004). See D.C. OFFICIAL CODE §§ 42-3502.04, 3502.15 (2001); 14 DCMR §§ 4213.1, -.13, -.18 (2004). Additionally, the Commission is satisfied that the Act establishes the jurisdiction of the Hearing Examiner over claims that all or part of the tenant approval of a voluntary agreement was induced by fraud,

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[20] 14 DCMR § 4213.1 (2004) provides the following:

> Tenants and housing providers may enter into voluntary agreements pursuant to §215 of the Act for the following purposes: (a) to establish rent ceilings; (b) to change related services or facilities; or (c) to provide for capital improvements and ordinary maintenance and repairs.

14 DCMR § 4213.13 (2004) provides the following:

> When a voluntary agreement has been approved by seventy percent (70%) of the tenants in a housing accommodation and the housing provider, the Rent Administrator shall approve the voluntary agreement...; Provided, that the Rent Administrator shall provide a reasonable opportunity for tenants with objections to submit the objections in writing.

14 DCMR § 4213.18 (2004) provides the following:

> If the Rent Administrator, pursuant to §4213.13, determines that there is substantial evidence that credible grounds for disapproval are present, a hearing shall be conducted so that the parties can present testimony and documentary evidence in support of or in response to the grounds determined by the Rent Administrator.

deceit, or misrepresentation of material facts. See D.C. OFFICIAL CODE §§ 42-3502.04, 3502.15 (2001); 14 DCMR § 4213.19 (2004). Accordingly, the Commission affirms the Hearing Examiner's exercise of jurisdiction over this case. See D.C. OFFICIAL CODE §§ 42-3502.04, 3502.15 (2001), 14 DCMR §§ 3900.3, 4213.1,-.13, -.18, -.19 (2004).

F. Whether the Hearing Examiner erred by overruling the Rent Administrator, who previously approved the agreement.

The Housing Provider asserts that the Hearing Examiner erred when he determined that VA 02-107 did not contain the requisite amount of signatures, because the Hearing Examiner did not have the ability to disapprove VA 02-107 after it had been previously approved by the Rent Administrator.[21] See Housing Provider's Amended Notice of Appeal at 2.

The Commission has previously drawn a distinction between "administrative approval" of a voluntary agreement, and approval that occurs after a judicial proceeding. See Walker v. Jerome Mgmt. Co., TP 12,089 (RHC Oct. 23, 1986). See also Schultz v. Fred A. Smith Co., TP 24,241; TP 24,245 (RHC July 16, 1999) ("[voluntary] agreements require administrative approval by the Rent Administrator before they take effect"); John v. Henson, TP 20,935 (RHC Sept. 23, 1991) (determining that a tenant may challenge a voluntary agreement after administrative approval by the Rent Administrator).

In Walker, TP 12,089, the housing provider maintained that the validity of the voluntary agreement had been "conclusively determined" by the Rent Administrator, and therefore that the tenant was precluded from "re-raising and re-litigating" the issue of the validity of the voluntary agreement through the filing of a tenant petition. See Walker, TP 12,089 at 7. The Commission explained that an agency's decision on a particular claim will only have a preclusive effect on the

[21] The delegation of the Rent Administrator's authority to the Hearing Examiner is governed by D.C. OFFICIAL CODE § 42-3502.04(d) (2001). See supra at 2 n.3.

subsequent litigation of such a claim, if the claim is first decided "when '[t]he agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an opportunity to litigate.'" See id. at 8 (quoting William J. Davis, Inc. v. Young, 412 A.2d 1187, 1194 (D.C. 1980)) (emphasis added). The Commission determined in Walker, TP 12,089, that because the Rent Administrator had not held an adjudicatory hearing prior to approving the voluntary agreement, his approval violated a tenant's due process rights by denying the tenant an opportunity to oppose the voluntary agreement in an "adversarial, fact-finding hearing" or other process equivalent to a judicial proceeding. See id. at 9.

The Commission's review of the record reveals that the Rent Administrator's April 8 Approval Order approving VA 02-107 was not entered after any adversarial or adjudicatory proceeding. See Final Order; April 8 Approval Order. Therefore the Commission determines that the April 8 Approval Order does not bar the Tenants' filing of objections to VA 02-107 on May 8, 2003, as a method of asserting their right to oppose VA 02-107 in an "adversarial, fact-finding hearing." See Walker, TP 12,089 (RHC Oct. 23, 1986); R. at 21. Furthermore, the Commission notes that it has previously determined the propriety of an adjudicatory proceeding on tenant objections to a voluntary agreement after the Rent Administrator has approved such voluntary agreement in an administrative decision. See Killingham v. Marina View Trustee, LLC, VA 07-017 (RHC July 8, 2011) (tenant was permitted to file objections and exceptions to the Rent Administrator's Order approving a voluntary agreement). See also John, TP 20,935; Walker, TP 12,089.

Accordingly, the Commission is satisfied that the Act did not prohibit the Hearing Examiner from holding a hearing on, and issuing a decision related to, VA 02-107 after it had

been previously approved by the Rent Administrator. See 14 DCMR 3807.1 (2004). The Commission thus affirms the Hearing Examiner on this issue.

G. Whether the Hearing Examiner erred in invalidating the rent increases based upon the 70% Voluntary Agreement, because the Housing Provider argues that the Tenants understood the Agreement at the time that they signed it.

H. Whether the Hearing Examiner erred by invalidating the 70% Voluntary Agreement, because when the Tenants signed the 70% Voluntary Agreement, the Housing Provider had promised to execute significant capital improvements and much-needed and statutorily-required repairs, with the expectation that the increased rents would cover the costs of these extremely necessary improvements and repairs that it was going to implement.[22]

In the Amended Notice of Appeal, the Housing Provider asserts that the Hearing Examiner erred in invalidating the rent increases under VA 02-107, because (1) "the Tenants understood the Agreement at the time that they signed it," and (2) "the Housing Provider had promised to execute significant capital improvements and . . . repairs, with the expectation that increased rents would cover the costs of those improvements." Amended Notice of Appeal at 3. Furthermore, the Housing Provider contends that the proposed capital improvements to the Housing Accommodation "served as a reasonable inducement for the tenants to consider a rent increase." See id.

The Commission is not persuaded by the Housing Provider that the Hearing Examiner erred in invalidating VA 02-107 on the basis of the above reasons. The Commission's review of the substantial evidence in the record, with respect to the material misstatements of fact by Mr. Afable to induce the Tenants to sign VA 02-107, see supra at 20-21, does not support the Housing Provider's contention that the Hearing Examiner erred in failing to invalidate VA 02-

[22] The Commission will combine its discussion of issues G and H because both issues involve overlapping legal issues and the application of common legal principles.

107 because the Tenants understood the terms of the voluntary agreement at the time they signed it. See supra at 16-24. See also Hearing Tape (RACD Mar. 18, 2004).

The Commission determines that neither the Act its regulations required the Hearing Examiner to approve VA 02-107 for the reasons urged by the Housing Provider: (1) that the Housing Provider was only induced to provide capital improvements to the Housing Accommodation on the belief that VA 02-107 had been, or would be, approved by the Rent Administrator; or (2) that the Tenants agreed to sign VA 02-107 as a result of the capital improvements provided by the Housing Provider. See generally, D.C. OFFICIAL CODE § 42-3502.15 (2001); 14 DCMR § 4213 (2004).

Of equal, if not greater importance, however, regarding the Commission's determination that the Hearing Examiner properly disapproved VA 02-107, is the lack of substantial evidence in the record that the Housing Provider complied with the mandatory procedural safeguards in the Act's regulations to which a housing provider must adhere for approval of a voluntary agreement. 14 DCMR §§ 4213.3, -.4, -.10, -.11, -.13 (2004).[23] For example, a housing provider must distribute a copy of a proposed voluntary agreement "to each tenant eligible to sign," and must provide the tenants with a minimum of fourteen (14) days to review the proposed voluntary agreement. 14 DCMR §§ 4213.3, -.4, -.10 (2004) (emphasis added). Furthermore, a voluntary agreement must indicate that it has been approved by at least 70% of the tenants in a housing accommodation (i.e., through the inclusion of tenants' signatures) before it may be approved by the Rent Administrator. D.C. OFFICIAL CODE § 42-3502.15(a) (2001); 14 DCMR § 4213.13 (2004).

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[23] For the text of 14 DCMR §§ 4213.3, -.4, -.10, -.11 (2004) see supra at 15-16. For the text of 14 DCMR § 4213.13 (2004), see supra at 26 n.20.

In this case, the Commission's review of the record reveals that the Hearing Examiner determined that the Housing Provider failed to comply with the procedural safeguards contained in 14 DCMR § 4213 (2004). See Final Order at 11-13; R. at 127-29. Specifically, the Hearing Examiner determined that the Housing Provider "failed to distribute a complete information packet to all tenants on the proposed 70% Voluntary Agreement, as required under 14 DCMR [§] 4213.10 [(2004)]," that the Housing Provider "failed to obtain the required . . .signatures to complete the requisite 70% of the tenants' signatures" in violation of 14 DCMR § 4213.13 (2004), and that the Housing Provider failed to provide the Tenants "with a minimum of 14 days to consider the proposal, confer with other tenants, and to respond to Housing [P]rovider as required under 14 DCMR [§] 4213.4 [(2004)]." See id.

The Commission is satisfied that the Hearing Examiner did not err by invalidating VA 02-107, or that he otherwise misinterpreted or misapplied the relevant provisions of the Act and its regulations as the basis of his disapproval of VA 02-107. 14 DCMR § 3807.1 (2004). See Final Order at 11-13; R. at 127-29. See also supra at 16-24. As discussed supra at 30, the Commission notes the absence of substantial evidence in the record that the Housing Provider complied with the procedural requirements of 14 DCMR § 4213 (2004). Furthermore, as discussed supra at 29-30, the Commission determines that it was not error under the Act and its regulations for the Hearing Examiner to disapprove VA 02-107 despite the Housing Providers contentions that the Tenants understood the agreement, and that the Housing Provider executed repairs to the Housing Accommodation simply in reliance on VA 02-107. See 14 DCMR §§ 4213.3, -.4, -.10, -.11, -.13 (2004); Amended Notice of Appeal at 3; Final Order at 11-13; R. at 127-29.

The Commission's review of the record thus does not reveal that the Hearing Examiner violated any specific provisions or requirements of the Act and its regulations with respect to issues "G" and "H". See supra at 29. For the reasons stated supra, the Commission is satisfied that there is no merit in these issues raised by the Housing Provider. See 14 DCMR § 3807.1.

I. Whether the Tenants, having accepted the improvements, are estopped to deny their signatures.[24]

As stated supra at 14-16, the Act's regulations contain a number of procedural safeguards that must be followed prior to the Rent Administrator's approval of a voluntary agreement. See, e.g., 14 DCMR §§ 4213.4, -.10, -.13 (2004). In this case, the Hearing Examiner determined that the Housing Provider failed to comply with the regulatory requirements, by failing to distribute a copy of the proposed VA 02-107 to each Tenant under 14 DCMR § 4213.3 (2004), by failing to provide the Tenants with the requisite number of days to consider the proposed VA 02-107 under 14 DCMR § 4213.4 (2004), and by failing to obtain the required 70% of the Tenants' signatures on VA 02-107 under 14 DCMR § 4213.13 (2004). See supra at 16-24. See also Final Order at 11-13; R. at 127-29. The Commission's review of the record therefore indicates that the Tenants were unable to consent to and approve VA 02-107 in compliance with the Act. See 14 DCMR §§ 4213.4, -.10, -.13 (2004). Having determined that the Tenants were prohibited from providing their approval to VA 02-107, in compliance with the Act, the Commission notes that any reliance by the Housing Provider on the Tenants' signatures received in violation of the Act would not be "reasonable" under the circumstances, and thus could not support a claim of

[24] The Commission observes that the Housing Provider offers no additional argument in support of this issue on appeal, other than its one-sentence statement of the issue, and cites no provision of the Act, its regulations or other relevant case law precedent, to support this claim. See Amended Notice of Appeal at 5

estoppel.[25] See Nolan, 568 A.2d at 484 (stating that a party raising an estoppel claim must show that "he changed his position prejudicially in reasonable reliance on a false representation") (emphasis added) (citing Cassidy, 533 A.2d at 255); Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC May 29, 2009) (explaining that, as part of an estoppel claim, a party's reliance on an alleged misrepresentation of material fact must be "reasonable") (citing Heckler v. Cmty. Health Servs., 467 U.S. 51 (1984)).

The Commission thus affirms the Hearing Examiner on this issue.

J. Whether the Hearing Examiner erred by failing to rule upon Respondent's Motion to Reopen the Record for Relief from Order Denying Oral Motion for Continuance.

The Housing Provider contends that the Hearing Examiner erred by failing to rule upon "Respondent's Motion to Reopen the Record for Relief from Order Denying Oral Motion for Continuance" (hereinafter "Motion to Reopen the Record for Relief"). See Amended Notice of Appeal at 4. The Housing Provider explains in the Amended Notice of Appeal that it had made an oral motion for a continuance on the record at the March 18, 2004 RACD hearing, because "an essential witness, Louis Afable . . . who was the only person who could testify as to the validity of the agreement and to the [Tenants'] comprehension of the [70% Voluntary] Agreement, had failed to appear at the hearing." See Amended Notice of Appeal at 4.

The Commission observes that the Hearing Examiner denied the Housing Provider's oral motion for a continuance because the Housing Provider had failed to state sufficient grounds for

[25] The Commission observes that the DCCA has stated that a party claiming estoppel must show the following: "that he changed his position prejudicially in reasonable reliance on a false representation or concealment of material fact which the party to be estopped made with knowledge of the true facts and intent to induce the other to act." See, e.g., Nolan v. Nolan, 568 A.2d 479, 484 (D.C. 1990) (citing Cassidy v. Owen, 533 A.2d 253, 255 (D.C. 1987)); Moore v. Manhattan Co., 276 A.2d 720, 722 (D.C. 1971) (quoting Parker v. Sager, 174 F.2d 657, 661 (D.C. Cir. 1949); Hardison v. Shirlington Trust Co., 148 A.2d 88, 89 (D.C. 1959) (quoting Parker, 174 F.2d at 661).

granting the motion.[26] See Hearing Tape 4 (RACD Mar. 18, 2004). After the RACD hearing, but before the issuance of the Final Order, the Housing Provider filed its Motion to Reopen the Record for Relief, which was not ruled upon by the Hearing Examiner. See Amended Notice of Appeal at 4.

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[26] The Commission recites, in relevant part, the following dialogue between counsel for the Housing Provider ("Counsel"), and the Hearing Examiner regarding his denial of the Housing Provider's motion for a continuance:

Counsel: . . .What I would ask is that we be given the opportunity to continue the matter and subpoena Mr. Afable, he wasn't available today to testify.

Hearing Examiner: Why didn't you subpoena him to come today?

Counsel: . . .I was under the impression that he would be available to testify. By the time I found out that he was not available, I did not have sufficient time to have the subpoena processed, and I would ask for leave to be able to do so . . . . [H]is testimony is crucial and he wasn't able to testify today, we need his testimony, and there would be no prejudice to the other side. They . . . would be able to attend the hearing and cross examine him and your honor would be able to determine the credibility of the witnesses. The Tenants' testimony is already . . . on record and . . . [Tenants'] counsel, they would have an opportunity to question him which they are saying they don't have right now.

Hearing Examiner: Mr. Asaka, I would have been probably a little more willing to hear your argument if you'd done this as a preliminary matter, but now that we've taken testimony of, what, 6 or 7 Tenants . . . it's too late . . . I can't even entertain it, I can't consider that, continuing the matter. I appreciate you being honest about why you couldn't get [Mr. Afable] here but the fact of the matter is . . . it doesn't appear to be sufficient grounds to continue the matter since we've been convened for almost eight hours so far and . . . I'm just not inclined to grant that request at this time . . . .

[I]n light of the fact that all these Tenants were here, they would essentially have to come back so they could hear [Mr. Afable's] testimony . . . if they wanted to be recalled to respond to something that he said . . . and I just think that under the circumstances, again had you tried to convince me here at nine o'clock this morning, I may have been a little inclined to do it because I don't know how much prejudice in terms of time and inconvenience of Tenants [there] would have been . . . had we done it eight hours ago, but right now I just think it's a little too . . .unfair. I think you just lost the opportunity to get him here, and quite frankly . . . he's the key witness to your defense, he should have been here . . . . That's why I asked you at the beginning of the case if you had any preliminary matters, that's why I do that . . . . So I'm going to have to deny the request . . . .

Hearing Tape 4 (RACD Mar. 18, 2004).

The Commission notes initially, that there is no provision in the Act or its regulations, nor has the Housing Provider cited to any such provision, that required the Hearing Examiner to rule on the Housing Provider's Motion to Reopen the Record for Relief. See, e.g., 14 DCMR § 4017.1 (2004).[27]

Moreover, the Commission notes that the Housing Provider's underlying claim on appeal is that the Hearing Examiner erred by denying the motion for a continuance made at the RACD hearing. See Amended Notice of Appeal at 4. Rather than directly contest the Hearing Examiner's denial of the continuance, the Housing Provider contests the failure of the Hearing Examiner to address the Motion to Reopen the Record for Relief. See id. Since the Commission's determination of the merits of this issue is predicated upon its determination of the merits of the Housing Provider's claim of error in the denial of the motion for continuance at the RACD hearing, the Commission will address any error in the Hearing Examiner's denial of the motion for continuance. The DCCA has consistently held that the grant or denial of a motion for a continuance is committed to the sound discretion of the trial judge. See, e.g., Nursing Unlimited Servs., Inc. v. D.C. Dep't of Emp't Servs., 974 A.2d 218, 221 (D.C. 2009) (quoting King v. D.C. Water & Sewer Auth., 803 A.2d 966, 970 (D.C. 2002)); Wagley v. Evans, 971

[27] 14 DCMR § 4017.1 (2004) (emphasis added) provides the following:

> On motion and upon such terms as are just, the Rent Administrator [or hearing examiner] may relieve a party from a final judgment, order, or proceeding for the following reasons:
>
> (a) Mistake, inadvertence, surprise, excusable neglect; newly discovered evidence that by due diligence could not have been discovered in time for reconsideration under §4013;
>
> (b) Fraud, misrepresentation, or other misconduct of an adverse party; or
>
> (c) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the decision have prospective application.

A.2d 205, 208 (D.C. 2009) (quoting Fischer v. Estate of Flax, 816 A.2d 1, 8 (D.C. 2003)); Lyons v. Jordan, 524 A.2d 1199, 1203 (D.C. 1987) (citing Harris v. Akindulureni, 342 A.2d 684, 686 (D.C. 1975)). See also Hines v. Brawner Co., TP 27,707 (RHC Sept. 7, 2004); Thorpe v. Lynch, TP 24,460 (RHC Aug. 16, 1999); Shapiro v. Comer, TP 21,742 (RHC Aug. 19, 1993).

Under the relevant regulations, a motion for continuance must be requested at least five (5) days prior to the hearing; if the motion is filed less than five (5) days prior to a hearing, the motion must set forth extraordinary circumstances to justify the granting of a continuance. See 14 DCMR §§ 4008.6, 4014.1 (2004).[28] See, e.g., Chaney v. Am. Rental Mgmt. Co., RH-TP-06-28,366; RH-TP-06-28,577 (RHC Mar. 4, 2013); Salazar v. Varner, RH-TP-09-29,645 (RHC July 19, 2012); Johnson v. Dorchester House Assocs., RH-TP-07-29,077 (RHC Feb. 19, 2009).

The Commission's review of the record reveals, and the Housing Provider does not contest, that the Housing Provider failed to request a continuance the requisite five (5) days prior to the hearing. See Hearing Tape 4 (RACD Mar. 18, 2004). Furthermore, the Commission's review of the record reveals substantial evidence to support the Hearing Examiner's determination that the Housing Provider had failed to set forth in his oral motion for a continuance sufficient grounds to justify granting the continuance on the basis of "extraordinary circumstances" less than five (5) days prior to the hearing. Hearing Tape 4 (RACD Mar. 18,

[28] 14 DCMR § 4008.6 (2004) (emphasis added) provides the following:

> A party may file a motion to continue or reschedule a hearing for good cause with the hearing examiner provided the motion is served on opposing parties and the hearing examiner at least five (5) days before the hearing; however, in extraordinary circumstances, the time limit may be shortened by the hearing examiner.

14 DCMR § 4014.1 (2004) (emphasis added) provides the following:

> Any party may move to request a continuance of any scheduled hearing . . .if the motion is served on opposing parties and the Rent Administrator at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Rent Administrator.

2004). See 14 DCMR § 4008.6, 4014.1 (2004); Chaney, RH-TP-06-28,366; RH-TP-06-28,577; Salazar, RH-TP-09-29,645; Johnson v. Dorchester House Assocs., RH-TP-07-29,077; Envoy Assocs. Ltd. P'ship, TP 27,312; Frank, TP 25,001.

For example, the Commission is not persuaded that the Hearing Examiner committed an abuse of discretion in not finding "extraordinary circumstances," when the counsel for the Housing Provider explained that he had been merely "under the impression that [Mr. Afable] would be available to testify," or when he simply noted, without any indication or suggestion of underlying extraordinary circumstances, that by the time Counsel became aware that Mr. Afable was unavailable to testify on March 18, 2004, there was not enough time to issue a subpoena. See Hearing Tape 4 (RACD Mar. 18, 2004) (emphasis added). See also supra at 34 n.26. The Commission concurs with the Hearing Examiner that neither of the above grounds provided by the Housing Provider constitute "extraordinary circumstances," under 14 DCMR §§ 4008.6, 4014.1 (2004). See, e.g., Chaney, RH-TP-06-28,366; RH-TP-06-28,577 (determining that counsel's absence from the country when the notice of hearing was issued constituted "extraordinary circumstances" for the purposes of granting a motion for continuance less than five (5) days prior to the hearing); Salazar, RH-TP-09-29,645 (determining that "absence of counsel" from the hearing and "conflicting engagement of counsel" were not "extraordinary circumstances" to justify granting a continuance less than five (5) days prior to the hearing); Johnson, RH-TP-07-29,077 (determining that a need for additional time to find counsel did not constitute "extraordinary circumstances" to justify a continuance less than five (5) days prior to a hearing).

Accordingly, the Commission determines that the Hearing Examiner's denial of the motion for continuance at the RACD hearing was supported by substantial evidence on the

record, did not constitute an abuse of discretion, and was in accordance with the relevant regulations, including 14 DCMR §§ 4008.6, 4014.1 (2004). See 14 DCMR § 3807.1 (2004). See also Chaney, RH-TP-06-28,366; RH-TP-06-28,577; Salazar, RH-TP-09-29,645; Johnson v. Dorchester House Assocs., RH-TP-07-29,077; Envoy Assocs. Ltd. P'ship v. 2400 Tenant Assoc., TP 27,312 (RHC June 30, 2008); Frank v. The Barac Co., TP 25,001 (RHC Dec. 7, 2001). Therefore, the Commission is satisfied that Hearing Examiner did not abuse his discretion in failing to rule on the Housing Provider's Motion to Reopen the Record for Relief, in light of the Hearing Examiner's proper denial of the Housing Provider's motion for continuance at the RACD hearing, and thus the Commission affirms the Hearing Examiner on this issue.

K. Whether the Hearing Examiner erred by invalidating the rent increases, allegedly due to Housing Provider's fraud, because the Tenants in their Objections to New Rent Increase, dated May 4, 2003, failed to raise fraud as an issue.

The Commission has adopted the standard of the DCCA that an issue not raised at the trial or initial hearing level cannot be later raised for the first time on appeal to an appellate body. See Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994). See, e.g., Stone v. Keller, TP 27,033 (RHC Mar. 24, 2009); Ford, TP 23,973; Terrell v. Estrada, TP 22,007 (RHC May 30, 1991). Furthermore, the Commission similarly recognizes that new evidence submitted post-trial or post-hearing cannot be entered into the record and may not provide a basis upon which an agency bases a decision. 14 DCMR § 3807.5 (2004). See Harris v. D.C. Rental Hous. Comm'n, 505 A.2d 66, 69 (D.C. 1986). See also, Johnson v. MPM Mgmt., TP 27,294 (RHC Sept. 28, 2005); Tenants of the Winthrop House v. William Calomiris Inv. Corp., TP 22,533 (Apr. 7, 1994); McNeal v. Desko, TP 20,319 (RHC Jan. 4, 1990).

The Commission's review of the record reveals that during the Tenants' opening statement, counsel for the Tenants stated the following: "we will show that [the Tenants' approval of VA 02-107 was] obtained through fraud, deceit or misrepresentation of material fact as set out in 14 DCMR 4213.19 (b)." See Hearing Tape 1 (RACD Mar. 18, 2004) (emphasis added). The Commission's review of the record does not reflect that the Housing Provider raised any objection during the Tenants' opening statement as to lack of notice regarding this issue, or that the Housing Provider raised an objection at any other time throughout the hearing to the Tenants' presentation of evidence in support of the claim that their approval of VA 02-107 was obtained by fraud, deceit, or misrepresentation. Id.

The Commission observes that the first time that the Housing Provider raised the issue of any lack of notice of the Tenants' claim that their approval of VA 02-107 had been induced by fraud, deceit or material misrepresentation, is in "Respondent's Response to Petitioner's Proposed Decision and Order," filed with RACD on May 11, 2004, nearly two months after the evidentiary hearing, and prior to the Notice of Appeal. R. at 120-24.[29] Based on its review of the record, the Commission determines that because the Housing Provider failed to raise this issue at the March 18, 2004 RACD hearing, despite being placed on notice of it at that hearing, the Commission is unable to address it for the first time on appeal. See Hearing Tape 1 (RACD Mar. 18, 2004). See also Lenkin Co. Mgmt., 642 A.2d at 1286; Stone, TP 27,033; Ford, TP 23,973; Terrell, TP 22,007. Accordingly, the Commission dismisses this issue. See Hearing

[29] In "Respondent's Response to Petitioner's Proposed Decision and Order," the Housing Provider stated in a footnote that "since said allegations of misrepresentation and fraud were not raised in the tenant's objection to rent increase, T[P] #27,897 and TP #27,896, such allegations should not be considered by the Hearing Examiner." R. at 121-22.

Tape 1 (RACD Mar. 18, 2004). See also Lenkin Co. Mgmt., 642 A.2d at 1286; Stone, TP 27,033; Ford, TP 23,973; Terrell, TP 22,007.

L. Whether the Tenants were barred from contesting the validity of the 70% Voluntary Agreement because they had signed a Rehabilitation Agreement on August 19, 2003.

The Housing Provider seeks reversal of the decision by the Hearing Examiner on the basis of an alleged Rehabilitation Agreement dated August 19, 2003. Housing Provider's Amended Notice of Appeal at 5. The Housing Provider contends that the Rehabilitation Agreement was signed by the following Tenants: "Joseph Adisioye [sic], Francisca Quel, Jacqueline Galdamez . . . Denise Taylor, Ned Parrish, Joel Villatoro, Maria Bonilla and John Young." See id. The alleged content of the Rehabilitation Agreement was represented by the Housing Provider as follows: "[b]oth the tenant and the owner agree that, as of August 29, 2003, all major defects in the above-mentioned apartment have been depicted and no further issues preceding this date may be used to make a housing complaint and *file for rent abatement.*" See Housing Provider's Amended Notice of Appeal at 5 (emphasis in original).

The Commission's regulations prohibit the consideration of new evidence on appeal. 14 DCMR § 3807.5 (2004). See, e.g. Hawkins, RH-TP-08-29,201 at 9 n.9 (noting that the Commission cannot consider factual allegations that were not raised below, were not part of the record on appeal, and constituted inadmissible new evidence); Reid v. Weinstein, TP 28,010 (RHC Apr. 3, 2008) at 5-6 (stating that the Commission is unable to consider new evidence that was submitted post-hearing); Mann Family Trust v. Johnson, TP 26,191 (RHC Nov. 21, 2005) at 8 (explaining that new evidence may not be submitted on appeal). See also supra at 23 n.17.

The Commission's review of the record reveals that, in the Final Order, the Hearing Examiner lists seven (7) exhibits submitted by Tenants at the hearing, and two (2) exhibits

submitted by Housing Provider at the hearing. Final Order at 4-5; R. at 135-36. The two exhibits submitted by Housing Provider were identified by the Hearing Examiner as: (1) "70% Voluntary Agreement Petition", and (2) "List of repairs for Mr. Young's unit."[30] R. at 135. The Commission observes that the Final Order does not mention an August 19, 2003 Rehabilitation Agreement. See R. at 135-36. The Commission is thus satisfied, based on its review of the record, that the alleged Rehabilitation Agreement was not introduced into evidence by the Housing Provider at the RACD hearing or that it was otherwise part of the RACD record. Therefore, the Commission is satisfied that the Rehabilitation Agreement referenced in the Housing Provider's Notice of Appeal is new evidence that cannot be considered for the first time on appeal. 14 DCMR § 3807.5 (2004); Final Order at 1015; R. at 125-39; Hearing Tape (RACD Mar. 18, 2004). See Hawkins, RH-TP-08-29,201 at 9 n.9; Reid, TP 28,010 at 5-6; Mann Family Trust, TP 26,191 at 8. Accordingly, the Commission dismisses this issue on appeal.

M. Whether the Hearing Examiner erred during the hearing on March 4, 2004 when he allowed the admission of the Tenants' Exhibits Numbered 6 and 7.

The Housing Provider contends in its Amended Notice of Appeal that the Hearing Examiner erred in admitting the Tenants' Exhibits numbered 6 and 7 into the record, because the Tenants failed to lay a proper foundation for the admission of these documents. See Housing Provider's Amended Notice of Appeal at 1. The Commission observes that these exhibits were identified by the Hearing Examiner in the Final Order as follows: "Copy of Rent [L]edger dated 8/13/03 received from Respondent through discovery" (Tenants' Exhibit 6), and "Copy of Rent

[30] The Commission observes that the "[l]ist of repairs for Mr. Young's unit," identified by the Hearing Examiner as Housing Provider's Exhibit 2, is a handwritten list dated November 5, 2002, and signed by Tenant John Young. See R. at 75. See also Hearing Tape 3 (RACD Mar. 18, 2004). The Commission's review of the record has revealed no evidence, and the Housing Provider has not contended, that this "list of repairs" is the Rehabilitation Agreement at issue herein.

[L]edger dated 5/31/03 received from Respondent during discovery" (Tenants' Exhibit #7). Final Order at 4; R. at 136. The Commission notes that there was no discussion in the Final Order explaining the Hearing Examiner's basis for the admission of these exhibits into the record. Final Order at 1-15; R. at 125-39.

According to the DCCA, when a party seeks to introduce a business record into evidence, such as the rent ledgers at issue in this case (Tenants' Exhibits 6 and 7), the proponent of the evidence must show the following through witness testimony:

> (1) that the record was made in the regular course of business, (2) that it was the regular course of the business to make such records, (3) that the record was made at the time of the act, transaction, occurrence, or event, or within a reasonable time thereafter, and (4) that the original maker has personal knowledge of the information in the record or received the information from someone with such personal knowledge and who is acting in the regular course of business.

See Dutch v. United States, 997 A.2d 685, 688-89 (D.C. 2010) (citing Allstate Ins. Co. v. Curtis, 781 A.2d 725, 727 (D.C. 2001)); Clyburn v. District of Columbia, 741 A.2d 395, 397 (D.C. 1999) (citing Giles v. United States, 548 A.2d 48, 53 (D.C. 1988)); Clements v. United States, 669 A.2d 1271, 1273 (D.C. 1995) (citing D.C. Sup. Ct. Civ. R. 43-I (1995)); Meaders v. United States, 519 A.2d 1248, 1255 (D.C. 1986) (citing In re D.M.C., 503 A.2d 1280, 1282 (D.C. 1986)).

The Commission's standard of review is located at 14 DCMR § 3807.1 (2004). See supra at 17. The Commission notes that a hearing examiner is entrusted with a degree of latitude in deciding how to evaluate and credit the evidence presented. See Miller, TP 27,445 (citing Harris v. D.C. Rental Hous. Comm'n, 505 A.2d 66, 69 (D.C. 1986)). See also, e.g., Baxter v. Jackson, TP 24,370 (RHC Sept. 15, 2000) at 13; Mersha v. Marina View Tower Apartments, TP

24,302 (RHC July 23, 1999) at 9-10; Gates, Hudson & Assocs. v. Johnson, TP 23,144 (RHC Sept. 30, 1996) at 7.

The Commission's review of the record reveals that at the March 18, 2004, RACD hearing, the Tenants introduced Exhibits 6 and 7 during the testimony of Christopher Hayes, General Manager for the Housing Provider. See Hearing Tape 2 (RACD Mar. 18, 2004). The Commission observes that, prior to the introduction of Tenants' Exhibit 6, the Tenants asked Mr. Hayes whether he was the custodian of records for the Housing Provider; however, Mr. Hayes did not provide a responsive answer.[31] See id. The Commission further observes that the Tenants did not ask Mr. Hayes any preliminary questions prior to the introduction of Tenants' Exhibit 7. See id.[32]

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[31] The Commission observes the following dialogue between counsel for the Tenants and Mr. Hayes, regarding Exhibit 6:

Tenants' Counsel:	"I would like to share what is going to be Tenant Exhibit 6. Mr. Hayes are you considered the custodian of records for Washington Communities LLC?"
Mr. Hayes:	"How would you define custodian of records?"
Tenants' Counsel:	"Do you keep track of rent paid, rent received? Do you generate documents in the ordinary course of business?"
Mr. Hayes:	"I think you would be hard-pressed to find a company that does not generate documents in the course of business."
Tenants' Counsel:	"I am showing you what is Tenant Exhibit 6. This is a document produced also through discovery, which is for the corresponding month of August 31, 2003. Do you recognize this document?
Mr. Hayes:	"Yes"
Tenants' Counsel:	"What is it?"
Mr. Hayes:	"Statement of income"

See Hearing Tape 2 (RACD Mar. 18, 2004). The Commission notes that directly after the dialogue quoted above, the Tenants proceeded to question Mr. Hayes about the substantive contents of Exhibit 6. See id.

[32] The Commission observes that the only question the Tenants asked Mr. Hayes regarding Exhibit 7 was the following:

When the Tenants moved for the admission of both Exhibits into the record, the Housing Provider objected, stating that Mr. Hayes was not the person who had prepared the documents, and that he was not able to attest to the accuracy of the information contained in the documents. See id. The Housing Provider renewed its objection to Exhibits 6 and 7 in the Notice of Appeal. See Housing Provider's Amended Notice of Appeal at 1.

Based on its review of the record, the Commission determines that the Tenants failed to lay a proper foundation for either Exhibit 6 or Exhibit 7. See Dutch, 997 A.2d at 688-89; Clyburn, 741 A.2d at 397; Clements, 669 A.2d at 1273; Meaders, 519 A.2d at 1255. Although the Commission notes that the Tenants asked Mr. Hayes whether he was the custodian of records for the Housing Provider, the Tenants failed to elicit testimony from Mr. Hayes sufficient to establish the foundational elements for a business record (see supra at 42). Specifically, the Tenants did not establish that either Exhibit 6 or Exhibit 7 was "made in the regular course of business," that it was the regular course of the Housing Provider's business to make such records, that Exhibit 6 or Exhibit 7 was made at the time of the "act, transaction, occurrence, or event, or within a reasonable time thereafter" or that the original maker of Exhibit 6 and Exhibit 7 "had personal knowledge of the information in the record or received the information from someone with such personal knowledge and who is acting in the regular course of business." See Dutch, 997 A.2d at 688-89; Clyburn, 741 A.2d at 397; Clements, 669 A.2d at 1273;

Tenants' Counsel:	"Let me show you what is March 31, 2003, as exhibit 7. On that sheet there are two vacancies, correct?"
Mr. Hayes:	"Well, I see two lines crossed out and two vacancies, so that could be four vacancies"

See Hearing Tape 2(RACD Mar. 18, 2004).

Meaders, 519 A.2d at 1255. Accordingly, the Commission determines that the substantial evidence does not support the Hearing Examiner's decision to allow the admission of Exhibits 6 and 7, where the record evidence shows that the Tenants failed to lay a proper foundation for those exhibits. 1 DCMR § 3807.1 (2004); Final Order at 4; R. at 136. See Dutch, 997 A.2d at 688-89; Clyburn, 741 A.2d at 397; Clements, 669 A.2d at 1273; Meaders, 519 A.2d at 1255.

Nevertheless, the Commission is satisfied that the Hearing Examiner's error in admitting Exhibits 6 and 7 into the record was harmless[33] for the following reasons: (1) the Commission's review of the record reveals that Exhibits 6 and 7 (which were identified as rent ledgers, see Final Order at 4; R. at 136), were not part of the substantial evidence in the record used by the Hearing Examiner to arrive at the following conclusion in the Final Order – that all or part of the Tenants' approval of VA 02-107 was induced by fraud, deceit, or misrepresentation of material facts, under 14 DCMR § 4213.19 (2004); and (2) the Commission's review of the record reveals that the Housing Provider failed to comply with mandatory procedural requirements for obtaining Tenants' approval of VA 02-107, including that the Housing Provider failed to distribute a copy of the proposed voluntary agreement to each Tenant, in accordance with 14 DCMR § 4213.3 (2004), and that the Housing Provider failed to give each Tenant the requisite fourteen (14) days to review the proposed voluntary agreement, in accordance with 14 DCMR § 4213.4 (2004).[34] See Belmont Crossing, TP 28,292; Shipe, RH-TP-08-29,411; Young, TP 28,635 at n.5; Smith, RH-TP-07-28,961; Ford, TP 23,973 at n.18.

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[33] For the definition of "harmless error," see supra at 18 n.15.

[34] Furthermore, the Commission is unable to determine based on its review of the Final Order, that the Hearing Examiner relied on either of the Tenants' Exhibit 6 or Exhibit 7 as the basis for any finding of fact or conclusion of law. See Final Order at 1-15; R. at 125-39. Nor does the Housing Provider's Amended Notice of Appeal allege any specific finding of fact or conclusion of law that was based on the Tenants' Exhibit 6 or Exhibit 7. See Housing Provider's Amended Notice of Appeal at 1.

Based on the foregoing, the Commission is unable to determine that the Hearing Examiner changed or determined the outcome of the Final Order as a result of the admission of Exhibits 6 and 7 into evidence. See Shipe, RH-TP-08-29,411 (determining that an ALJ's failure to address the housing provider's eligibility for a small landlord exemption was harmless error where it did not affect or change the outcome of the case); Sindram v. Tenacity Grp., TP 29,094 (RHC Sept. 14, 2011) at n.10 (defining "harmless error" as error that neither "prejudice[s] the substantial rights of either of the parties, nor. . .affect[s] the final outcome of the case") (emphasis added).

Accordingly, the Commission dismisses this issue on appeal.

N. Whether the Hearing Examiner incorrectly permitted the testimony of Tenant Francisca Quel, because the Tenants' counsel Alejandra Castillo, served as Ms. Quel's Spanish interpreter.

The Housing Provider contends that the Hearing Examiner erred by permitting the Tenant's attorney Alejandra Castillo to act as an interpreter during the testimony of the Tenant Francisca Quel. See Housing Provider's Amended Notice of Appeal at 2. The DCCA has explained that decisions regarding the appointment of interpreters "are confided to the sound discretion of the trial judge." Ko v. United States, 694 A.2d 73, 83 (D.C. 1997) (citing In re Q.L.J., 458 A.2d 30, 301-32 (D.C. 1982)).

According to the DCAPA, when a non-English speaking person appears as a party or a witness at an administrative hearing, a hearing examiner may appoint a qualified interpreter, as defined by D.C. OFFICIAL CODE § 2-1901(5) (2001), upon request from the non-English speaking party or witness. See D.C. OFFICIAL CODE §§ 2-1901(1)-(2), (5), 2-1902(c) (2001).[35]

[35] D.C. OFFICIAL CODE §§ 2-1901(1)-(2), (5) (2001) provides, in relevant part, as follows:

A hearing examiner must make a determination that the interpreter is able to communicate with, and translate information accurately to and from, the person requiring the interpretation services. D.C. OFFICIAL CODE § 2-1904 (2001).[36]

Prior to beginning any interpretation services, the interpreter must take an oath that the interpreter will "make a true interpretation...to the best of the interpreter's skill and judgment." D.C. OFFICIAL CODE § 2-1907 (2001).[37] Although the DCAPA states that a request for an interpreter shall be made at least five (5) days prior to a hearing, if practicable, "[a] failure to

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> (1) 'Appointing authority' means the...director or commissioner of any department or agency of the District of Columbia...or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this chapter.
>
> (2) 'Communication-impaired person' means a...non-English or limited-English speaking person.
>
> ...
>
> (5) 'Qualified interpreter' means a person who is...found by the court to be, skilled in the language...needed to communicate fluently with a communication-impaired person and to translate or interpret information accurately to and from the communication-impaired person.

D.C. OFFICIAL CODE § 2-1902(c) (2001) provides as follows:

> Whenever a communication-impaired person is a party or a witness in an administrative proceeding before a department, board, commission, agency, or licensing authority of the District of Columbia, the appointing authority conducting the proceeding may appoint a qualified interpreter to interpret the proceedings to the communication-impaired person and to interpret the communication-impaired person's testimony. The appointing authority shall appoint a qualified interpreter upon the request of the communication-impaired person.

[36] D.C. OFFICIAL CODE § 2-1904 (2001) provides the following:

> Before appointing an interpreter, an appointing authority shall make a preliminary determination that the interpreter is able to accurately communicate with and translate information to and from the communication-impaired person involved. If the interpreter is not able to provide effective communication with the communication-impaired person, the appointing authority shall appoint another qualified interpreter.

[37] D.C. OFFICIAL CODE § 2-1907 (2001) provides the following:

> Before an interpreter appointed under this chapter begins to interpret, the interpreter shall take an oath or affirmation that the interpreter will make a true interpretation in an understandable manner to and for the person for whom the interpreter is appointed to the best of the interpreter's skills and judgment.

notify [the hearing examiner] ... is not a waiver of the right to an interpreter." D.C. OFFICIAL CODE § 2-1903(a) (2001).[38] The DCCA has stated that an interpreter should be neutral and detached, "an individual who has no interest in the outcome of the case."[39] See Ko, 694 A.2d at 83.

The Commission observes that the Hearing Examiner's Final Order does not state the identity of the individual who served as the interpreter during Ms. Quel's testimony. Final Order at 1-15, R. at 125-39. However, the Commission's review of the record reveals that there was a lengthy discussion between the Hearing Examiner and counsel for both parties on the record at the March 18, 2004 RACD hearing regarding the need for an interpreter for Ms. Quel's testimony. See Hearing Tape 2 (RACD Mar. 18, 2004).

After the conclusion of the testimony of the Tenant Sandra Paris, the Tenants' interpreter, who had been present since the start of the hearing, informed the Hearing Examiner that he had to leave as he had already stayed longer than the time for which he had been hired. See Hearing Tapes 1-2 (RACD Mar. 18, 2004). The Tenants' counsel represented that one witness remained, Ms. Quel, who required the services of an interpreter, and whose testimony was necessary for the limited purpose of entering a copy of her lease agreement into the record. See id.

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[38] D.C. OFFICIAL CODE § 2-1903(a) (2001) provides as follows:

> A communication-impaired person entitled to an interpreter under this chapter shall, if practicable, notify the appropriate appointing authority of the person's need for an interpreter at least 5 business days prior to the person's appearance. A failure to notify the appointing authority of the need for an interpreter is not a waiver of the right to an interpreter.

[39] In Ko, 694 A.2d at 77, a criminal defendant appealed his conviction for extortion, threats, and unlawful possession of ammunition, on the grounds that he was deprived of his rights under the District's Interpreters for Hearing-Impaired and Non-English Speaking Persons Act of 1987 (D.C. OFFICIAL CODE § 2-1901 *et seq.* (2001)), and the Constitution, because several of the interpreters used at the trial were paid by the prosecutor's office. See Ko, 694 A.2d at 77, 79. Specifically, the DCCA explained that the issue on appeal went to "the essence of a [criminal] defendant's right to a fair trial." See id. at 79.

Counsel for the Housing Provider objected to the admission of Ms. Quel's lease without corresponding testimony laying a proper foundation, and asked that the parties return at a later date for an interpreter to be present for Ms. Quel's testimony. See id. Counsel for the Tenants, Alejandra Castillo, represented to the Hearing Examiner that she was fluent in Spanish. See id. The Hearing Examiner consequently placed her under oath as an interpreter in accordance with D.C. OFFICIAL CODE § 2-1907 (2001). See id. Counsel for the Housing Provider objected to Ms. Castillo's service as an interpreter on the ground of lack of neutrality, but the Hearing Examiner allowed the testimony to proceed for the limited purpose of laying a foundation for the admission of Ms. Quel's lease. See id.

At the conclusion of Ms. Quel's testimony, the Tenants moved to enter her lease into evidence as Tenants' Exhibit 3. See id. The Housing Provider objected to the admission of this exhibit because an interested party had served as translator, and there was no verification that a foundation had been laid. See id. The Hearing Examiner noted the Housing Provider's objection for the record, but continued with the hearing, without ruling on the admissibility of Ms. Quel's lease. Id.

The Commission notes that the Hearing Examiner listed Ms. Quel's lease (Tenants' Exhibit 3) in the Final Order as part of the list of documents submitted by the Tenants at the hearing. See Final Order at 4, R. at 136. Additionally, in the Final Order the Hearing Examiner referenced the testimony of Ms. Quel as follows:

> Similarly, Petitioner Francisca Quel also testified that she has resided at 809 Kennedy Street, NW, Apartment No. 6, since November 1, 2002. Petitioners' Exhibit 3, the rental agreement between Ms. Francisca Quel and the Barac Company was dated October 25, 2002, and possession of the premises was to begin on November 1, 2002.

Final Order at 9; R. at 131. The Hearing Examiner also made the following relevant finding of fact in the Final Order: "Ms. Francisca Quel has occupied Apartment No. 6 since November 1, 2002." Final Order at 12; R. at 128.

Based on its review of the record evidence, the Commission determines that it would not be unreasonable to characterize Ms. Castillo, the counsel for Ms. Quel, as either an interpreter who was not sufficiently neutral or detached, or as an interpreter who had an interest in the outcome of the case, in her role as counsel to the Tenants. See Ko, 694 A.2d at 83; Hearing Tape 2 (RACD Mar. 18, 2004). As the DCCA has stated, interpreters should be neutral participants, and should not be considered a part of either "team" of litigants. See id.

In this case, the Commission observes that, despite Counsel's oath, the Hearing Examiner erred by allowing Ms. Castillo, as counsel for the Tenants, to serve as Ms. Quel's interpreter because of the appearance of her lack of neutrality, and because of her apparent interest in the outcome of the case. See Ko, 694 A.2d at 83; Hearing Tape 2 (RACD Mar. 18, 2004). Without the reasonable appearance of a neutral and detached translation of Ms. Quel's testimony, the Commission decides that the Hearing Examiner further erred by admitting Ms. Quel's lease (Tenants' Exhibit 3) into evidence.[40] See id.

Nevertheless, as the Commission similarly noted regarding the erroneous admission of Tenants' Exhibits 6 and 7 into the record, see supra at 45, the use of the Tenants' counsel as the translator for Ms. Quel's testimony was harmless,[41] insofar as the Commission's review of the record reveals that Ms. Quel's testimony, as well as her lease, were immaterial to the Hearing

[40] The Commission is satisfied, based on its review of the record, that the Tenants made a timely request for an interpreter as is required under D.C. OFFICIAL CODE § 2-1902(c) (2001). D.C. OFFICIAL CODE § 2-1903(a) (2001). See R. at 31.

[41] For the Commission's definition of "harmless error" see supra at 18 n.15.

Examiner's ultimate conclusion in the Final Order – that all or part of the Tenants' approval of VA 02-107 was induced by fraud, deceit, or misrepresentation of material facts, under 14 DCMR § 4213.19 (2004), and that the Housing Provider failed to comply with mandatory procedural requirements for obtaining Tenants' approval of VA 02-107, including that the Housing Provider failed to distribute a copy of the proposed voluntary agreement to each Tenant, in accordance with 14 DCMR §§ 4213.3, -.10 (2004), and that the Housing Provider failed to give each Tenant the requisite fourteen (14) days to review the proposed voluntary agreement, in accordance with 14 DCMR § 4213.4 (2004). The Commission's review of the record reveals that Ms. Quel's testimony was limited to the fact of establishing her tenancy in the Housing Accommodation; her testimony did not address the manner in which the Housing Provider sought the Tenants' approval of VA 02-107. See Hearing Tape 2 (RACD Mar. 18, 2004).

Based on the foregoing, the Commission is unable to determine that the Hearing Examiner changed or determined the outcome of the Final Order as a result of Ms. Quel's testimony or the admission of her lease into evidence. See Shipe, RH-TP-08-29,411; Sindram, TP 29,094 at n.10. The Commission thus dismisses this issue on appeal.

O. Whether the Hearing Examiner used the wrong burden of proof.

The Commission's regulations require that a notice of appeal contain "... a clear and concise statement of the alleged error(s). 14 DCMR 3802.5(b) (2004). The Commission may not review issues that are "vague, overly broad, or do not allege a clear and concise statement of error [in the Final Order]." See, e.g., Marbury Plaza, L.L.C. v. Tenants of 2300 & 2330 Good Hope Rd., S.E., CI 20,753 & CI 20,754 (RHC Apr. 18, 2005); Norwood v. Peters, TP 27,678 (RHC Feb. 3, 2005); Parreco v. Akassy, TP 27,408 (RHC Dec. 8, 2003).

The Commission observes that the Housing Provider's statement of issue "O" fails to identify either the allegedly erroneous legal standard for the burden of proof that was applied by the Hearing Examiner, or the legal standard for the burden of proof that the Housing Provider asserts should have been applied. See Amended Notice of Appeal at 5. The Commission's review of the record does not indicate that the Hearing Examiner failed to apply the legal standard for the proper burden of proof in 14 DCMR § 4003.1 (2004).[42] See Final Order at 5-13; R. at 127-135. Accordingly, the Commission dismisses this issue on appeal for failure to provide a clear and concise statement of the issue. 14 DCMR § 3802.5(b) (2004). See Marbury Plaza, L.L.C., CI 20,753 & CI 20,754; Norwood, TP 27,678; Parreco, TP 27,408.

VI. DISCUSSION OF THE TENANTS' ISSUES ON CROSS-APPEAL

A. Whether the Hearing Examiner erred in not ordering a rent refund to the Tenants

The Tenants contend on cross-appeal that the Hearing Examiner erred in failing to award rent refunds to the Tenants because his decision was based upon the following erroneous conclusions:

1. None of the Tenants had paid the increase in monthly rents based upon VA 02-107.

2. The Housing Provider had not filed suit against any of the Tenants for their failure to pay the rent increase based on VA 01-107.

3. The monthly rent levels for each unit were below the fair rental market value such that a rent refund would result in a windfall to the Tenants that is contrary to the purposes and spirit of the Act.

Tenants' Cross-Appeal Brief at 5 (citing Final Order at 11). The Tenants contend that record evidence reflects that the Tenants have been charged the increased rent level, and many of them

[42] For the text of 14 DCMR § 4003.1 (2004), see supra at 17 n.13.

have paid the increased rent level. See id. at 5-7 (citing Final Order at 10). Additionally, the Tenants assert that the testimony at the RACD hearing indicates that at least one of the Tenants was involved in court proceedings with the Housing Provider. See id. at 5 n.1. Finally, the Tenants assert that there was no record evidence to support the Hearing Examiner's determination regarding the fair market value of the Tenants' apartments. See id. at 5.

The penalty provision of the Act provides, in relevant part that:

> (a) Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter...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 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 Rental Housing Commission determines.

D.C. OFFICIAL CODE § 42-3509.01(a) (2001) (emphasis added). The Act defines the term "rent" as follows: "[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." D.C. OFFICIAL CODE § 42-3501.03(28) (2001).

Both the DCCA and the Commission have stated that a housing provider's mere demand for rent in excess of the maximum allowable rent under the Act, without the requirement or proof of receipt or collection of payment, triggers the award of damages to tenants, including treble damages. See Kapusta v. D.C. Rental Hous. Comm'n, 704 A.2d 286, 287 (D.C. 1997) (upholding order for "rent refund" of money demanded but never received). See also, e.g., 1773 Lanier Pl., N.W. Tenant's Ass'n v. Drell, TP 27,344 (Aug. 31, 2009); Laprade v. Klinberg, TP 27,920 (RHC June 22, 2005); Hamlin v. Daniel, TP 27,626 (RHC June 10, 2005).

As previously stated, the Commission's standard of review is contained at 14 DCMR § 3807.1 (2004). See supra at 17. The Commission will sustain the Hearing Examiner's interpretation of the Act unless it is unreasonable or embodies a material misconception of the law, even if a different interpretation also may be supportable. See Carpenter v. Markswright Co., Inc., RH-TP-10-29,840 (RHC June 5, 2013) (citing Dorchester House Assocs. Ltd. P'ship v. D.C. Rental Hous. Comm'n, 938 A.2d 696, 702 (D.C. 2007)); Falconi v. Abusam, RH-TP-07-28,879 (RHC Sept. 28, 2012) (citing Sawyer Prop. Mgmt. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 102-3 (D.C. 2005)); Jackson, RH-TP-07-28,898. To conduct an appellate review under this standard, the Commission will consider whether the Hearing Examiner made findings of fact on each material, contested factual issue, based his findings on substantial evidence, and made conclusions of law that flow rationally from those findings of fact. See Ahmed, Inc., RH-TP-28,799; Falconi, RH-TP-07-28,879; Shipe, RH-TP-08-29,411.

The Hearing Examiner in this case determined that the Housing Provider had erroneously increased the Tenants' rent based on the April 8 Approval Order of the Rent Administrator. Final Order at 10; R. at 130. Based on this determination, the Hearing Examiner rolled back the Tenants' rent ceiling and rent charged levels to the levels prior the Rent Administrator's April 8 Approval Order. See id. at 11; R. at 129. Nevertheless, the Hearing Examiner declined to award any of the Tenants a rent refund. See id.

The Hearing Examiner first determined that the Tenants were not entitled to a rent refund based on rent actually paid, because he found that the Tenants had not established that they had paid an increase in rent based on VA 02-107. See id. Next, the Hearing Examiner determined that the Tenants were not entitled to a rent refund based on a demand for an increased rent under VA 02-107, for the following two reasons: (1) there was no evidence that the Housing Provider

had filed suit against any of the Tenants due to their failure to pay the increased rent based on the 809 Kennedy St. VA; and (2) the monthly rent levels for the Tenants' units were "below the fair rental market value such that a rent refund would result in a windfall to the tenants that is contrary to the purposes and spirit of the Act."[43] See id.

The Commission observes that the Hearing Examiner cited and applied the appropriate provision of the Act in his assessment of whether the Tenants were entitled to damages: D.C. OFFICIAL CODE § 42-3509.01(a) (2001). See Final Order at 10; R. at 130. The Commission is further satisfied that the Hearing Examiner was correct to consider whether the Tenants were entitled to a rent refund based on either the actual payment of an increased rent amount, or the Housing Provider's demand for an increased rent amount, under VA 02-107. D.C. OFFICIAL CODE § 42-3509.01(a) (2001). See Drell, TP 27,344; Laprade, TP 27,920; Hamlin, TP 27,626; Kapusta, 704 A.2d at 287.

Nevertheless, the Commission's review of the record reveals that the Hearing Examiner's determinations in support of his decision to not award the Tenants any rent refund (i.e., that the Tenants had not paid an increased rent based on VA 02-107, that the Housing Provider had not instituted any court actions against the Tenants for failure to pay increased rent based on VA 02-107, and that the Tenants' rents were below market value), are not supported by substantial record evidence. 14 DCMR § 3807.1 (2004). See Final Order at 10-11; R. at 129-30.

First, the Commission's review of the record does not reveal substantial evidence to support the Hearing Examiner's determination that none of the Tenants' had paid an increase in

[43] The Commission's review of the Final Order reveals that, in his statement of these determinations related to the Tenants' entitlement to a rent refund, the Hearing Examiner did not reference or cite to any supporting testimony from the RACD hearing, or other record evidence which may support such determinations. Final Order at 11; R. at 129.

rent based on VA 02-107, nor does the Hearing Examiner indicate in the Final Order the specific evidence that supports this determination. 14 DCMR § 3807.1 (2004). See generally, Final Order at 5-13; R. at 127-135; Hearing Tape (RACD Mar. 18, 2004). Moreover, the Commission's review of the record reveals the following testimony given at the RACD hearing, regarding the Tenants' payment of increased rent based on VA 02-107:

1. William Beret testified that he was paying $575 in rent "right now", and that his rent increased on June 1, 2003 as a result of the 809 Kennedy St. VA.

2. Tracey Coleman testified that she was currently paying $575, which was more than she had previously paid.

3. Sandra Perez testified that she used to pay $350 in rent, and was now paying $460 "due to a court order."

4. Ned Parrish testified that he was paying $575 in rent, and before had been paying $316.

5. John Young testified that he is currently paying $750 for rent, "my rent was originally $430", and that "I pay my rent to the court, landlord and tenant."

6. Joseph Adesioye testified that "I'm paying $575, before I was paying $282."

7. Mario Galdamez testified that "Right now I pay $549 they say it's supposed to be $575."

Hearing Tapes 1-3 (RACD Mar. 18, 2004). The Commission's review of the Final Order indicates that the testimony described supra is not reflected in the findings of fact or conclusions of law, or addressed in any manner by the Hearing Examiner in the Final Order. See Final Order at 5-13; R. at 127-135.

Additionally, the Commission's review of the record does not reveal substantial evidence to support the Hearing Examiner's determination that the Housing Provider had not filed suit against any of the Tenants for their failure to pay the rent increase based on VA 02-107. 14 DCMR § 3807.1 (2004). See generally, Final Order at 5-13; R. at 127-135; Hearing Tapes 1-4

(RACD Mar. 18, 2004). The Commission notes the following testimony at the RACD hearing regarding court actions related to the Tenants' failure to pay increased rent based on VA 02-107:

1. Sandra Perez testified that "due to a court order I am paying $460."

2. John Young testified that "I pay my rent to the court, landlord and tenant."

Hearing Tape 2 (RACD Mar. 18, 2004). The Commission's review of the Final Order indicates that the testimony described supra is not reflected in the findings of fact or conclusions of law, or addressed in any manner by the Hearing Examiner in the Final Order. See Final Order at 5-13; R. at 127-135.

Finally, the Commission's review of the record does not reveal substantial evidence to support the Hearing Examiner's determination that the monthly rent levels for the Tenants' units are below market value. 14 DCMR § 3807.1 (2004). See generally, Final Order at 5-13; R. at 127-135; Hearing Tape (RACD Mar. 18, 2004).

Based on its review of the record, and for the reasons described supra at 55-57, the Commission notes that the Hearing Examiner's determination that the Tenants are not entitled to rent refunds based on either the payment of increased rent, or alternatively, based on the Housing Provider's demand for increased rent, was not supported by substantial evidence. 14 DCMR § 3807.1 (2004). See Final Order at 10-11; R. at 129-30; Hearing Tape (RACD Mar. 18, 2004).

Furthermore, the Commission observes that the Hearing Examiner failed to make findings of fact and conclusions of law that reflected the undisputed testimony given by the Tenants at the RACD hearing regarding the payment of increased rent based on VA 02-107, as well as purported court actions brought by the Housing Provider against the Tenants for non-payment of the increased rent based on VA 02-107. See supra at 55-57. See generally, Final Order at 5-13; R. at 127-135; Hearing Tape (RACD Mar. 18, 2004).

Accordingly, the Commission reverses the Hearing Examiner's determination that the Tenants are not entitled to a rent refund. The Commission remands this issue for an evidentiary hearing with the participation of both parties, but limited to the testimony of those Tenants who testified at the March 18, 2004 hearing regarding an increase in rent based on VA 02-107: William Beret, Tracey Coleman, Sandra Perez, Ned Parrish, John Young, Joseph Adesioye, and Mario Galdamez.[44] Hearing Tapes 1-3 (RACD Mar. 18, 2004). The evidentiary hearing should address solely the following issues regarding possible rent refunds: (1) whether any of the Tenants are entitled to a rent refund based on the actual payment of increased rent under VA 02-107, and (2) whether any of the Tenants are entitled to a rent refund based on the Housing Provider's demand for increased rent under VA 02-107, in accordance with D.C. OFFICIAL CODE § 42-3509.01(a) (2001). 14 DCMR § 3807.1 (2004). See Ahmed, Inc., RH-TP-28,799; Falconi, RH-TP-07-28,879; Shipe, RH-TP-08-29,411. Based upon such evidentiary hearing, the Hearing Examiner is instructed to amend the Final Order with findings of fact and conclusions of law on the two issues above, and the amount of any rent refunds due and owing to any Tenants under the Act.

B. Whether the Hearing Examiner erred in not awarding attorneys' fees

The Tenants argue on appeal that they are entitled to reasonable attorneys' fees as they were the successful parties below, and request that the Commission award them such fees. Tenants' Cross-Appeal Brief at 8-9 (citing D.C. OFFICIAL CODE § 42-3509.02 (2001); Ungar v. D.C. Rental Hous. Comm'n, 535 A.2d 887, 891-92 (D.C. 1987)).

[44] The Commission observes that although Ms. Quel testified at the March 18, 2004 RACD hearing, she did not present any testimony or evidence related to any increase in her rent as a result of VA 02-107. See Hearing Tape 2 (RACD Mar. 18, 2004). The Commission is satisfied that Ms. Quel's testimony was limited to the fact of her tenancy (for example, the Tenants' counsel proffered that the purpose of Ms. Quel's testimony was to enter a copy of her lease agreement into the record), and therefore Ms. Quel should not be permitted on remand to present testimony related to the additional issue of an increase in rent. See id.

The Commission observes that an award of attorney's fees is governed by the Act's regulations at 14 DCMR §§ 3825.7, 4019.1 (2004), which provide, in relevant part as follows:

> 3825.7 An award of attorney's fees by the Rent Administrator or the Commission shall be based on an affidavit executed by the attorney of record itemizing the attorney's time for legal services and providing the applicable information listed in §3825.8 . . . .
>
> 4019.1 All motions for an award of attorney's fees in a rental housing case shall be filed within thirty (30) days of service of the final order.

See also 14 DCMR § 4019.2 (2004).[45]

The Commission's review of the record on appeal does not reveal that the Tenants requested attorney's fees from the Hearing Examiner as required by the regulations, recited supra. See 14 DCMR §§ 3825.7, 4019.1 (2004). Therefore, the Commission determines that the Hearing Examiner's omission of findings of fact and conclusions of law in the Final Order regarding attorney's fees was not an abuse of discretion or otherwise arbitrary, in the absence of substantial evidence in the record demonstrating that the Tenants made a request for attorney's fees in accordance with the regulations. 14 DCMR § 3807.1 (2004). See 14 DCMR §§ 3825.7, 4019.1 (2004). Taylor v. Chase Manhattan Mortg., TP 24,303 & TP 24,420 (RHC Sept. 9, 1999) (affirming a hearing examiner's failure to award attorney's fees where the record did not contain a request for attorney's fees in compliance with the regulations). Based on the foregoing, the Commission affirms the Hearing Examiner on this issue.

Furthermore, the Commission observes that it may not award attorneys' fees to the Tenants based solely on their Notice of Cross-Appeal, without an affidavit(s) itemizing the attorneys' time for legal services, in accordance with 14 DCMR § 3825.7 (2004). See Notice of

[45] 14 DCMR § 4019.2 (2004) provides the following:

> When the Rent Administrator determines that it is appropriate to award attorney's fees, the award of attorney's fees shall be made in accordance with § 3825 of this title.

Cross-Appeal at 2. However, the Commission notes that its decision regarding this issue on appeal does not preclude the Tenants from seeking attorneys' fees in this case in the future, provided that they comply with the Act's requirements for such requests.[46] See 14 DCMR §§ 3825.7, 4019.1 (2004).

C. Whether the Hearing Examiner erred in not ordering treble damages

D. Whether the Hearing Examiner erred in not ordering the payment of fines[47]

The Tenants assert that the Hearing Examiner erred by not ordering the Housing Provider to pay treble damages and fines.[48] Tenants' Notice of Appeal at 2. The Commission's review of the Tenants' Notice of Cross-Appeal and the Tenant's Cross-Appeal Brief, reveal that the Tenants have not provided any statute, regulation, or caselaw as precedent to support the contention that the Hearing Examiner's decision to not impose treble damages and/or fines was error. See Tenants' Notice of Cross-Appeal at 1-2.

The Commission's review of the Final Order reveals that the Hearing Examiner made no findings of fact or conclusion of law regarding whether the imposition of treble damages and/or fines was appropriate in this case. See Final Order at 11-13; R. at 127-29. The Commission observes that the Penalties provision of the Act, governing treble damages and fines, contains no requirement that a hearing examiner must consider, and therefore make findings of fact and

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[46] The DCCA has explained that, when an appeal is pending before the Commission, a tenant is not a "prevailing party" for purposes of an award of attorney's fees until the Commission rules in their favor. See Loney v. D.C. Rental Hous. Comm'n, 11 A.3d 753, 760 (D.C. 2010). Thus, the DCCA has determined that when a motion for attorney's fees is properly brought before the Commission, the Commission has the jurisdiction to award attorney's fees for work performed before the Commission, as well as work performed before the original hearing examiner. See id. at 759.

[47] The Commission will combine its discussion of issues C and D because both issues involve overlapping legal issues and the application of common legal principles.

[48] The Commission's review of the record does not reveal that the Tenants raised the issue of treble damages and/or fines prior to the Notice of Cross-Appeal. See Notice of Cross-Appeal at 1-2; Hearing Tape (RACD Mar. 18, 2004).

conclusions of law regarding, the appropriateness of treble damages and/or fines in every case. See D.C. OFFICIAL CODE §§ 42-3509.01(a)-(b) (2001).[49] Furthermore, the Commission notes that where the Final Order contains no findings of fact or conclusions of law on the issues of treble damages and/or fines, the Commission will not substitute itself for the trier of fact to determine on appeal whether those penalties should have been considered below. See, e.g., Sellers v. Lawson, RH-TP-08-29,437 (RHC Dec. 6, 2012) (citing Fort Chaplin Park Assocs., 649 A.2d at 1079); Tillman v. Reed, RH-TP-08-29,136 (RHC Sept. 18, 2012); McDonald v. Nuyen, TP 26,124 (RHC Aug. 29, 2003); Harper v. Humber, HP 20,002 (RHC Dec. 13, 1985). Finally, the Commission is satisfied that decisions regarding the imposition of treble damages and fines are within the discretion of the hearing examiner. See Washington Cmtys. v. Joyner, TP 28,151 (RHC July 22, 2008); Dey v. L.J. Dev., Inc., TP 26,119 (RHC Oct. 15, 2003); Noori v. Whitten, TP 27,045 & 27,046 (RHC Sept. 13, 2002).

Therefore, where the Hearing Examiner did not address treble damages and fines in the Final Order, and in the absence of a requirement in the Act that the Hearing Examiner consider treble damages and fines, the Commission declines to determine on appeal whether treble damages and fines would have been appropriate in this case. See D.C. OFFICIAL CODE §§ 42-3509.01(a)-(b) (2001). See also, e.g., Sellers, RH-TP-08-29,437; Tillman, RH-TP-08-29,136;

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[49] D.C. OFFICIAL CODE §§ 42-3509.01(a)-(b) (2001) provides, in relevant part, the following:

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

Joyner, TP 28,151; Dey, TP 26,119; Noori, TP 27,045 & 27,046. The Commission thus dismisses these issues on appeal.

V. CONCLUSION

In accordance with the foregoing, the Commission reverses the Hearing Examiner's determination that the Tenants are not entitled to a rent refund. The Commission remands this issue for an evidentiary hearing with the participation of both parties, but limited to the testimony of those Tenants who testified at the March 18, 2004 hearing regarding an increase in rent based on VA 02-107: William Beret, Tracey Coleman, Sandra Perez, Ned Parrish, John Young, Joseph Adesioye, and Mario Galdamez. Hearing Tapes 1-3 (RACD Mar. 18, 2004). The evidentiary hearing should address solely the following issues regarding possible rent refunds: (1) whether any of the Tenants are entitled to a rent refund based on the actual payment of increased rent under VA 02-107, and (2) whether any of the Tenants are entitled to a rent refund based on the Housing Provider's demand for increased rent under VA 02-107, in accordance with D.C. OFFICIAL CODE § 42-3509.01(a) (2001). 14 DCMR § 3807.1 (2004). See Ahmed, Inc., RH-TP-28,799; Falconi, RH-TP-07-28,879; Shipe, RH-TP-08-29,411. Based upon such evidentiary

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hearing, the Hearing Examiner is instructed to amend the Final Order with findings of fact and conclusions of law on the two issues above, and the amount of any rent refunds due and owing to any Tenants under the Act. The Commission affirms the Hearing Examiner on all other issues.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, COMMISSIONER

MARTA W. BERKLEY, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR §3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in VA 02-107 was mailed, postage prepaid, by first class U.S. mail on this **27th day** of **September, 2013** to:

Michael Brand
Loewinger & Brand
471 H Street, NW
Washington, DC 20001

Dorene M. Haney
Ann Marie Hay (c/o Dorene M. Haney)
DC Law Students in Court Program
806 7th Street, NW.
Suite 300
Washington, DC 20001

LaTonya Miles
Clerk of the Court
(202) 442-8949