DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-09-29,715

In re: 4941 North Capitol Street, N.E., Unit 21

Ward Five (5)

GELMAN MANAGEMENT COMPANY
Housing Provider/Appellant

v.

DEBRA CAMPBELL
Tenant/Appellee

ORDER ON RECONSIDERATION

April 22, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).[1] The applicable provisions of the Rental Housing Act of 1985 (Rental Housing Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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

I. PROCEDURAL HISTORY[2]

On September 16, 2009, Tenant/Appellee Debra Campbell (Tenant), residing at 4941 North Capitol Street, N.E., Unit 21, Washington, D.C. 20011 (Housing Accommodation), filed Tenant Petition RH-TP-09-29,715 (Tenant Petition) against Housing Provider/Appellant Gelman Management Company (Housing Provider). *See* Tenant Petition at 1-2; Record for RH-TP-09-29,715 (R.) at 10-11. On December 15, 2010, the ALJ issued a final order, Campbell v. Gelman Management Company, RH-TP-09-29,715 (OAH Dec. 15, 2010) (Final Order).

On January 5, 2011, the Housing Provider filed a Notice of Appeal ("First Notice of Appeal") with the Commission, asserting the following: "Gelman Management Co. hereby notes its appeal from the Final Order below, because a settlement agreement filed in the landlord-tenant branch of the Superior Court, as well as the Rental Housing Act's statute of repose bars all of the petitioner's claims." First Notice of Appeal at 1.

The Commission issued its Initial Decision and Order on December 23, 2013, determining that the Act's statute of limitations, at D.C. OFFICIAL CODE § 42-3502.06(e), did not divest OAH of subject matter jurisdiction over the Tenant Petition, and that the Housing Provider had waived the issue of *res judicata* by failing to properly raise it before the ALJ, and thus dismissing the Housing Provider's issues on appeal. *See* Initial Decision and Order at 16-25. Additionally, the Commission remanded the case to OAH based on the determination that the following conclusions in the Final Order constituted "plain error:" (1) the ALJ's mathematical calculations of the award of a rent refund of $40 for the month of February, 2010, related to rent

[2] The Commission notes that a complete procedural history of this case prior to the Housing Provider's Motion for Reconsideration can be found in the Commission's previous decisions in this case, Gelman Management Company v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013) (Initial Decision and Order), and Gelman Management Company v. Campbell, RH-TP-09-29,715 (RHC Mar. 11, 2015) (Second Decision and Order).

increases in 2009 and 2010 while the Housing Accommodation was not in substantial compliance with the housing code; (2) the ALJ's conclusion that the Tenant was entitled to damages for reductions in services and/or facilities beginning on December 12, 2008 constitutes plain error, because the ALJ failed to address whether the parties' Settlement Agreement gave the Housing Provider until February 27, 2009 to make repairs in the Tenant's unit; and (3) the ALJ's award of a rent refund for the period of November 1, 2009, through May 12, 2010, related to a reduction in services and/or facilities due to an improperly installed smoke alarm. *See id.* at 25-30.

On September 22, 2014, the ALJ issued a Final Order After Remand, Campbell v. Gelman Management Company, RH-TP-09-29,715 (OAH Sept. 22, 2014) (Final Order After Remand). In the Final Order After Remand, the ALJ addressed each of the three (3) issues of plain error identified in the Commission's Initial Decision and Order. *See* Final Order After Remand at 2-7; R. at 374-79. On October 2, 2014, the Housing Provider filed a notice of appeal with the Commission (Second Notice of Appeal) raising the following issues:

1. The doctrine of stare decisis required the Administrative Law Judge to dismiss this petition for lack of subject matter jurisdiction, and the Rental Housing Commission to affirm that dismissal, because the D.C. Court of Appeals has definitively ruled that claims for relief based on alleged violations of the Rental Housing Act occurring or originating more than three years prior to the filing of the petition are barred.

2. The tenant petition should have been dismissed for lack of subject matter jurisdiction because no relief was available after August 5, 2006 for violations originating or occurring before that date.

3. Tenant Petitioner reached a settlement of a landlord-tenant action in the Superior Court which effectively settled and released all claims, according to its terms. Tenant Petitioner's claims herein were merged into that court settlement and she was therefore barred by res judicata/collateral estoppel from seeking further relief herein.

4. The Office of Administrative Hearings erred in awarding interest on the award to Tenant Petitioner, because there is no statutory authority for it to do so, and because Tenant Petitioner's rent charge [sic] was prima facie lawful, i.e. did not exceed the maximum amount the Housing Provider was permitted to charge under the Rental Housing Act, based on the Act's filing requirements and authorized rent and rent ceiling adjustment[s].

5. The Administrative Law Judge's finding that there was a reduction in services and facilities was arbitrary and capricious, there being no evidence that the housing code violations of which the Campbell [sic] complained constituted a reduction in services, or were the result of such a reduction.

Second Notice of Appeal at 1-2. The Commission held its hearing on February 19, 2015, and issued its Second Decision and Order on March 11, 2015. In the Second Decision and Order, the Commission dismissed the Housing Provider's issues 1, 3, part of 4 (regarding whether the rent charged was "prima facie lawful") and 5. Second Decision and Order at 8-10, 13-18. The Commission affirmed the ALJ on issues 2 and part of 4 (regarding whether the ALJ erred in awarding interest). *Id.* at 10-14.

II. MOTION FOR RECONSIDERATION

On March 30, 2015, the Housing Provider filed a timely Motion for Reconsideration of the Second Decision and Order, and attached a Memorandum of Points and Authorities in Support of Housing Provider's Motion for Reconsideration (Memorandum of Points and Authorities). The Motion for Reconsideration challenged only the Commission's ruling regarding the second issue raised in the Second Notice of Appeal, *see supra* at 3, i.e., that claims "originating or occurring" before the Act was amended on August 5, 2006,[3] did not expire on that date. Memorandum of Points and Authorities at 1. On April 9, 2015, the Tenant filed

[3] The Commission notes that the Act was amended effective August 5, 2006, by the Rent Control Reform Amendment Act of 2006 (2006 Amendments), D.C. Law 16-145, 53 DCR 4889, which abolished rent ceilings.

"Tenant's Opposition to Housing Provider's Motion for Reconsideration of Decision and Order of March 11, 2015" (Tenant's Opposition).

III. PRELIMINARY ISSUE

On April 14, 2015, the Housing Provider filed "Housing Provider's Motion to File Attached Reply to Tenant Petitioner's Opposition to Motion for Reconsideration of Decision and Order of March 11, 2015" (Motion to File Reply). The Commission's regulations governing motions practice provide that where a motion is filed, a party may file an opposition in response to such a motion. 14 DCMR § 3814.3 (2004).[4] The Commission's regulations do not provide for the filing of a response to an opposition, such as the Housing Provider's Motion to File Reply, and therefore, in the reasonable exercise of its discretion, the Commission will not accept such filings. *See* Prime v. D.C. Dep't of Pub. Works, 955 A.2d 178 (D.C. 2008) (quoting Ammerman v. D.C. Rental Accommodations Comm'n, 375 A.2d 1060, 1063 (D.C. 1977)) (explaining that administrative tribunals such as the Commission "must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate."); Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC May 22, 2014) ("[c]ontinuances are committed to the sound discretion of the Commission"); KMG Mgmt., LLC v. Richardson, RH-TP-12-30,230 (RHC Jan. 28, 2014) (stating that the decision to grant or deny a continuance is in the Commission's discretion); *cf.* 14 DCMR § 3802.9 ("There shall be no reply to a responsive brief and the Commission shall not accept the brief if submitted"). Accordingly, the Motion to File Reply is dismissed, and will not be considered by the

[4] 14 DCMR § 3814.3 provides as follows: "any party may file a response in opposition to a motion within five (5) days after service of the motion."

Commission in its disposition of the Motion for Reconsideration.[5] Prime, 955 A.2d 178; Smith Prop. Holdings Five (D.C.) L.P., RH-TP-06-28,794; KMG Mgmt., LLC, RH-TP-12-30,230.

IV. DISCUSSION OF THE MOTION FOR RECONSIDERATION

The Motion for Reconsideration is governed by 14 DCMR § 3823.1-.2, which provides the following:

> 3823.1 Any 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; provided, that an order issued on reconsideration is not subject to reconsideration.
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> 3823.2 The motion for reconsideration or modification shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful.

The Commission observes that the Motion for Reconsideration focuses on, and reiterates, the argument made by the Housing Provider in the Second Notice of Appeal that claims "originating or occurring" prior to the amendment of the Act on August 5, 2006, expired on August 5, 2006.[6] *See* Second Decision and Order at 10-12; Memorandum of Points and Authorites at 1-8; Second Notice of Appeal. The Motion for Reconsideration asserts that the Commission's Second Decision and Order was erroneous or unlawful based on the following: (1) "There is An Almost Conclusive Presumption that Statutes, and Amendments Thereto, have Prospective Application Only;" and (2) "The DC General Savings Statute Applies Only to Criminal Laws." Memorandum of Points and Authorities at 1 and 6.

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[5] The Commission observes that the Motion to File Reply does not cite any statutory, regulatory or case law support that would justify the Commission's acceptance of such a filing.

[6] The Act was amended effective August 5, 2006, by the Rent Control Reform Amendment Act of 2006 (2006 Amendments), D.C. Law 16-145, 53 DCR 4889, to eliminate rent ceilings.

As the Commission explained in the Second Decision and Order, the Tenant Petition in this case was filed on September 16, 2009. Second Decision and Order at 2; Tenant Petition at 1; R. at 11. In accordance with the Act's statute of limitations, D.C. OFFICIAL CODE § 42-3502.06(e) (2012 Repl.),[7] the claims in the Tenant Petition were therefore limited to those that arose no earlier than September 16, 2006 – more than a month after the effective date of the 2006 Amendments. The Commission explained the time period relevant to the Tenant Petition as follows:

> Finally and most notably, the Commission observes that it was undisputed by the parties to this appeal that the time period relevant to the Tenant Petition occurred from December 11, 2008 through May 12, 2010 (the date of the final evidentiary hearing), and thus the Tenant's claims in this appeal by definition were not claims occurring prior to the amendment of the Act on August 5, 2006, nor involved the award of any damages prior to the amendment of the Act on August 5, 2006.

Second Decision and Order at 12-13 (citations omitted) (emphasis added).[8] The Commission is satisfied that the Motion for Reconsideration does not dispute, or otherwise contest the Commission's determination that the only claims addressed by the ALJ occurred after December 11, 2008, both within the Act's three-year statute of limitations period, and well after the

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

> A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-2502.16. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment, except that a tenant must challenge the new base rent as provided in § 42-3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

See also United Dominion Mgmt. Co v. Hinman, RH-TP-06-28,728 (RHC June 5, 2013), *aff'd* United Dominion Mgmt. Co. v. D.C. Rental Hous. Comm'n, 101 A.3d 426 (D.C. 2014).

[8] The ALJ determined, and neither party contested, that the Tenant's claims were limited to those occurring after December 11, 2008, the date through which the Tenant received the benefit of a settlement agreement. Final Order at 10; R. at 166.

effective date of the 2006 Amendments.[9] Second Decision and Order at 12-13; Memorandum of Points and Authorities at 1-8.

Accordingly, where the Housing Provider has failed to contest the primary basis for the Commission's determination that the Tenant's claims did not expire on the effective date of the 2006 Amendments, the Commission is not persuaded by the Motion for Reconsideration that the Second Decision and Order is unlawful or erroneous. 14 DCMR § 3823.1-.2; Second Decision and Order at 10-12.[10]

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[9] The Commission notes that the Housing Provider asserted in its First Notice of Appeal that the conditions in the Tenant's unit giving rise to the claims in the Tenant Petition first arose in 2003, and were thus barred by the Act's statute of limitations. In an order dated December 7, 2011, the Commission dismissed this issue on appeal because the Housing Provider had failed to properly raise the issue before the ALJ. Gelman Mgmt. v. Campbell, RH-TP-09-29,817 (RHC Dec. 7, 2011 at 9-11.

[10] The Commission is also not persuaded by the Housing Provider's claim that the Second Decision and Order is erroneous or unlawful based on the principle that amendments to statutes have prospective application. 14 DCMR § 3823.1-.2; *see* . Am. Rental Mgmt. Co. v. Chaney, RH-TP-06-28,366 (RHC Dec. 12, 2014); Carmel Partners, LLC v. Barron, TP 28,510, TP 28,521, & TP 28,526 (RHC Oct. 28, 2014); Ahmed, Inc. v. Torres, RH-TP-07-29,064 (RHC Oct. 28, 2014); United Dominion Mgmt. Co v. Hinman, RH-TP-06-28,728, *aff'd* United Dominion Mgmt. Co. v. D.C. Rental Hous. Comm'n, 101 A.3d 426). For the reasons enumerated in the Second Decision and Order, the Commission remains unconvinced that the 2006 Amendments served to supersede the original statute, such that all claims arising prior to the 2006 Amendments were extinguished.

With respect to the Housing Provider's claim that the general savings provision contained at D.C. OFFICIAL CODE § 45-404(1) (2001) (the District's General Savings Clause) only applies to criminal cases, and as the Commission explained in its Second Decision and Order, the plain language of the General Savings Clause indicates that it was meant to apply to "any act" of the Council, not just those governing criminal conduct. *See* Parreco v. D.C. Rental Hous. Comm'n, 567 A.2d 43, 46 (D.C. 1989) ("[t]he primary rule of statutory construction is that the intent of the legislature is to be found in the language which it has used"); Second Decision and Order at 12 n.10. The Commission is also not persuaded to reverse its position by the Housing Provider's analogy to the Federal Savings Clause, which, contrary to the Housing Provider's assertion, has been applied in civil cases. Estep v. Construction General, Inc., 546 A.2d 376, 378 (D.C. 1988) (holding that injuries occurring before the effective date of a new statute, were cognizable not under the new statute, but under the terms of the old statute, by way of 1 U.S.C. § 109); Garrett v. Washington Air Compressor Co., 466 A.2d 462, 462 n.1 (D.C. 1983) (determining that a worker injured before the effective date of the new statute was covered by the old statute).

Finally, although the Commission notes that the District's General Savings Clause is often cited in the context of criminal cases, the Commission's review of the cases cited by the Housing Provider on this issue (only one of which was a District of Columbia Court of Appeals (DCCA) case), did not reveal any support for the contention that application of the District's General Savings Clause is prohibited in civil cases. *See* Memorandum of Points and Authorities at 6-7 (citing, e.g., Dorsey v. United States, 132 S. Ct. 2321 (2012); Warden v. Marrero, 417 U.S. 653 (1934); United States v. Reisinger, 128 U.S. 398 (1888); Quick v. District of Columbia, 71 A.2d 271 (D.C. 1950)).

IV. CONCLUSION

Based on the foregoing, Housing Provider's Motion to File Reply is dismissed, and the Motion for Reconsideration is denied.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

CLAUDIA L. McKOIN, COMMISSIONER

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 **ORDER ON RECONSIDERATION** in RH-TP-09-29,715 was mailed, postage prepaid, by first class U.S. mail on this **22nd day** of **April, 2015** to:

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