DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,270

In re: 3133 Connecticut Ave., N.W.
Unit 829

Ward Three (3)

KLINGLE CORPORATION and
B.F. SAUL COMPANY
Housing Providers/Appellants/Cross-appellees

v.

CHRISTINE BURKHARDT
Tenant/Appellee/Cross-appellant

DECISION AND ORDER

April 29, 2016

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission ("Commission") from a final order issued by the Rental Accommodation and Conversion Division ("RACD") of the Department of Consumer and Regulatory Affairs ("DCRA").[1] These proceedings are governed by the applicable provisions of the Rental Housing Act of 1985 ("Act"), D.C. Law 6-10, D.C. OFFICIAL CODE § 42-3501.01 *et seq.* (2001), the District of Columbia Administrative Procedures Act ("DCAPA"), D.C. OFFICIAL CODE § 2-501 *et seq.* (2001), and the District of Columbia Municipal Regulations ("DCMR"), 14 DCMR §§ 3800-4399 (2004).

[1] The functions and duties of the former RACD were transferred to Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD") pursuant to § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. Official Code § 42-3502.04b (2008 Supp.). An evidentiary hearing on the petition was held by the RACD before the Office of Administrative Hearings ("OAH") assumed jurisdiction over rental housing cases pursuant to § 6(b-1)(1) of the OAH Establishment Act of 2001, D.C. Law 14-76, D.C. Official Code § 2-1831.03(b-1)(1) (2007 Repl.).

I. PROCEDURAL HISTORY

On January 31, 2005, Christine Burkhardt ("Tenant"), residing in unit 829 of the housing accommodation located at 3133 Connecticut Avenue, N.W. ("Housing Accommodation"), filed tenant petition TP 28,270 ("Tenant Petition") with RACD. In the petition, the Tenant alleged that Klingle Corporation and B.F. Saul Company (collectively, "Housing Provider") violated the Act as follows: 1) the rent being charged for her unit exceeded the legally calculated rent ceiling; and 2) the rent ceiling filed with RACD for her unit was improper.

An RACD hearing on the petition was held on April 18, 2005, with Hearing Examiner Saundra M. McNair ("Hearing Examiner") presiding. The Hearing Examiner issued a final order on September 2, 2005: Burkhardt v. Kingle Corp., TP 28,270 (RACD Sept. 2, 2005) ("Final Order"); R. at 174. The Final Order contained the following findings of fact:

1. The subject housing accommodation, 3133 Connecticut Avenue, N.W., is properly registered with the RACD.

2. The Petitioner took possession of apartment #829 on or about June 29, 1994, and has resided at the subject premises at all relevant times, without interruption.

3. Respondent Klingle Corporation owns the subject property.

4. Respondent B.F. Saul Company manages the subject property.

5. The rent ceiling for Petitioner's rental unit at the time the Petitioner moved into her rental unit was $660.00 per month. The Respondent sought to take and perfect a 39.7% increase to the Petitioner's rent ceiling based on §213(a)(2) of the Act for a comparable unit (unit #729[sic]).

6. The current rent ceiling for Petitioner's rental unit is $1,011.00. The rent charged Petitioner during the period of November 2004 through September 2005 was $1,059.00 per month.

7. The Respondent did not file the proper forms with the RACD to increase the rent charged or the rent ceiling for Petitioner's rental unit in the subject property.

8. The Respondent did not provide proper notice to the Petitioner to prove its entitlement to an increased rent charge or increased rent ceiling for rental unit #829.

9. The Petitioner has provided sufficient evidence to meet her burden to challenge whether the rent charged exceeded the legally calculated rent ceiling for the subject property.

10. The Petitioner has provided sufficient evidence to meet her burden to challenge whether the rent ceiling filed with the RACD for her unit is improper.

11. The Respondent "knowingly" and "willfully" violated the Act.

12. The Petitioner is entitled to a claim for treble damages.

Final Order at 5-6; R. at 169-170.

The Hearing Examiner made the following conclusions of law:

1. The Petitioner has proven, by a preponderance of the evidence, that the rent ceiling for her unit is improper.

2. The Petitioner has proven, by preponderance of the evidence, that the rent charged for her rental unit exceeds the legally calculated rent ceiling for rental unit #829.

3. The Petitioner has proven, by a preponderance of law [sic], that the Respondent has knowingly, willfully, and in bad faith implemented an improper and invalid increase to the rent ceiling for Petitioner's rental unit, in violation of D.C. Official Code §42-3502.06.

4. The Petitioner is entitled to a rent refund in that the rent charged to Petitioner in [sic] exceeded the legally calculated rent ceiling for Petitioner's rental unit. The Petitioner is also entitled to a rent rollback for Respondent's implementation of an illegal rent increase for Petitioner's unit. The total amount due to the Petitioner is $2,641.50, including interest in the amount of $9.50 on the $2,632.00 overcharge amount, for Respondent's implementation of an illegal rent ceiling and rent charge increase pursuant to D.C. Official Code § 42-3502.06.

5. The Respondents shall pay a rent refund and rent rollback in the amount of $2,632.00, plus interest in the amount of $9.50 that has accrued from the beginning of the violation period through the date of the Decision and Order, because of the illegal and improper rent ceiling and rent charge increase for the Petitioner['s] rental unit. Accordingly, the total refund due the Tenant Petitioner is $2,641.60.

6. The Petitioner is entitled to a trebled rent refund for Respondent['s] failure to comply with the requirements of 14 DCMR [§] 4204.10 and [D.C. OFFICIAL CODE §] 42.3502.08(h)(2) for the eleven (11) months Respondent charged in excess of the legal rent ceiling for Petitioner['s] rental unit; and for the twenty-four (24) months that the Respondent charged a rent charged in excess of the legal rent charged for Petitioner's rental unit. The total trebled amount due to the Petitioner is $7,924.80, including interest in the amount of $9.50 on the $2,632.00 overcharge amount, for Respondent's violation of D.C. Official Code § 42-3502.08(h)(2).

Final Order at 22-23 (footnotes omitted); R. at 152-53.

The Housing Provider filed a notice of appeal with the Commission on September 30, 2005 ("Housing Provider's Notice of Appeal"), and the Tenant filed a notice of appeal with the Commission on October 3, 2005 ("Tenant's Notice of Cross-appeal"). On October 31, 2007, the Commission granted a motion by Blake Nelson, Wendy Nelson, and Michael Dolan ("Intervenors") to appear as intervenors in the appeal in support of the Tenant, with the condition that their participation would be limited to the filing of a brief. Klingle Corp. v. Burkhardt, TP 28,270 (RHC Oct. 27, 2007) (Order on Motion to Intervene) at 4-5.

On November 8, 2007, the Intervenors filed a brief in support of Tenant ("Intervenors' Brief"). The same day, the Tenant filed a brief ("Tenant's Brief") stating that she concurs with and adopts the arguments made in the Intervenors' Brief. Also on November 8, 2007, the Housing Provider filed a brief in support of its appeal ("Housing Provider's Brief").

On November 19, 2007, the Housing Provider filed a brief in response to the Intervenors' Brief and the Tenant's Brief ("Housing Provider's Responsive Brief"). On November 28, 2007, the Intervenors filed a brief in response to the Housing Provider's Brief ("Intervenors' Responsive Brief"), with which the Tenant filed a concurring brief.[2]

[2] The Commission notes that there are several pending motions related to the filing and service of the briefs, and motions related to those motions. All outstanding motions are hereby denied as moot.

On January 25, 2008, Carol S. Blumenthal, Esq., entered an appearance as counsel for the Tenant. The Commission held its hearing on January 29, 2008.

II. ISSUES ON APPEAL[3]

On appeal to the Commission, the Housing Provider raises the following issues:

1. The hearing examiner erred when she refused to consider as valid and uncontroverted evidence a date-stamped copy of an amended registration form filed on July 29, 1994, which was both offered into evidence and is in the official registration file of which she took official notice.

2. The hearing examiner erroneously relied upon the Commission's decision in Sawyer Property Management, TP 24,991, which was not rendered until after the date of certain of the specific rent ceiling increases challenged by the tenant petition herein.

3. The hearing examiner erroneously ignored the Act's three-year limitation period when considering the anniversary date of Housing Provider's filing with respect to the adjustments of general applicability on the subject property.

4. The hearing examiner misapplied and/or ignored the applicable statute of limitations in disallowing ceiling and rent adjustments and awarding damages.

5. The hearing examiner's decision was arbitrary and capricious in that she misinterpreted and misapplied the Unitary Rent Ceiling Adjustment Act in reaching her decision.

6. The hearing examiner lacked jurisdiction to impose a fine because fines may be imposed only in accordance with the Civil Infractions Act.

7. There was no factual or legal basis to support the imposition of a fine in this case; in addition, without standards to support the amount of fine imposed, the fine is unconstitutional.

8. There was no factual or legal basis for an award of treble damages in this case.

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

[3] The Commission, in its discretion, has re-ordered issues 3 and 4 on appeal to group for ease of discussion and to group together issues that involve the application and analysis of common facts and legal principles. *See, e.g.,* B.F. Saul Co. v. Nelson, TP 28,519 (RHC Feb. 18, 2016) at n.14; Tenants of 2300 & 2330 Good Hope Rd., S.E. v. Marbury Plaza, LLC, CIs 20,753 & 20,754 (RHC Mar. 10, 2015) at n.15.

On appeal to the Commission, the Tenant raises the following issue:

1. The Petitioner appeals the Hearing Examiner's Decision and Order of September 2, 2005 because the Hearing Examiner erred when she barred challenges to any rent ceiling or rent increase prior to February 2002.

See Tenant's Notice of Cross-appeal at 1.

III. DISCUSSION OF THE HOUSING PROVIDER'S ISSUES

1. [Whether the] [H]earing [E]xaminer erred when she refused to consider as valid and uncontroverted evidence of a date-stamped copy of an amended registration form filed on July 29, 1994, which was both offered into evidence and is in the official registration file of which she took official notice.

The Housing Provider maintains that the legal basis for the increase in rent charged to the Tenant that was implemented on November 1, 2004, was a rent ceiling adjustment reflected in an Amended Registration Form filed on July 29, 1994, pursuant to a vacancy rent ceiling adjustment in the amount of $262. In the Final Order, the Hearing Examiner concluded that the Housing Provider had not properly taken and perfected the 1994 vacancy adjustment. Final Order at 6; R. at 169.

The Housing Provider asserts on appeal that the Hearing Examiner erred in finding the June 29, 1994, vacancy rent ceiling adjustment to be improperly taken and perfected. Housing Provider's Brief at 3. Specifically, it maintains that the Hearing Examiner should have accepted the date stamp on the Amended Registration Form (Petitioner's Exhibit 1; R. at 121) ("June 29 Form") as clear evidence that it was timely filed within thirty days of its effective date.[4] In the Final Order, the Hearing Examiner found, regarding the filing of the

[4] The Commission notes that the parties do not dispute that the Tenant moved into the rental unit on June 29, 1994. *See* Final Order at 5; R. at 170. The Commission further observes that the Tenant alleged at the evidentiary hearing that the rental unit had been vacant prior to the date she moved in. Hearing Tape 2 (RACD Apr. 18, 2005) at 33:00. Nonetheless, neither party has raised any issue on appeal regarding whether June 29, 1994, was the date that the Housing Provider was "first eligible" to take and perfect the vacancy adjustment. *See* D.C. OFFICIAL CODE § 42-3502.13(a) (authorizing rent ceiling adjustment "when a tenant vacates a rental unit"); 14 DCMR § 4204.10(c) (notice must be filed and served within 30 days); *cf.* Burkhardt, RH-TP-06-28,708 (rejecting argument that rental

June 29 Form, that:

> The year of the date-stamped and filed document cannot be seen on the document[,] and the [Hearing] Examiner is unable to determine the year that this document was date-stamped and filed with the RACD. Moreover, the [Tenant] alleges that the date-stamp of the Amended Registration was changed and falsely reported as June 29, 1994 when it was in fact June 19, 1994. Conversely, the [Housing Provider] purports that the document was date-stamped July 29, 1994. Therefore, the [Hearing] Examiner can only accept the date of the document that is able to be viewed, July 29; the year of the document is undeterminable.

Final Order at 3 n.1; R. at 172.

Notwithstanding the Housing Provider's contentions that the date stamp on the June 29 Form is clear[5] and that the document should therefore be considered "authentic," *see* Housing Provider's Brief at 3-5, the Hearing Examiner also determined that the Housing Provider "did not provide proper notice to the [Tenant] to prove its entitlement to an increased rent charge or increased rent ceiling for rental unit #829." Final Order at 6; R. at 169. The Hearing Examiner specifically noted that the Tenant "testified that the [Housing Provider] did not provide the notice required by 14 DCMR [§§] 4204.10 . . . and 4207.5." *Id.*[6] The Commission's review of the record reveals that the Tenant testified that the Housing Provider neither posted a copy of the July 29 Form in a conspicuous place at the rental unit nor mailed her a copy of it. Hearing Tape 2 (RACD Apr. 18, 2005) at 37:00-38:00.[7]

The Commission's standard of review of the Final Order is contained in 14 DCMR § 3807.1 and provides the following:

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unit became vacant on date prior tenant died, rather than date housing provider recovered possession from decedent's family).

[5] Based on the its review of the record, the Commission is satisfied that the Hearing Examiner correctly found that the only legible part of the date stamp on the June 29 Form is the day and month. R. at 121.

[6] The Final Order also states that the Tenant testified that the Housing Provider failed to give notice as required by 14 DCMR § 4205.7. However, 14 DCMR § 4205.7 governs increases in the rent charged to a tenant, not in the rent ceiling of a rental unit.

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

> 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.

However, the Commission will not decide questions on appeal where no relief is available to the party raising an issue or, in other words, where the issue is moot. *See, e.g.,* McChesney v. Moore, 78 A.2d 389, 390 (D.C. 1951) (noting that "it is not within the province of appellate courts to decide abstract hypothetical or moot questions, disconnected with the granting of actual relief or from the determination of which no practical relief can follow"); B.F. Saul Co. v. Nelson, TP 28,519 (RHC Feb. 18, 2016) (invalidation of rent ceiling adjustment on one basis rendered alternative arguments moot) (citing BLACK'S LAW DICTIONARY at 1029-30 (8th ed. 2004) (defining "moot" as "[h]aving no practical significance; hypothetical or academic")).

Under the Act, a housing provider is permitted to increase the rent ceiling for a rental unit when that unit becomes vacant. D.C. OFFICIAL CODE § 42-3502.13 (2001).[8] The Commission's regulations on vacancy adjustments require that a housing provider must both file the proper documentation with the Rent Administrator and provide proper notice to the tenant of the affected unit. *See* 14 DCMR §§ 4101.6; 4204.10, 4207.5 (2004).[9]

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[8] D.C. OFFICIAL CODE § 42-3502.13(a) (2001) provides, in relevant part:

> When a tenant vacates a rental unit ... the rent ceiling may, at the election of the housing provider, be adjusted to: . . .
>
> (2) The rent ceiling of a substantially identical rental unit in the same housing accommodation, except that no increase under this section shall be permitted unless the housing accommodation has been registered under § 42-3502.05(d).

The Commission notes that the Rent Control Reform Amendment Act of 2006, effective August 5, 2006, D.C. Law 16-145, 53 DCR 4889, abolished rent ceilings. The Commission's review of the record reveals that all issues in this case arose under the prior version of the Act. Therefore, unless otherwise noted, all references and citations to the Act in this decision and order are to its text at the time the Tenant Petition was filed on January 31, 2005.

[9] 14 DCMR § 4101.6 (2004) provides:

Consequently, the validity of a vacancy adjustment under the Act depends on both the filing with the Rent Administrator and the posting or mailing of notice at or to the rental unit. *See* 14 DCMR §§ 4101.6; 4204.10, 4207.5. The Commission is thus satisfied that the Hearing Examiner's determination that the vacancy adjustment at issue in this appeal was invalid was based on the grounds of its violation of the Act's filing and posting requirements, and not simply on the ground that the date stamp on the June 29 Form was illegible. *See* 14 DCMR §§ 4101.6; 4204.10, 4207.5. Therefore, the Housing Provider's arguments on this point are moot. *See* Moore, 78 A.2d at 390; Nelson, TP 28,519.

Accordingly, the Commission dismisses the Housing Provider's appeal of this issue as moot.

> Each housing provider who files a Registration/Claim of Exemption form under the Act shall, prior to or simultaneously with the filing, post a true copy of the Registration/Claim of Exemption form in a conspicuous place at the rental unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.

14 DCMR §4204.10 (2004) provides, in relevant part:

> [A] housing provider shall take and perfect a rent ceiling increase authorized by § 206(b) of the Act (an adjustment of general applicability) by filing with the Rent Administrator and serving on the affected tenant or tenants in the manner prescribed in § 4101.6 [a notice], which shall:
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> (a) Identify each rental unit to which the election applies;
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> (b) Set forth the amount of the adjustment elected to be taken, and the prior and new rent ceiling for each unit; and
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> (c) Be filed and served within thirty (30) days following the date when the housing provider is first eligible to take the adjustment.

(emphasis added).

14 DCMR § 4207.5 (2004) provides:

> A housing provider who so elects shall take and perfect a vacancy rent ceiling adjustment in the manner set forth in § 4204.10, and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of § 4101.6.

2. **[Whether the] [H]earing [E]xaminer erroneously relied upon the Commission's decision in Sawyer Property Management, TP 24,991, which was not rendered until after the date of certain of the specific rent ceiling increases challenged by the tenant petition herein.**

3. **[Whether the] [H]earing [E]xaminer's decision was arbitrary and capricious in that she misinterpreted and misapplied the Unitary Rent Ceiling Adjustment Act in reaching her decision.**

The Housing Provider contends that the Hearing Examiner erred by making findings of facts and conclusions of law regarding the validity of the July 29 Form because it was filed outside of the Act's three-year limitations period. D.C. OFFICIAL CODE § 42-3502.06(e);[10] Sawyer Prop. Mgmt. v. Mitchell, TP 24,991 (RHC Oct. 31, 2002), *aff'd* Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n, 877 A.2d 96 (D.C. 2005).

The Commission observes that the Housing Provider's legal arguments regarding the application of the Act's statute of limitations have been addressed and resolved by the Commission in separate proceedings and the Commission's interpretation of the Act upheld by the DCCA. United Dominion Mgmt. Co. v. D.C. Rental Housing Comm'n, 101 A.3d 426 (D.C. 2014); Grant v. Gelman Mgmt. Co., TPs 27,995, 27,997, 27,998, 28,002, & 28,004 (RHC Feb. 24, 2006). Although these decisions post-date the filing of the rent ceiling adjustment and its implementation as an increase in rent charged in this case, "judicial decisions are applied retroactively" where they do not actually alter an established rule or make "an unexpected departure from prior law." Washington v. Guest Servs., 718 A.2d 1071, 1074 (D.C. 1998); Tenants of 2301 E St., N.W. v. D.C. Rental Hous. Comm'n, 580 A.2d 622, 627 (D.C. 1990); *see*

[10] D.C. Official Code § 42-3502.06(e) (2001) provides, in relevant part:

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

United Dominion Mgmt., 101 A.2d at 431-32 (finding prior DCCA decisions on Act's statute of limitations distinguishable).

Pursuant to the Unitary Rent Ceiling Adjustment Amendment Act of 1992, D.C. Law 9-191, each adjustment in the rent charged for a rental unit may implement no more than one previously taken and perfected rent ceiling adjustment. D.C. OFFICIAL CODE § 42-3502.08(h)(1) (2001).[11] A rent ceiling adjustment that was not properly taken and perfected is invalid and may not later be implemented as an adjustment in rent charged. Sawyer, 877 A.2d at 107. The Act's statute of limitations does not bar a tenant from challenging the validity of a rent ceiling adjustment, regardless of when it was filed, if a housing provider later implements it as an increase in the rent charged within the three-year limitations period under D.C. OFFICIAL CODE § 42-3502.06(e). United Dominion Mgmt., 101 A.2d at 430.

The Commission's review of the record indicates that the Hearing Examiner reached the correct legal conclusion with regard to the application of the statute of limitations and the November 2004 implementation of the July 29 Form. *See* Final Order at 7-13; R. at 162-68. *See also* D.C. OFFICIAL CODE § 42-3502.06(e); United Dominion Mgmt., 101 A.2d at 430.

Accordingly, the Commission affirms the Hearing Examiner's determination that the Tenant is permitted to challenge the validity of a rent ceiling adjustment implemented as a rent charged adjustment within the statute of limitations period. *See* D.C. OFFICIAL CODE § 42-3502.06(e): United Dominion Mgmt., 101 A.2d at 430.

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[11] D.C. OFFICIAL CODE § 42-3502.08(h)(1) provides:

> One year from March 16, 1993, unless otherwise ordered by the Rent Administrator, each adjustment in rent charged permitted by this section may implement not more than 1 authorized and previously unimplemented rent ceiling adjustment. If the difference between the rent ceiling and the rent charged for the rental unit consists of all or a portion of 1 previously unimplemented rent ceiling adjustment, the housing provider may elect to implement all or a portion of the difference.

See also supra n.8

4. [Whether the] [H]earing [E]xaminer erroneously ignored the Act's three-year limitation period when considering the anniversary date of Housing Provider's filing with respect to the adjustments of general applicability on the subject property.

In the Final Order, the Hearing Examiner determined that the rent ceiling adjustments filed by the Housing Provider for the Tenant's rental unit in 2002, 2003, 2004 and 2005 were invalid. Final Order at 16-17; R. at 158-59. The Hearing Examiner therefore concluded that the lawful rent ceiling was $1,011.00, and awarded the Tenant a rent refund based on the amount by which her rent charged exceeded the lawful rent ceiling. *Id.* at 17, 20; R. at 155, 158.

The Housing Provider contends on appeal that the 2002, 2003, 2004, and 2005 rent ceiling adjustments implementing annual adjustments of general applicability ("CPI-W adjustments"), were timely filed based on the January 1 (and, later, February 1) "anniversary date" for the rental units in the Housing Accommodation. Housing Provider's Brief at 7-8; Housing Provider's Responsive Brief at 2-7. The Tenant asserts that CPI-W adjustments may only be filed within the thirty days following the "effective date" of the annual publication of the amount of the adjustment by the Commission, *i.e.*, May 1. Intervenors' Brief at 4-16; Intervenors' Responsive Brief at 5-11. However, the Housing Provider maintains that, because the later "anniversary date" for the Tenant's unit of January 1 (and February 1) was established more than three years before the Tenant Petition was filed, the Hearing Examiner should have found each of the CPI-W adjustments to be timely filed based on the later, applicable "anniversary dates." Housing Provider's Brief at 7; Housing Provider's Responsive Brief at 6-7.

As stated *supra* at 7-8, the Commission will reverse decisions by a hearing examiner that are unsupported by substantial evidence on the record or not in accordance with the Act. 14 DCMR § 3807.1 (2004). Although the Commission will defer to a hearing examiner's credibility determinations and weighing of the substantial evidence on the record, *see* Fort

Chaplin Park, 49 A.2d at 1079, the Commission must be satisfied that the findings of fact rationally support the examiner's conclusions of law, *see* Perkins, 482 A.2d at 402.[12]

The Commission's regulations require that a CPI-W adjustment must be taken and perfected "by filing with the Rent Administrator . . . a [Certificate of Election] which shall . . . [b]e filed . . . within thirty (30) days following the date when the housing provider is first eligible to take the adjustment." 14 DCMR § 4204.10(c) (2004). The DCCA has observed that:

> There may be circumstances (not arising . . . in . . . the present case) under which a housing provider will not be eligible to take an adjustment of general applicability until sometime after the published effective date of the adjustment. For example, a housing provider may take and perfect a rent ceiling adjustment of general applicability only once in any twelve month period. [14 DCMR] § 4206.3; *see also* D.C. [Official] Code § 42-3502.06(b). If the first adjustment is perfected on May 31, for instance, the twelve-month rule renders the provider ineligible to take the second adjustment until May 31 of the following year, thirty days later than the published effective date of that adjustment.

Sawyer, 877 A.2d at 104 n.5.

In American Rental Management Co. v. Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 (RHC Dec. 12, 2014), the Commission addressed a substantially identical question to the one raised by the parties in this appeal. The Commission determined in Chaney that its regulations do not necessarily require a housing provider to file a CPI-W adjustment between May 1 and May 31 of any given year, and that the "anniversary date," *i.e.*, the date a housing provider is "first eligible," to take and perfect a CPI-W adjustment, and the 30-day filing period allowed by

[12] In the Final Order, the Hearing Examiner "[found] the testimony of the [Tenant] to constitute credible evidence that [the Housing Provider] failed to comply with the notice requirements of §§ 4204.10 4205.4, and 4206.5, as to [the Tenant], regarding the year 2002, 2003, 2004, and 2005 annual automatic increase[.]" Final Order at 16-17; R. at 158-59. The Commission's review of the record reveals, however, that the sole basis argued by the Tenant for finding the 2002, 2003, 2004, and 2005 CPI-W adjustments invalid was that they were not filed during May of each year. Hearing Tape 2 (RACD Apr. 18, 2005) at 59:00-63:00; *compare* 14 DCMR § 4204.10(c) (2004) (timeliness with respect to first eligibility) *with* 14 DCMR § 4101.6 (2004) (service of notice of rent ceiling adjustment on tenant). The Commission's review of the record indicates that the Hearing Examiner credited the Tenant's assertion that the 30-day filing period runs from May 1 to May 31 of each year through the Hearing Examiner's conspicuous citation of 14 DCMR § 4204.10 in support of her finding. *See* Final Order at 16-17; R. at 158-59.

14 DCMR § 4204.10 that follows, may vary among rental units or housing accommodations. *Id.* at 31-39.[13]

In Chaney, the housing provider had filed a CPI-W adjustment with an effective date of June 1, 2002. *Id.* at 37. The Commission noted that the June 1, 2002, date was outside the statute of limitations for the tenant petition at issue, and that the tenant could not, therefore, challenge that the CPI-W adjustment became effective on June 1, 2002. *Id.* at 35-36 & n.20 (citing Kennedy v. D.C. Rental Hous. Comm'n, 709 A.2d 94, 99-100 (D.C. 1998)).[14] The Commission, following footnote 5 in Sawyer, affirmed that the housing provider was not "first eligible" to take and perfect another CPI-W adjustment until June 1, 2003, and that the 30-day filing period would run until July 1, 2003. *Id.* at 34, 38; *see* Sawyer, 877 A.2d at 104 n.5.

Likewise, in this case, the Commission's review of the record reveals that the Housing Provider filed a CPI-W adjustment for the Tenant's unit with an effective date of January 1, 2001. Respondent's Exhibit ("RX") 3 at 2; R. at 90. Because more than three years had elapsed between the date of the January 2001 CPI-W adjustment and the filing of the Tenant Petition, the Tenant cannot contest the January 2001 CPI-W adjustment. *See* Kennedy, 709 A.2d at 99-100 (D.C. 1998); Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 at 35-36 & n.20. Therefore, the Commission is satisfied that the Housing Provider was not "first eligible" to take and perfect another CPI-W adjustment until January 1, 2002, not May 1, 2001, and that the filing period for

[13] The Commission observes that in its recent decision in B.F. Saul Prop. Co. v. Nelson, TP 28,519 (RHC Feb. 18, 2016), the Housing Provider contended that CPI-W adjustments taken in January were valid solely because of an agreement, not appearing in the record, with a tenant association, and did not assert that "the delayed filings were predicated on any provision of the Act, such as the requirement that a housing provider only take one CPI-W adjustment within a twelve month period." Nelson, TP 28,519 at 50. Unlike Nelson, the Housing Provider specifically asserts in this case that the statute of limitations bars any challenge to the effective date of prior CPI-W adjustments, regardless of the claimed legal grounds in the Act. *See* Housing Provider's Brief at 7. Therefore, the Commission is satisfied that, although the issues in Nelson are factually similar to this case, the legal issues decided are distinguishable. *See* Nelson, TP 28,519 at 50.

[14] *See also infra* at 21.

the subsequent adjustment ran until February 1, 2002. *See* 14 DCMR § 4204.10; Sawyer, 877 A.2d at 104 n.5; Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 at 35-36.

The Commission's review of the record reveals that, within the statute of limitations period applicable to this case, the Housing Provider filed the following Certificates of Adjustment of General Applicability to take and perfect CPI-W adjustments for the Tenant's unit: (1) on January 2, 2002, effective February 1, 2002, RX 4 at 1; R. at 80; (2) on January 5, 2003, effective February 1, 2003, RX 5 at 4; R. at 68; and (3) on January 3, 2005, effective February 1, 2005, RX 6 at 3; R. at 60. The Commission further observes that the record does not contain a Certificate of Election or other evidence of a CPI-W adjustment for 2004, and that the Tenant had the burden of proof to produce evidence of an unlawful rent ceiling adjustment. *See* 14 DCMR § 4003.1 (2004).[15] In light of the substantial evidence in the record indicating that Housing Provider was not "first eligible" to take and perfect its CPI-W adjustments until February of each year, in accordance with the Act and regulations as established by Sawyer, 877 A.2d at 104 n.5, and Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 at 35-36, the Commission determines that the Hearing Examiner's determination that the 2002 through 2005 CPI-W adjustments were unlawful is in error. 14 DCMR § 3807.1 (2004); *see* 14 DCMR § 4204.10; Sawyer, 877 A.2d at 104 n.5; Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 at 35-36.

Accordingly, the Commission reverses the Hearing Examiner's determination that the CPI-W adjustments were untimely filed. *See* Sawyer, 877 A.2d at 104 n.5; Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 at 35-36.

Because the Commission's review of the record does not support the Tenant's contention that the rent ceiling for her unit during the years 2002 through 2005 was unlawful, the

[15] 14 DCMR § 4003.1 provides that, in a hearing before RACD, "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."

Commission, for the following reasons, also reverses the Hearing Examiner's award of a rent refund to the Tenant. *See* Final Order at 20; R. at 155. *See also*, Sawyer, 877 A.2d at 104 n.5; Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 at 35-36. The Commission's review of the record reveals that the rent ceiling for the Tenant's unit was increased from $1,011 to $1,044 on February 1, 2002, increased from $1,044 to $1,071 on February 1, 2003. *See* RX 4 at 1; R. at 80; RX 5 at 4; R. at 68. The Hearing Examiner found that the Tenant was charged $875 per month between January 31, 2002, three years before the Tenant Petition was filed, and November 2004, at which time the Housing Provider increased her rent charged to $1,059. Final Order at 16; R. at 159.

The Act provides that a rent refund may be awarded where a housing provider demands or receives rent in excess of the rent ceiling for a rental unit. D.C. OFFICIAL CODE § 42-3509.01(a) (2001);[16] Carmel Partners, Inc. v. Barron, TPs 28510, 28,521, & 28,526 (RHC Oct 27, 2014) at 17-18; Kemp v. Marshall Heights Cmty. Dev., TP 24,786 (RHC Aug. 1, 2000) ("The housing provider is liable for a rent refund only if the rent charged is higher than the reduced rent ceiling. Where the rent actually charged is equal to or lower than the reduced rent ceiling, there was no excess rent collected and no refund is required."); Hiatt Place P'ship v. Hiatt Place Tenants Ass'n, TP 21,149 (RHC May 10, 1991) ("If the rent actually charged is equal to or lower than the reduced rent ceiling then there has been no excess rent collected and no refund need be made."). Therefore, the Commission determines that, because the Tenant's

[16] D.C. Official Code § 42-3509.01(a) provides (emphasis added):

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

rent charged never exceeded the lawful rent ceiling for the rental unit, no rent refund may be awarded. D.C. OFFICIAL CODE § 42-3509.01(a) (2001); Kemp, TP 24,786.

Accordingly, the Commission vacates the Hearing Examiner's award of a rent refund to the Tenant.

5. [Whether the] [H]earing [E]xaminer lacked jurisdiction to impose a fine because fines may be imposed only in accordance with the Civil Infractions Act.

The Housing Provider argues that the Hearing Examiner erred by imposing a civil fine of $1,000 without following the procedures set out in the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 ("Civil Infractions Act"), D.C. Law 6-42, D.C. OFFICIAL CODE § 2-1801.01 *et seq.* However, the Commission has previously rejected this exact argument. Joyner, TP 28,151 at 7-10 (citing Revithes v. D.C. Rental Hous. Comm'n, 536 A.2d 1007, 1021 (D.C. 1987)).

D.C. OFFICIAL CODE § 42-3509.01(b) (2001) provides that "any person who willfully . . . commits any other act in violation of any provision of this chapter . . . shall be subject to a civil fine of not more than $5,000 for each violation." D.C. OFFICIAL CODE § 42-3509.01(f) (2001) further provides that:

> Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of subsections (b), (d), and (e) of this section, or any rules or regulations issued under the authority of these subsections, pursuant to [D.C. OFFICIAL CODE § 2-1801.01 *et seq.*]. Adjudication of any infraction of these subsections shall be pursuant to [D.C. OFFICIAL CODE § 2-1801.01 *et seq.*].

(emphasis added). As the DCCA held in Revithes, subsection (f), added by the Civil Infractions Act, does not supersede the authority of the Commission or a hearing examiner to impose fines under subsection (b). 536 A.2d at 1021-22; *see* Joyner, TP 28,151. Therefore, the Commission is satisfied that the Hearing Examiner did not exceed her jurisdiction by imposing a civil fine

without following the procedures of the Civil Infractions Act. Revithes, 536 A.2d at 1021; Joyner, TP 28,151; *see* Final Order at 18-20; R. at 155-57.

Accordingly, the Commission affirms that the Hearing Examiner had jurisdiction to impose a civil fine without following the procedures of the Civil Infractions Act.

6. [Whether there] was no factual or legal basis to support the imposition of a fine in this case.

The Housing Provider argues that the $1,000 civil fine imposed by the Hearing Examiner is unsupported by substantial evidence on the record that the Housing Provider acted willfully. Housing Provider's Brief at 12-13. As described, the Commission will reverse the Final Order if findings of fact and conclusions of law do not rationally follow from substantial evidence on the record. *See* 14 DCMR § 3807.1 (2004); Perkins, 482 A.2d at 402.

As noted, the Act provides that civil fines of up to $5,000 may be imposed on any person who willfully commits any act in violation of the Act or its implementing regulations. D.C. OFFICIAL CODE § 42-3509.01(b) (2001). The DCCA "has affirmed the Commission's interpretation of the term 'willfully' as a 'more culpable mental state' than the term 'knowingly.'" 1773 Lanier Place. N.W., Tenants Ass'n v. Drell, TP 27,344 (Aug. 31, 2009) (quoting Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 505 A.2d 73, 75 n.6 (D.C. 1986)). Under the Act, "'willfully' goes to intent to violate the law. 'Knowingly' is simply that you know what you are doing." Quality Mgmt., 505 A.2d at 75 (quoting Council of the District of Columbia, Council Period 3, Second Session, 43rd Legislative Session at 88-83 (Nov. 14, 1980)).

"The Act places a heavier burden under D.C. OFFICIAL CODE § 42-3509.01(b) of showing that a housing provider's conduct was 'intentional, or deliberate or the product of a conscious choice[.]'" Drell, TP 27,344 at 87 (quoting Ratner Mgmt. Co. v. Tenants of Shipley Park, TP

11,613 (RHC Nov. 4, 1988) at 4-5). Therefore, a fine may only be imposed where a hearing examiner makes specific findings of fact that "the housing provider intended to violate or was aware that it was violating a provision of the Rental Housing Act." Miller v. D.C. Rental Hous. Comm'n, 870 A.2d 556, 559 (D.C. 2005)); Joyner, TP 28,151; Nelson, TP 28,519 (inconspicuous posting of vacancy adjustment not willful, based on evidence housing provider thought its posting method was lawful).

In the Final Order, the Hearing Examiner found, as a matter of fact, that "[t]he [Housing Provider] 'knowingly' and 'willfully' violated the Act." Final Order at 6; R. at 169. That finding apparently followed from the following analysis:

> The [Housing Provider] either knew or should have known of its obligations pursuant to the Act. Moreover, the [Housing Provider] has operated a rental housing business in the District of Columbia for at least 11 years and based on the [Housing Provider's] actions in not implementing a change in the rent charged to the [Tenant] during the years 2002, 2003, and 2004, the Examiner is persuaded that the [Housing Provider] knew that its actions were improper and was attempting to come into compliance. Therefore, the Examiner determines that the [Housing Provider] has failed to comply with the requirements of the Act. Furthermore, the Examiner determines that the [Housing Provider's] conduct implies a conscious and deliberate refusal to fulfill its duty to comply with the Act and to file the proper documents with the RACD and to provide proper notice to the [Tenant] without just or reasonable cause or excuse. Thus, the evidence in the instant case demonstrates that the [Housing Provider] acted intentionally, voluntarily, and deliberately in the instant matter by failing to properly perfect and implement an increase in the rent ceiling for [Tenant's] rental unit; and failing to provide the [Tenant] with sufficient notice of the increases without just or reasonable cause or excuse. [Housing Provider's] conduct implies the conscious refusal to fulfill its duty to comply with the Act.

Id. at 20; R. at 155.

The Commission observes that the Hearing Examiner's analysis does not identify the specific actions by the Housing Provider that she considered "willful." The Commission has determined in Issue 3, *supra* at 12-17, that the Housing Provider did not violate the Act by filing its CPI-W adjustments in February of 2002 through 2005, and those actions may not, therefore,

serve as the basis for civil fines. D.C. OFFICIAL CODE § 42-3509.01(b) (2001). Moreover, it is not clear whether the Hearing Examiner's analysis applies specifically to the Housing Provider's increasing of the Tenant's rent charged in November 2004, based on the June 1994 vacancy adjustment that the Commission affirms was in violation the Act. *See* Final Order at 20, R. at 155. *See supra* at 6-9.

As the Hearing Examiner noted, the Housing Provider had been in the rental housing business for at least eleven years by the time the Final Order was issued. Final Order at 20; R. at 155. Based on the Commission's review of the record, the Hearing Examiner's general statement that the Housing Provider "has operated a rental housing business in the District of Columbia for at least 11 years" may thus suggest that the Housing Provider "should have known" that the June 1994 vacancy rent ceiling adjustment could not serve as the basis for the November 2004 rent charged adjustment. *See id.*[17]

However, based on the Commission's review of the record in this case, the Commission is not satisfied that a mere claim of the Housing Provider's constructive knowledge of the invalidity of the June 1994 vacancy rent ceiling adjustment as the legal grounds for the rent charged adjustment in November 2004 is sufficient to meet the "heavier burden" of showing a "more culpable mental state." Drell, TP 27,344. Therefore, the Commission is not satisfied that substantial evidence on the record supports a finding of willfulness for the Housing Provider's violation of the Act in November 2004. D.C. OFFICIAL CODE § 42-3509.01(b) (2001). 14 DCMR § 3807.1 (2004); *see* Miller, 870 A.2d at 559; Drell, TP 27,344.[18]

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[17] The Commission observes that the Hearing Examiner's other basis for finding the Housing Provider acted willfully, that is, "not implementing a change in the rent charged . . . during the years 2002, 2003, and 2004 . . . and . . . attempting to come into compliance," plainly does not relate to the November 2004 increase in the Tenant's rent charged. *See* Final Order at 20; R. at 155.

[18] The Commission distinguishes this case from its recent decision in Nelson, TP 28,519. In Nelson, the Commission upheld the Hearing Examiner's award of fines where the Hearing Examiner determined that

Accordingly, the Commission vacates the Hearing Examiner's imposition of a $1,000 civil fine.

7. [Whether there] was no factual or legal basis for an award of treble damages in this case.

The Housing Provider asserts on appeal that the ALJ erred by awarding a trebled rent refund to the Tenant because the Hearing Examiner made no finding that the Housing Provider's rent overcharge to the Tenant was done in bad faith and because no evidence in the record would support such a finding. *See* Housing Provider's Brief at 13. Because the Commission vacates the rent refund awarded to the Tenant, *supra* at 17, the issue of a trebled refund is moot. *See, e.g.*, Richardson v. Barac Co., TP 28,196 (RHC June 24, 2015); Barron, TPs 28,510, 28,521, & 28,526; Hiatt Place, TP 21,149.[19]

Accordingly, the Housing Provider's appeal on this issue is dismissed as moot.

"knowledge of the Act is imputed to the Housing Provider, and the Housing Provider knew or should have known that filing Certificates of Election more than thirty days after the date they were first eligible to take a CPI-W rent ceiling adjustment was a violation of the Act." Nelson, TP 28,519. As additional support, the Hearing Examiner also found that the housing provider in Nelson was "fully aware that it could not lawfully and unilaterally move filing dates for annual rent ceiling adjustments." *Id.* (emphasis added). Thus, in Nelson, the Hearing Examiner identified with specificity the violation of the Act that was willful (late filing of CPI-W adjustments) and specifically determined that the identified violation was committed with awareness that the housing provider was violating the Act. *Id.*

In contrast, the Hearing Examiner in this case made simple, conclusory statements that the Housing Provider's conduct was willful, without identifying the specific violation of the Act to which such "willful conduct" applied. Final Order at 20; R. at 155. Where the Commission is unable to discern from its review of the record a specific violation of the Act that the Hearing Examiner also determined to be "willful" for the purposes of assessing fines, the Commission is not satisfied that a mere statement or observation by a hearing examiner that the Housing Provider may have had knowledge of the Act is sufficient to support the assessment of fines for ambiguous violations of the of the Act. *Compare* Final Order at 20; R. at 155, *with* Nelson, TP 28,519.

[19] The Commission notes, nonetheless, that its review of the record reveals no findings of fact on the issue of "bad faith" by the Hearing Examiner, and only a brief conclusion of law that the Housing Provider "has knowingly, willfully, and in bad faith implemented an improper and invalid rent ceiling for [the Tenant's] rental unit." Final Order at 22; R. at 153. The absence of specific findings of fact regarding a housing provider's alleged "bad faith" with respect to rent adjustments cannot support the imposition of a trebled rent refund. D.C. Official Code § 2-509(e); Perkins, 482 A.2d at 402.

IV. DISCUSSION OF THE TENANT'S ISSUE

1. Whether the [H]earing [E]xaminer erred when she barred challenges to any rent ceiling or rent increase prior to February 2002.

In the Final Order, the Hearing Examiner determined that, although the Housing Provider "failed to perfect rent ceiling adjustments for the years 1996 [through] 2004," the Tenant "is barred from pursuing claims for those years prior to January 2002." Final Order at 13: R. at 162. The Tenant maintains that the Hearing Examiner erred by disallowing the Tenant's challenges to rent ceiling adjustments that were filed by the Housing Provider more than three years before the Tenant Petition was filed. Tenant's Notice of Cross-appeal at 1. Unlike the Housing Provider's statute of limitations issue, discussed *supra* at 10-12, the Tenant's single issue on appeal is whether challenges to the rent ceiling itself are barred by the statute of limitations, or if only adjustments to the rent charged are barred. *See* Intervenors' Responsive Brief at 14-33; *see also* Tenant's Brief at 1 ("You can only collect three years['] worth of [d]amages. Housing Provider did not manage to make one valid increase since the inception of rent control.").[20]

As noted *supra* at 7-8, the Commission will reverse final orders by a hearing examiner that are not supported by substantial evidence on the record or that contain conclusion of law that are not in accordance with the Act. 14 DCMR § 3807.1 (2004). The Act's statute of limitations provides, in relevant part:

> A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No

[20] The Tenant's additional assertion that D.C. OFFICIAL CODE § 42-3502.06(e) is merely a limit on rent refunds and that rent ceiling adjustments, "since the inception of rent control," may be challenged is directly foreclosed by the Commission's and DCCA's decisions in Kennedy. *See* 709 A.2d at 98-99 ("The tenants argue on this appeal, as they did before the Commission, that § [42-3502.06(e)] merely serves to limit their recovery of rent overcharges to the period 1991-1994."). The DCCA, in that case, found the tenants' position unpersuasive and affirmed the Commission's determination that the statute of limitations applies to rent ceiling adjustments from their effective date. *Id.* ("Ultimately, the validity of these ceilings depends on the propriety of the periodic adjustments taken by the landlord, a matter squarely within the purview of § [42-3502.06(e)]."); *see also* Nelson, TP 28,519 ("when a tenant is directly challenging the validity of a rent ceiling adjustment, the statute of limitations begins to run on the effective date of the rent ceiling adjustment."); *infra* n. 22.

> 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[.]

D.C. OFFICIAL CODE § 42-3502.06(e) (2001).[21] In Gelman Mgmt., TPs 27,995, 27,997, 27,998, 28,002, & 28,004, the Commission articulated the principle, upheld by the DCCA in United Dominion Mgmt., that rent ceiling adjustments may be collaterally challenged within three years of their implementation as rent charged adjustments. *See* United Dominion Mgmt., 101 A.3d at 431 n.5.[22]

The Commission's review of the record does not reveal any substantial evidence or assertion by the Tenant that the rent ceiling adjustments for the years 1996-2002 were implemented as rent *charged* increases at any point after January 31, 2002, three years prior to the filing of the Tenant Petition. *See* Final Order at 3-4; R. at 171-72; *compare supra* at 6-9 (implementation of 1994 vacancy rent ceiling adjustment in November 2004). Therefore, the Commission is satisfied that the Hearing Examiner's conclusion that the Tenant could not directly challenge the rent ceiling adjustments filed before January 2002 is supported by substantial evidence on the record and in accordance with the Act. 14 DCMR § 3807.1 (2004); Kennedy, 709 A.2d at 97-98; Nelson, TP 28,519 at n.19; *cf.* United Dominion Mgmt., 101 A.3d at 431.

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[21] The Tenant also asserts that the statute of limitations does not bar challenges to rent ceiling adjustments, only adjustments in the rent charged. *See* Intervenors' Brief at 21-25 (citing Gelman Mgmt., TPs 27,995, 27,997, 27,998, 28,002, & 28,004). Although the plain language of the Act refers simply to "rent adjustments," and not specifically to adjustments to "rent ceilings" or to "rents charged," the Commission has consistently determined that the three-year time limit applies to rent ceiling adjustments. *See* Kennedy, 709 A.2d at 97-98 (citing, *inter alia*, Ayers v. Landow, TP 21,273 (RHC Oct. 4, 1990); Chin Kim v. Woodley, TP 23, 260 (RHC Sept. 13, 1994)).

[22] As the Commission has recently noted, a direct challenge to a rent *ceiling* adjustment, for the purpose of attaining a reduction in the lawfully-calculated rent ceiling, is distinguishable from a challenge to a rent *charged* adjustment that raises a collateral attack on the rent ceiling adjustment that serves as the basis for the rent charged increase. *See* Nelson, TP 28,519 at n.19 (distinguishing United Dominion Mgmt., 101 A.3d 426). The Tenant's argument conflates these two types of challenges: in a direct challenge to a rent ceiling adjustment, the "effective date" is not deferred until the rent charged is increased. Kennedy, 709 A.2d at 97-98; Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 at 35-36 & n.20; *cf.* United Dominion Mgmt., 101 A.3d at 430.

Accordingly, the Commission affirms the Hearing Examiner's determination that direct challenges to rent ceiling adjustments that were filed before January 2002 are barred by the statute of limitations.

V. CONCLUSION

For the foregoing reasons, the Commission affirms the Final Order in part, reverses it in part, and vacates it in part.

Regarding the Housing Provider's issues on appeal, the Commission dismisses the Housing Provider's issue regarding the Hearing Examiner's findings with regard to the July 29 Form as moot. *See supra* at 9.

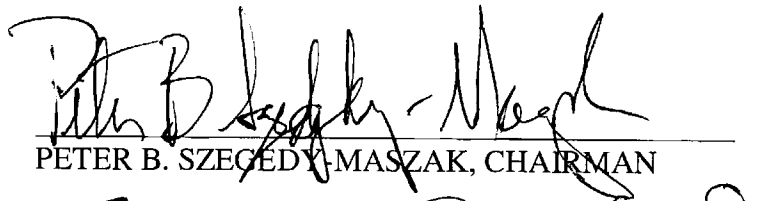
The Commission affirms the Hearing Examiner's determination that the Tenant is permitted to challenge the validity of a rent ceiling adjustment implemented as a rent charged adjustment within the statute of limitation period. *See supra* at 12. The Commission, however, reverses the Hearing Examiner's determination that the 2002-2005 CPI-W adjustments were untimely filed, *see supra* at 15, and vacates the Hearing Examiner's award of a rent refund to the Tenant because the rent charged to the Tenant did not exceed the lawful rent ceiling, *see supra* at 16-17.

The Commission also affirms that the Hearing Examiner had jurisdiction to impose a civil fine without following the procedures of the Civil Infractions Act. *See supra* at 17. The Commission, however, vacates the Hearing Examiner's imposition of a $1,000 civil fine. *See supra* at 20-21.

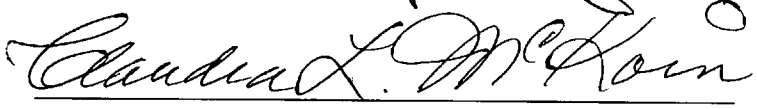
The Commission dismisses the Housing Provider's appeal regarding the imposition of a trebled rent refund as moot. *See supra* at 21.

Regarding the Tenant's issue on cross-appeal, the Commission affirms the Hearing Examiner's determination that direct challenges to rent ceiling adjustments filed before January 2002 are barred by the statute of limitations. *See supra* at 23-24.

SO ORDERED.



PETER B. SZEGEDY-MASZAK, CHAIRMAN



CLAUDIA L. McKOIN, COMMISSIONER

MOTIONS FOR RECONSIDERATION

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

JUDICIAL REVIEW

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

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in TP 28,270 was mailed, postage prepaid, by first class U.S. mail on this **29th day** of **April, 2016,** to:

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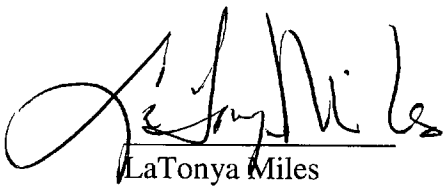

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