DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 26,197

In re: 4248 4th Street, SE #102
4283 6th Street, SE #201
4285 6th Street, SE #202
4287 6th Street, SE #102
4291 6th Street, SE #301
4297 6th Street, SE #201
4297 6th Street, SE #202

Ward Eight (8)

CASCADE PARK APARTMENTS and
CASCADE PARK PARTNERS, LLC
Housing Providers/Appellants

v.

URNA WALKER,
CHRISTEEN SMITH,
CONSTANCE JACKSON,
FRANCIS WALKER,
CLEM YOUNG,
ALSTON CYRUS, and
RAYMOND FRAZIER
Tenants/Appellees

DECISION AND ORDER

January 30, 2019

GREGORY, COMMISSIONER. This case is on appeal to the Rental Housing Commission ("Commission") from an order issued by the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD"), based on a petition filed with the Rental Accommodations and Conversion Division ("RACD") of the Department of Consumer and Regulatory Affairs ("DCRA").[1] The applicable provisions of the

[1] After the evidentiary hearing in this case was held, the Office of Administrative Hearings ("OAH") assumed jurisdiction over tenant petitions from DCRA pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in

Rental Housing Act of 1985 ("Act"), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01 - 3509.07 (2001), the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. OFFICIAL CODE §§ 2-501 - 510 (2001), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), and 14 DCMR §§ 3800-4399 (2004), govern these proceedings.

I. PROCEDURAL HISTORY[2]

On January 11, 2001, tenants/appellees Urma Walker, Francis Walker, Errol Smith, Alston Cyrus, Clem Young, Raymond Frazier, and Constance Jackson ("Tenants"),[3] residents of the housing accommodation known as Cascade Park Apartments ("Housing Accommodation"), filed tenant petition 26,197 ("Tenant Petition") with RACD against their housing provider, alleging the following:

1) The rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Emergency Act of 1985;

2) The rent being charged exceeds the legally calculated rent ceiling for our units;

3) The rent ceiling filed with the RACD for our units is improper;

4) The building in which our units are located is not properly registered with RACD;

5) The apartments have inadequate heat on cold days;

DCRA were transferred to DHCD by § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.)).

[2] The complete history and procedural background of this case is contained in the Commission's initial decision and order in Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005) and subsequently in Cascade Park Apartments & Cascade Park Partners, LLC v Walker, TP 26,197 (RHC Nov. 18, 2014). Those aspects of the history and procedural background in this case are incorporated by reference and will be recited only as relevant to the issues in the instant appeal.

[3] The Commission notes that other tenants also joined in the petition as originally filed, see R. at 17, but are no longer parties to this case, and that Christeen Smith was substituted for Erol Smith after his death, *see* Order on Pending Motions (RHC May 1, 2017).

6) Some units do not have any AC;

7) We are faced with ceiling leaks and places where the ceiling is falling in; and

8) The interior of some of the apartments are in horrible condition.

See Tenant Petition at 3; R. at 24. An evidentiary hearing was held before an RACD hearing examiner over 18 days between October 2, 2001 and May 9, 2002. After a decision was issued denying their claims, the Tenants appealed to the Commission, which reversed and remanded the case: Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005).

On May 9, 2007, Acting Rent Administrator Keith Anderson ("ARA Anderson"), issued a proposed decision and order after remand ("Proposed Decision and Order"), as required by D.C. OFFICIAL CODE § 2-509(d). R. at 982-1052. On June 8, 2007, the Tenants filed exceptions and objections to several findings of fact and conclusions of law ("Tenant's Exceptions and Objections"). R. at 1053-1060.

On January 30, 2008, Acting Rent Administrator Grace Wiggins ("ARA Wiggins") issued a final decision and order after remand: Walker v. Cascade Park Apartments, TP 26,197 (RAD Jan. 30, 2008) ("Final Order"); R. at 1064-71. In it, ARA Wiggins adopted the proposed rent refunds to the Tenants based on housing code violations. *Id.* at 5. In response to the Tenants' Exceptions and Objections, she took official notice of a change in ownership she discovered, *sua sponte*, and concluded as a matter of law that Cascade Park Partners, LLC ("CPPL") was a "housing provider" to be added as a respondent to the Tenant Petition. Final Order at 2-3, 5; R. at 1067, 1069-70.

On April 2, 2010, CPPL appealed, claiming a lack of notice of the proceedings and of the issuance of the Final Order. *See* Amended Notice of Appeal of Housing Provider/Appellant Cascade Park Partners LLC. On November 18, 2014, the Commission remanded this case to

RAD with instructions to reissue the Final Order and properly serve CPPL in accordance with D.C. OFFICIAL CODE § 2-509(e) and 14 DCMR § 3911.[4] Cascade Park Partners, LLC v Walker, TP 26,197 (RHC Nov. 18, 2014). Acting Rent Administrator Keith Anderson reissued the Final Order on October 11, 2016, consistent with the Commission's instructions. *See* R. at 1259-73.

On October 25, 2016, CPPL filed an amended notice of appeal ("Notice of Appeal"), which is now pending before the Commission. In its appeal, CPPL argues that:

1) ARA Wiggin's decision and order violated its right to due process, guaranteed by the Constitution, the D.C. Administrative Procedures Act, and the Commission's regulations;

2) A tenant-in-common may not be charged with debts or liabilities incurred by a co-tenant; and

3) The CPPL was unlawfully found liable for violations (acts) long after the statute of limitations on those claims, as applicable to CPPL, expired.

Notice of Appeal at 1-3.

CPPL filed a brief on June 30, 2017 ("CPPL's Brief"). The Tenants filed a brief on July 14, 2017 ("Tenants' Brief"). The Commission held a hearing on July 25, 2017. Hearing CD (RHC July 25, 2017) at 11:02.

II. ISSUE ON APPEAL

A. Whether ARA Wiggins erred by adding CPPL as a named housing provider/respondent without notice and an opportunity to respond

B. Whether CPPL can be added as a housing provider/respondent to the Tenant Petition

---

[4] D.C. OFFICIAL CODE § 2-509(e) provides, in relevant part, as follows: "A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record."

D.C. OFFICIAL CODE § 42-3502.16(j) provides the following: "A copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by first-class mail to the parties."

III. DISCUSSION

The Commission's standard of review of RAD decisions is contained at 14 DCMR § 3807.1 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.

The Commission reviews the Rent Administrator's conclusions of law to determine whether it is unreasonable or embodies a material misconception of the law. Dorchester House Assocs., L.P. v. D.C. Rental Hous. Comm'n, 938 A.2d 696, 702 (D.C. 2007) (citing Sawyer Prop. Mgmt. of Md. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 102-103 (D.C. 2005)); Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013); Carpenter v. Markswright, RH-TP-10-29,840 (RHC June 5, 2013). A decision to add or substitute a party is reviewed for abuse of discretion. *See, e.g.,* Burka v. Aenta Life Ins. Co., 87 F.3d 478, 482 (D.C. Cir. 1996). Nonetheless, "a court by definition abuses its discretion when it makes an error of law." Brown v. United States, 766 A.2d 530, 538 (D.C. 2001) (quoting Koon v. United States, 518 U.S. 81, 100 (1996)).

A. Whether ARA Wiggins erred by adding CPPL as a named housing provider/respondent without notice and an opportunity to respond

The Commission first determines whether ARA Wiggins abused her discretion when she added CPPL as a housing provider/respondent. In the Tenant's Exceptions and Objections to the Proposed Final Order, the Tenants requested to amend the caption of the case to reflect the name of the corporation, Cascade Park, Inc., that owned the Housing Accommodation, rather than the trade name of the apartment building, Cascade Park Apartments. *See* Tenants' Exceptions and Objections at1-3; R. at 1058-1060. ARA Wiggins denied the Tenant's request, and instead

provided the following explanation for determining that CPPL was a housing provider to be added as a respondent to the Tenant Petition: Final Order at 2-3, 5; R. at 1067, 1069-70:

> The problem with Petitioner's proposed change is that while it may not hurt the Respondent, it would prejudice the Petitioners. [ARA Wiggins] takes official notice that the land records of the District of Columbia reflect that the subject apartments were sold by Cascade Park, Inc. to Cascade Park Partners, LLC in two separate transactions. The first, recorded on April 8, 2004, conveyed a 95% interest in the subject property to Cascade Park Partners, LLC. (Attachment A). The second, recorded on December 28, 2005, conveyed the remaining 5% interest in the property to Cascade Park Partners, LLC. (Attachment B). Thus granting Petitioner's exception in this regard would result in naming an entity that no longer owns the property.
>
> [ARA Wiggins] further takes official notice that simultaneously with the April 8, 2004 sale of the property, Cascade Park, Inc. and Cascade Park Partners, LLC entered into and recorded a Tenancy in Common Agreement with respect to the subject property. (Attachment C). That agreement provided, inter alia, that "[t]he parties ... may use a trade name in connection with the Property which shall be Cascade Park Apartments ...." . . . The ARA finds that Cascade Park Apartments is the trade name by which the various owners of the property have operated since the inception of this proceeding and that, as such, it is not actually a misnomer. The ARA further finds that that agreement provided that the parties to it would "share all liabilities in respect of the Property ... in repsect of their percentage interest in the Property." . . . As of April 8, 2004, Cascade Park Partners, LLC bore 95% of the liabilities of the property and as of December 28, 2005 that entity bore 100% of the liabilities of the property.

Final Order at 2-3; R at 1069-70.

ARA Wiggins further stated that she would "adopt the procedure set forth in 14 DCMR § 3906.2 to add [CPPL] as a party respondent." *Id.* at 3; R. at 1069. The Tenants assert that 14 DCMR § 3906.1 also authorized the ARA to take official notice of the Tenancy in Common Agreement,[5] and to correct the case caption. *See* Tenants' Brief at 6. Those rules provide as follows:

[5] In the Final Order, ARA Wiggins states that the Tenancy in Common Agreement, the 2004 transfer document, and the 2005 transfer document are attached. However, the official record transmitted to the Commission does not contain any attachments to the Final Order, either as originally issued or as reissued after the Commission's 2014 remand. *See* R. at 1063-71 & 1258-73. The Tenants, in their November 8, 2016 Answer to the Notice of Appeal,

> 3906.1 Upon the death of a party, or the dissolution, reorganization, or change of ownership or interest of a party, or a change in the registration statement . . . , the hearing examiner may, upon the motion of a party or upon the hearing examiner's own motion, substitute or add a person, partnership, or corporation.
>
> 3906.2 If it appears to the Rent Administrator that the identity of the parties has been incorrectly determined, the Rent Administrator may substitute or add the correct parties on his or her own motion.

Although the language in 14 DCMR §3906.1 and .2 does allow the Rent Administrator to add parties, it is expressly limited by the immediate following subsection, 14 DCMR § 3906.3, which provides that:

> No substitution or addition of parties may occur unless all necessary parties are provided an opportunity to file written arguments in support of or opposition to a motion for substitution or addition of parties.

The ARA was therefore required to give the parties an opportunity to file written arguments in support or opposition to the addition of parties, whether by motion of the Tenants or on her own initiative. *See* Hanson v. D.C. Rental Housing Comm'n, 584 A.2d 592,595 (D.C. 1991) (an agency must follow its own regulations). Adding CPPL to the case without allowing CPPL to argue in support of or opposition to the motion violated 14 DCMR § 3906.3, as well as CPPL's right to due process. *See* Matthews v. Baccous, TP 24,470 & TP 24,471 (RHC Jan. 28, 2000); *see also* D.C. OFFICIAL CODE § 2-509(a) ("In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing . . . and opportunity shall be afforded all parties to present evidence and argument with respect thereto.").

Accordingly, the Final Order is reversed on this issue.

---

have attached a copy of the Tenancy in Common Agreement. In any event, the parties do not dispute that sale contracts were executed as ARA Wiggins describes in the Final Order.

B. Whether CPPL can be added as a housing provider/respondent to the Tenant Petition

On appeal, the Tenants argue that even if it was procedural error to add CPPL as a respondent, the case should be remanded to add CPPL in accordance with the proper procedures. *See* Tenants' Brief at 8-12. The Commission determines, to the contrary, that even if CPPL had been or were to be given proper notice of a motion to add it as a party, CPPL would not be a proper party to this Tenant Petition because successor landlords cannot be held liable for the actions that happened before they held ownership. *See* Binder v. Hawthorne, TP 11,761, 11,778, 11,788, & 11,803 (RHC May 14, 1986); Quality Mgmt. v. Henderson, TP 1,575 (RHC Oct. 28, 1982). The Commission has stated:

> [A] present landlord may not, as a general rule, be held liable for the transgressions of his or her predecessor. . . . Substantial evidence to show that the transgressor and the new landlord were essentially the same entity, that the conveyance was a fraudulent attempt to avoid liability, or that the new landlord knew of and profited by his predecessor's transgression might compel an opposite conclusion.

Binder, 11,761, 11,778, 11,788, & 11,803.

ARA Wiggins found, and the parties do not dispute, that CPPL did not own any interest in the Housing Accommodation until several years after the violations of the Act occurred and the evidentiary hearing was held. *See* Final Order at 2-3; R. at 1069-70. Therefore, CPPL cannot be named as housing provider/respondent and a remand to add it is not warranted.[6] Because CPPL may not be (directly) liable under the Act for the acts of its predecessor, the

[6] In Henderson, TP 1,575, the Commission remanded the case for further proceedings after ruling that the successor-owner could not be held liable. Unlike this case, Henderson was remanded specifically to determine the legal status of the predecessor-owner and manager, including whether there may have been some identity between the principals of the predecessor- and successor-owners. Nothing in the record of this case or the Tenants' arguments on appeal suggests that the former owner cannot be found or that CPPL and Cascade Park, Inc. entered into a less-than-arm's-length transfer of the Housing Accommodation.

Commission does not address its argument that the statute of limitations precludes liability against a later-added party.

With respect to whether CPPL may be liable pursuant to the terms of its sale contract(s) with Cascade Park, Inc., the resolution of that question is outside the proper scope of this Tenant Petition. The Act does not confer general authority on this administrative forum to adjudicate the enforceability of contracts for the sale of real property or for the assumption of liability between parties that do not have a landlord-tenant relationship to each other, and it is undisputed that CPPL did not have a landlord-tenant relationship to the Tenants within the relevant timeframe. A final order under the Act may be enforced by filing suit in the Superior Court, *see* D.C. OFFICIAL CODE § 42-3502.18, and, as a court of general jurisdiction, that forum may determine whether CPPL may be sued, implead, or otherwise held liable pursuant to the sales contract(s) for the refunds awarded in the Final Order. Accordingly, the Commission does not address CPPL's argument that a tenant-in-common owner of real property may not be charged with the liabilities of a co-owner.

IV. CONCLUSION

Based on the foregoing, the Commission reverses the Acting Rent Administrator's order adding CPPL as a housing provider/respondent and vacates the decision solely as to that party.

SO ORDERED.

MICHAEL T. SPENCER, CHAIRMAN

LISA M. GREGORY, 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

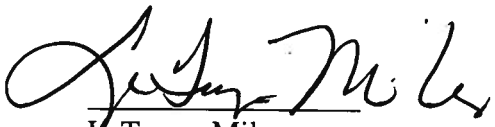
I certify that a copy of the foregoing **DECISION AND ORDER** in TP 26,197 was mailed, postage prepaid, by first class U.S. mail on this **30th day** of **January, 2019** to:

Richard W. Luchs, Esq.
1620 L Street, NW
Suite 900
Washington, DC 20036

Stephen O. Hessler, Esq.
Hessler and Associates
1313 F Street, NW, Suite 300
Washington, D.C. 20004

Jasmin Mize, Esq.
University of the District of Columbia
Housing and Consumer Law Clinic
David A. Clarke School of Law
4340 Connecticut Avenue, N.W.
Washington, DC 20008

Urna Walker
c/o Next of Kin
P.O. Box 54077
Washington, D.C. 20032-0277



LaTonya Miles
Clerk of Court
(202) 442-8949