

BZA #17337

Residential Action Coalition

February 8, 2006

1524 T St. NW 20009
(202) 265-5961

Dear Board of Zoning Adjustment,

The Residential Action Coalition was founded in 1983 and incorporated in 1987. RAC was organized to help preserve the residential character of the Dupont Circle Area and has been actively involved in historic preservation and land use issues in the neighborhood.

RAC closely followed N Street Follies eviction campaign --commencing in 1989 --to get rid of multiple tenants from the Woodbine Apartment House at 1755-53 N Street. I personally knew one of the tenants, Mr. Frank Genovese, a 70-year old retiree at the time, who was living on fixed income and who had been there for 28 years and who spent nearly \$20,000 in legal fees defending his rights as a tenant.

The purpose of the "hardship petition" filed by N Street Follies in 1993 was not to obtain a fair rate of return on the Woodbine Apartment building, but to evict the tenants in order to discontinue the housing use. (See the attached public record from the DC Rental Commission.) If a landlord seeks to discontinue a housing use, it must follow the proper statutory and regulatory scheme and offer the tenants an opportunity to purchase the property.

The Woodbine Apartment building at 1755 N Street was the last residential presence on the block and after it was discontinued as a housing use, N Street completely lost its residential component.

The Special Purpose District was created in 1958 to balance residential and professional uses in order to create a buffer-zone between downtown commercial uses and residential areas to the north. The BZA should reinforce this balance on the 1700 Block of N Street, which is an oasis, in and of itself. If city policy is to increase the number of D.C. residents, than keeping the residential use of these buildings is what should have been mandated by the Office of Planning, particularly in view of the present demand and viability for condos in and near downtown.

The proposed special exception for a hotel by N Street Follies is not consistent with the general intent and purpose of the Zoning Regulations, especially given the fact that there is clear evidence that the "hardship petition" was not filed in good faith and was intended solely to force the evictions of the tenants. Had the tenants been allowed to stay, N Street today would have a strong residential component. Furthermore, city coffers would have been enriched by their tax revenues. Over ten years of vacancy imposed upon the block by N Street Follies denied the city of badly needed revenue.

Sincerely,


Kay Eckles
Residential Action Coalition

2006 FEB 23 AM 10:10

D.C. OFFICE OF ZONING

RECEIVED

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17337
EXHIBIT NO. 53

Board of Zoning Adjustment
District of Columbia
CASE NO. 17337
EXHIBIT NO. 53A1

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
Zoning Division

614 H Street, N.W., Room 333
Washington, D.C., 20001

BLRA-17
(Rev. 11/87)
8-4777

CERTIFICATE OF OCCUPANCY

1880075

ISSUED TO NAME, ADDRESS, SQUARE
N STREET FOLLIES LIMITED PARTNERSHIP

ISSUE DATE 10/24/1988

1735 N ST NW

EXPIRATION DATE

LOTS 0836

SQUARE 158

TO USE: BASEMENT, FIRST - FIFTH

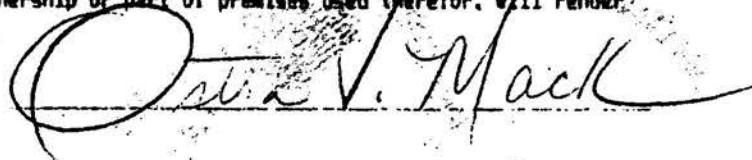
AS AN : APARTMENT BUILDING

ZONE: SP1 USE CODE: H651301R2 OCCUPANCY LOAD 20

BZA # SPECIAL USAGE: [YES] SEXUAL ORIENTED [N]

THIS CERTIFICATE SHALL BE CONSPICUOUSLY POSTED ON THE ABOVE PREMISE AT ALL TIMES. IT IS VALID INDEFINITELY, UNLESS AN expiration date is stated ONLY for the purpose(s) indicated above, and is not TRANSFERABLE to another person or premise under any conditions. ANY CHANGE in the type of business, ownership or part of premises used therefor, will render this CERTIFICATE void and a new CERTIFICATE must be obtained.

Designee


Donald G. Murray
DIRECTOR

R3

Evaluation and Analysis of the Evidence

Other than submission of their Federal and D.C. tax identification number, Respondent provided no evidence that the subject property has been used for transient occupancy, or that appropriate taxes were paid, from 1982 to the present. To this, Respondent argued that the language of Section 103(15) only requires a showing that the subject property was not a housing accommodation, as of May 20, 1980.

Section 103(14) defines "housing accommodation" for purposes of the Act as:

[A]ny structure or building in the District containing 1 or more rental units and the land appurtenant thereto. The term "housing accommodation" does not include any hotel or inn with a valid certificate of occupancy or any structure, used primarily for transient occupancy and in which at least 60% of the rooms devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980. For the purposes of this chapter, a rental unit shall be deemed to be used for transient occupancy only if the landlord of the rental unit is subject to and pays the sales tax imposed by §47-2001(n)(1)(C).

The Examiner finds that the subject property was not a housing accommodation, under §103(14), from May 20, 1980 to early 1982, but instead, was an accommodation where at least 60% of the units were used for transient occupancy, for which D.C. occupancy and sales taxes were paid. This finding is based on the testimonial and documentary evidence proffered by Respondent and Respondent's witness, Christopher Wallis. As such, from May 20, 1980 to early 1982, the subject property was excluded from any provision of the Act. However, the record contains no evidence that the subject property has maintained this transient status since early 1982.

The Rental Housing Commission has consistently held that the landlord has the burden of establishing an exemption. Litman v. Howell, T/P #11,855 (RHC August 28, 1986); Young, et al v. Smith, T/P #11,157 (RHC July 11, 1984); and Gibbons v. Hanes, T/P #11,076 (RHC July 11, 1984). By logical extension, the landlord also has the burden of establishing an exclusion from the Act. Here, Respondent failed to establish that the subject property is presently excluded from the Act because it is not a housing accommodation. Respondent argued that the only proof necessary is a showing of transient occupancy of

Evaluation and Analysis of the Evidence (continued)

the premises as of May 20, 1980, and that neither the statute nor case law provide contrary language. The Examiner rejects this argument based on the language of the registration and coverage provisions of §205 of the Act, D.C. Code Ann §45-2515 (1986 Repl. Vol.). Section 205 requires any rental unit to be registered with RACD by the housing provider. This means that should the subject premises fail to be used for transient occupancy, it would fall within the definition of housing accommodation and, if used as a rental unit, must be registered with RACD. Because Respondent did not provide substantial evidence that the subject premises has remained outside the definition of housing accommodation, the Examiner finds that the property in question was not used for transient occupancy, for the purposes of §103(14), and should have been registered as a housing accommodation, pursuant to §205. As such, the Examiner concludes that Respondent was in violation of §205 for the period from early 1982 to the present.

2. Retaliation

Having found that the subject property is a housing accommodation the subject property is covered by §501(d) of the D.C. Code Ann. §45-2551(d) (1986 Repl. Vol.). Under §501(d) a housing provider must, inter alia, serve on the tenant a 90-day notice to vacate for immediate and personal use and occupancy. Here, the February 9, 1989, Notice to Quit and Vacate only provided a 30-day notice period, and thus, was in violation of §501(d). However, Respondent shall not be subject to a fine for this violation, pursuant to §901(b), D.C. Code Ann. §45-2591(b), because the 30-day notice to quit and vacate was issued by Respondent under a good faith belief that the subject property was excluded from the requirements of §501(d). Thus, the Examiner finds that the violation was not willful, as is required for imposition of a fine under §901(b).

3. Did Respondents Act Knowingly?

Modern case law has defined the term "knowingly" to mean "know or should have known". The Rental Housing Commission has applied this definition to the Act as follows:

[A] landlord is imputed to have knowledge (sic) of a reasonable, prudent man involved in the business of renting properties in the District of Columbia.

Evaluation and Analysis of the Evidence (continued)

Reid v. Quality Management Company, T/P
11,307 (RHC February 7, 1985).

In this case, Respondent knew or should have known that the subject property was improperly registered and that the 30-day notice to vacate was invalid, and that this conduct constitutes a violation of the Act. Therefore, the Examiner concludes that Respondent knowingly violated the Act.

4. Remedies

Section 901(a) of the Act, D.C. Code Ann. §45-2591(a) (1986 Repl. Vol.), authorizes an award of a refund, trebled refund, and/or rent rollback, as appropriate, where a housing provider has knowingly violated the Act. Where Respondent has acted in bad faith, the refund shall be trebled. Section 901(a) provides:

Any person who knowingly (1) demands or receives any rent for a rental unit under the provisions of [the Act], or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or the Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

The evidence establishes that Petitioner is not entitled to either a rent refund or a rent rollback. Because the Examiner finds that Respondent's failure to register was not willful, no penalty via civil fine shall be imposed for the \$205 violation, as well.

Findings of Fact

After a careful evaluation and analysis of the evidence, the Examiner finds, as a matter of fact:

1. The subject property is located at 1755 "N" Street, N.W.
2. Dean Lewis resides at the subject property, and is the Petitioner in this matter.
3. N Street Follies Limited Partnership owns the subject premises, and is the Respondent in this matter.

Findings of Fact (continued)

4. The subject property contained twenty (20 units), fourteen (14) of which, or seventy percent (70%) were transiently occupied between May 20, 1980 and early 1982.
5. Respondent paid D.C. sales and occupancy taxes between May 20, 1980 and early 1982.
6. Respondent served on Petitioner a 30-day notice to quit and vacate on February 9, 1989.
7. Respondent believed that the subject property has not been a housing accommodation, under the Act, since May 20, 1980, and, therefore, has been excluded from the Act for this period.

Conclusions of Law

After a careful evaluation of the evidence and Finding of Facts, the Examiner concludes, as a matter of law:

1. The subject property was excluded from the Act from May 20, 1980 to early 1982, because it was not a housing accommodation, pursuant to D.C. Code §45-2503(14).
2. Respondent failed to establish that the subject property is presently not a housing accommodation, pursuant to §45-2503(14), supra.
3. Respondent failed to properly register the subject property as a violation of housing accommodation, Section 205 of the Act, D.C. Code Ann. §45-2515(1986 Repl. Vol.).
4. Respondent issued Petitioner a 30-day notice to quit and vacate on February 9, 1989, in violation of D.C. Code Ann. §45-2551(d).
5. Respondent did not willfully violate §§45-2515 and 45-2551(d) and shall not be subject to a civil fine, pursuant to D.C. Code Ann. §45-2591(b).

ORDER

Therefore, it is hereby ORDERED this **FEB 12 1990** that,
Tenant Petition #21,759 is GRANTED.

It is FURTHER ORDERED that,

Respondent properly register with RACD within thirty (30) days of the issuance of this Decision and Order.

ORDER (continued)

It is FURTHER ORDERED that,

This Decision is effective immediately.

Right to File Motion for Reconsideration or to Appeal

Any party who believes that this Decision is either: (1) the result of a default judgement because of that party's failure to appear at the hearing, (2) contains typographical, numerical, or other technical errors; (3) contains clear error that is evident on its face; or (4) should be reconsidered because newly discovered evidence exists which could not have been discussed at the hearing, may file a Motion for Reconsideration with the Rent Administrator.

Any party who believes that this Decision is not supported by the evidence before the Hearing Examiner or that the law was applied incorrectly, may request a review by the Rental Housing Commission, by filing a Notice of Appeal. The Notice must set forth the specific reasons for appeal which must be based on the evidence in the official record or the application of the law.

Motions for Reconsideration and Appeals from the Rent Administrator's Decision must be file-stamped with the Rent Administrator or the Commission, respectively, and served on opposing parties within ten (10) days of the Decision of the Rent Administrator, excluding Saturdays, Sundays, holidays on or before **12 MAR 1990** allowing three (3) additional days for mailing pursuant to 14 D.C.M.R. 3912.5. All pleadings and other filings shall be deemed filed when actually received and stamped by RACD during business hours (8:30 A.M. to 3:00 P.M.) on or before the due date.

Address any Motion for Reconsideration to:

Rental Accommodations and Conversion Division
P.O. Box 37200
Washington, D.C. 20013-7200

Address any Notice of Appeal to:

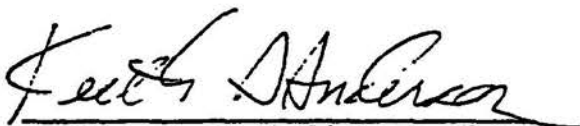
Rental Housing Commission
P.O. Box 37200
Washington, D.C. 20013-7200

Motions for Reconsideration must be decided within ten (10) days from the date on which they are filed. If no ruling on the motion is issued within those ten (10) days, the motion is automatically denied.

Right to File Motion for Reconsideration or to Appeal (continued)

The time for appeal does not run while a Motion for Reconsideration is pending. However, once a ruling on a Motion for Reconsideration is issued or the time to decide such motion elapses, the ten (10) days to file an appeal begins to run again.

The failure of the party to file a timely appeal shall result in the waiver of the right to have this Decision reviewed by the District of Columbia Court of Appeals.



KEITH A. ANDERSON, ESQUIRE
Hearing Examiner
Department of Consumer and
Regulatory Affairs
Rental Accommodations and
Conversion Division

KAA/mew/02/01/90

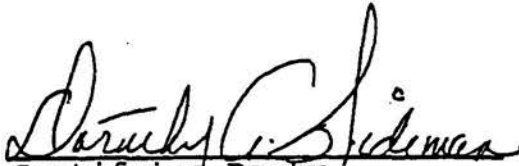
Copies to:

Dean Lewis
1755 "N" Street, N.W.
Suite #200
Washington, D. C. 20036

Mark E. Brodsky, Esquire
1016 - 16th Street, N.W.
6th Floor
Washington, D. C. 20036

CERTIFICATE OF SERVICE

I hereby certify that I cause to be mailed on **FEB 12 1990**
the Decision and Order in T/P #21,759 to the above-listed parties.


Certifying Party

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 21,759

TEST EVICTION

**"N" STREET FOLLIES LIMITED PARTNERSHIP
Housing Provider/Appellant**

v.

**DEAN LEWIS
Tenant/Appellee**

On Appeal from the Rent Administrator

DECISION AND ORDER

Issued December 4, 1991

Jordan, Commissioner: In this appeal the housing provider challenges the hearing examiner's conclusion that the proviso to the definition of a "housing accommodation" contained in the Rental Housing Act of 1985, D.C. Law 6-10 sec. 103(14), D.C. Code sec. 45-2503(14)¹ does not exclude the housing provider from coverage

¹ Section 45-2503(14) provides:

"Housing accommodation" means any structure or building in the District containing 1 or more rental units and the land appurtenant thereto. The term "housing accommodation" does not include any hotel or inn with a valid certificate of occupancy or any structure, including any room in the structure, used primarily for transient occupancy and in which at least 60% of the rooms devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980. For the purposes of this chapter, a rental unit shall be deemed to be used for transient occupancy only if the landlord

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under the Act. We deny the housing provider's appeal and affirm the decision and order of the Rent Administrator².

I

Tenant Lewis took occupancy in June or July, 1988³. Despite the fact that he was current in his rent, he was served with a 30-day notice to quit dated February 9, 1989. The notice did not specify the reason the housing provider wished to recover possession of the premises, but testimony indicated the reason was that the housing provider wanted the premises for its own use. Tenant Lewis filed a tenant petition which alleged that the housing provider had violated the Rental Housing Act of 1985 by serving on him a notice to vacate which did not meet the requirements of section 501 of the Act and by retaliating against him. That section sets forth in detail the notice periods required for different types of evictions. The housing provider did not dispute that the notice would be in violation of the Act if the housing provider were covered by section 501. Instead, the housing provider maintained, and continues to maintain on appeal, that it

of the rental unit is subject to and pays the sales tax imposed by 47-2001(n)(1)(C).

² Lewis v. "N" Street Follies Limited Partnership, TP 21,759 (RACD Feb. 12, 1990).

³ The hearing examiner incorrectly stated occupancy commenced in January, 1989 but Mr. Lewis' testimony was clear that the actual date was in June or July, 1988. Although not offered as an exhibit, Mr. Lewis attached to the petition his rent receipts for August 5, 1988 through March, 1989. We correct this plain error.

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is not covered by the Act in any respect because the premises in question are not a "housing accommodation" under the Act's definition of that term. See fn. 1, supra.

Under the housing provider's interpretation, the proviso excludes from coverage any owner who can show that on May 20, 1980 at least 60% of the rooms devoted to living quarters for tenants or guests were used for transient occupancy. If that showing is made, the exclusion takes effect and the building is forever excluded from coverage regardless of the subsequent usage of the premises.

The housing provider's chief witness was Mr. Wallis, the bookkeeper of the prior owner. The hearing examiner found, on the basis of Mr. Wallis' testimony and documentary evidence, that on May 20, 1980, the subject property contained twenty units, fourteen of which (70%) were transiently occupied. He also found that the then owner paid the D.C. occupancy tax and sales tax on transient units. He credited Mr. Wallis' testimony that, to his knowledge, the prior owner paid these taxes at least until early 1982 when Wallis stopped acting as bookkeeper. The examiner also found that the housing provider offered no evidence that the subject property has been used for transient occupancy, or the appropriate taxes paid from 1982 to the date of the hearing. Thus, the hearing examiner found that the record contains no evidence that the subject

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property has maintained transient status since early 1982.⁴

The hearing examiner observed that the Rental Housing Commission has consistently held that a housing provider has the burden of establishing an exemption from the rent stabilization program. By logical extension, he held, the housing provider also has the burden of establishing an exclusion from coverage under the Act. The examiner concluded that for the housing provider to be excluded from coverage under the proviso, it had to prove transient use of the premises had been maintained. Should the premises fail to be used for transient occupancy they would again fall within the definition of housing accommodation and, if used as a rental unit, must be registered with the Rental Accommodations and Conversions Division as required by section 205 of the Act. The hearing examiner held that the housing provider violated the Act by not serving a 90-day notice to vacate on the tenant as required by section 501; however, the examiner imposed no penalty, concluding that the housing provider's action was not wilfull because the housing provider was under a good faith belief that the subject property was excluded from the coverage of the Act.

⁴ Although not specifically mentioned by the hearing examiner, Mr. Wallis did testify that he does not know what the new owner is doing with the property and counsel for the housing provider stated on the record that a core of permanent resident remains at the premises, but that transient use has not continued. He added, however, that the present use is not relevant because, as stated in the text, the transient status of the building as of March 20, 1980 gave it a continuing exclusion from the provisions of the Act.

II

On appeal, the housing provider correctly points out that the Act's registration and coverage provisions, set out in section 205, extend only to "rental units" not otherwise exempt from coverage. D.C. Code sec. 45-2515 (1990 Repl. Vol). "Rental unit" is defined under the Act, 45 D.C. Code sec. 2503(33) (Repl. Vol. 1990), as follows:

"Rental unit" means any part of a housing accommodation as defined in paragraph (14) of this section . . . (Emphasis added)

Thus, it is clear that a unit must first be found to be part of a housing accommodation as that term is defined in D.C. Code sec. 45-2503(14), supra fn. 1, before that unit can be deemed a "rental unit"⁵. Conversely, if a unit is not part of a building or structure meeting the definition of "housing accommodation", it is

⁵ This Commission interpreted the first part of the definition of "housing provider" in Marshall v. William J. Davis, Inc., TP 10,185 (RHC May 21, 1986). The Rental Accommodations Act of 1975 permitted a landlord to take a rent ceiling increase when a rental unit is vacant, up to the rent ceiling of a substantially comparable unit "in the same housing accommodation." The term "housing accommodation" was defined in that Act, as it is in the 1985 Act, as "any structure or building in the District of Columbia containing one or more rental units and the land appurtenant thereto." We concluded that in the context of that case, the definition of "housing accommodation" was ambiguous despite its superficial clarity, because the definition included both the words "building" and "structure". We held that the word "structure" must have a meaning other than "building" and that meaning could encompass a multi-building complex. The Court of Appeals approved the Commission's reasoning, Marshall v. District of Columbia Rental Housing Commission, 533 A.2d 1271, 1274-75 (D.C. 1987), and provided a useful discussion of the doctrine of "plain meaning" in statutory construction which is referred to, infra.

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excluded (as opposed to exempted) from the Act's coverage.

For convenience in reference we again set forth the definition of "housing accommodation":

"Housing accommodation " means any structure or building in the District of Columbia containing 1 or more rental units and the land appurtenant thereto. The term "housing accommodation" does not include any hotel or inn with a valid certificate of occupancy or any structure, including any room in the structure, used primarily for transient occupancy and in which at least 60% of the rooms devoted to living quarters for tenants and guests were used for transient occupancy as of May 20, 1980. For purposes of this chapter, a rental unit shall be deemed to be used for transient occupancy only if the landlord of the rental unit is subject to and pays the sales tax imposed by sec. 47-20001(n)(1)(C).

The housing provider examines the definition and argues that the test for exclusion involves two inquiries. The first is whether the structure was used primarily for transient occupancy as of May 20, 1980. In order to establish that, says the housing provider, it must be proven that payment of the applicable sales tax was made on at least 60% of the units as of May 20, 1980. The housing provider points out that the hearing examiner conceded that such an evidentiary showing was made here. It is not clear what the second test is supposed to be.

The housing provider argues that the May 20, 1980 date is all important; that the hearing examiner erroneously viewed that date as having no particular importance; and that he further erred by insisting that the definition requires a housing provider to prove

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continuous transient use since May 20, 1980.

The D.C. Court of Appeals has instructed that when we interpret a statute we must look first at the language we are interpreting; if the words are clear and unambiguous we must give effect to its plain meaning. J. Parreco & Son v. District of Columbia Rental Housing Commission, 567 A.2d 43, 45-6 (D.C. 1989). The court stated that the primary rule of statutory construction is that the intent of the legislature is to be found in the language it has used. On the other hand, we should not make a fetish of literalism, especially where the plain language would lead to an absurd result. Id. However, the court looks beyond the plain meaning only where there are persuasive reasons for doing so. Id.

Another principle of statutory construction is "that effect must be given, if possible, to every word of a statute so that no part will be inoperative or superfluous, unless the provision is the result of obvious mistake or error." Marshall v. D.C. Rental Housing Commission, supra, fn. 5, at 1274.

We conclude that the meaning of the proviso is plain. It states that the exclusion applies to two categories of structures. The first is "any hotel or inn with a [current] valid certificate of occupancy." The second is "any structure [currently] used primarily for transient occupancy and in which at least 60% of the rooms [currently] devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980", (emphasis added). Moreover, "a rental unit shall be deemed to be [currently]

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used for transient occupancy only if the landlord of the rental unit is subject to and [currently] pays the sales tax imposed by sec. 47-2001(n)(1)(C)."

The proviso taken as a whole means there are two categories of transient occupancy. The first is a hotel or inn having a Certificate of Occupancy for such usage. The second is a "structure", which the Council must have conceived as something less than a currently operating, full-fledged hotel or inn having a certificate of occupancy. Because it is less than or different from a hotel or inn, the Council set forth criteria that would identify which such structures would qualify for the exclusion. Only structures that were substantially used as transient residences on May 20, 1980 could qualify; they were structures where 60% of the rooms devoted to living quarters on that date were used for transient occupancy. At the same time, the structure must be currently used primarily for transient occupancy. In order to satisfy that criterion, it must be shown that the "landlord" is subject to, and is paying, the sales tax under sec. 47-2001(n)(1)(C) of the D.C. Code⁶.

⁶ Title 47 of the D.C. Code, sec. 2002 imposes a sales tax upon vendors for the privilege of selling certain services which are defined as "retail sale" and "sale at retail". Those terms are defined in D.C. Code sec. 47-2001(n)(1); that is the section referred to in the proviso to the definition of "housing accommodation" under discussion herein. Specifically, subsection (C) of sec. 2001(n)(1) provides that a "retail sale" and "sale at retail" includes:

(C) The sale or charge for any room or rooms,

The language of the tax provision makes it clear that there are a number of types of transient occupancy which are neither hotels nor inns. They include, for example, tourist camps, tourist cabins or other places in which rooms, lodgings or accommodations are regularly furnished to transients for a consideration. Thus, the second part of the proviso appears to apply to a structure which does not qualify as a hotel or inn, but which, nevertheless, rents to transient occupants. We believe that this interpretation avoids the error inherent in the appellant's position whereby a substantial portion of the proviso, i.e. the portion which states, "or any structure, including any room in the structure, used primarily for transient occupancy, is simply ignored and treated as surplusage.

We also apply another rule which confirms our interpretation of the proviso. The Court of Appeals has noted that, "[e]xemptions from rent control laws should be narrowly construed in light of the intent of the legislature and plain meaning of the legislation." Remin v. District of Columbia Rental Housing Commission, 471 A.2d 275, 279 (D.C. 1984). The housing provider's interpretation would result in the premises having a complete exclusion from the rent stabilization program without regard to its present use simply

lodgings, or accommodations furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. . . ."

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because it was used as a transient residence on a given date in the past. We find nothing in the legislative history of the definition that would sustain such a broad exclusionary interpretation.

Briefly stated, the history of rental housing legislation in the District of Columbia shows the Council's continuing concern that rental housing not be converted to hotels, motels and other transient occupancy. Hotels, motels and inns are given an exclusion from coverage, but those claiming the exclusion must prove their entitlement. This is in keeping with the court's statement that exemptions should be narrowly construed.

The "District of Columbia Rental Accommodations Act of 1975", D.C. Law 1-33, 201(f), contained a definition of "housing accommodation" similar to the present one and contained an exclusion which provided:

". . . Such, term [housing accommodation] shall not include any hotel, motel, or other structure, including any room therein, used primarily for transient occupancy and in which at least 60 percent of the rooms devoted to living quarters for tenants or guests are used for transient occupancy.

This provision was narrowly construed by the Court of Appeals in Granite State Limited Partnership v. District of Columbia Rental Accommodations Commission, 403 A.2d 1157 (D.C. 1979).

The "Rental Housing Act of 1977", D.C. Law 2-54, 102(f) contained a similar definition of "housing accommodation" and the following proviso:

. . . Such term shall not include any hotel, motel or

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other structure, including any room therein, used primarily for transient occupancy and in which at least sixty percent (60%) of the rooms devoted to living quarters for tenants or guests are used for transient occupancy. For the purposes of this Act, a rental unit shall be deemed to be used for transient occupancy if the landlord thereof is subject to and pays the sales tax imposed by section 47-2601(14)(a)(3) of the District of Columbia Code.

In 1980, the Council passed D.C. Law 3-87, the Rental Housing Conversion Regulation Act of 1980 which amended sec. 604 of the Rental Housing Act of 1977. Section 3(b) provided:

Notwithstanding any other provision of law, no person shall convert and the Mayor shall not permit the conversion of any housing accommodation or rental unit to a hotel, motel, inn, or other transient residential occupancy. (Emphasis added)

The Rental Housing Act of 1980, D.C. Law 3-131, 103(8) again contained essentially the same definition of "housing accommodation" but the exclusionary proviso was altered as follows:

. . . The term "housing accommodation" shall not include any hotel or inn with a valid certificate of occupancy.

Despite the apparently looser language of this proviso, the prohibition on conversion of rental housing to transient occupancy was substantially strengthened in the 1980 Act by prohibiting the demolition of rental housing to build transient quarters. D.C. Law 3-131, sec.602.

Finally, in the the Rental Housing Act of 1985 the Council adopted the more comprehensive proviso which is under review in this case. It embodies the language of the proviso of the 1977 Act,

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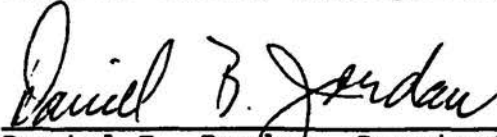
but with the word "structure", together with the additional language concerning use as of May 20, 1980, made into a separate category.

III

Counsel for the housing provider made no effort to show at the hearing that the building presently qualifies for exclusion as a hotel or motel. Nor did he attempt to prove that it fell into the alternative category of a structure that is excluded because currently used primarily for transient occupancy and which met the 60% transient use criterion on May 20, 1980. Indeed, as previously noted, he conceded it was not currently used for transient purposes and elected to rely solely on its use on May 20, 1980, a position we have rejected. For the foregoing reasons, we hold that the subject premises are not within the exclusionary language of the definition and that they are, consequently a "housing accommodation" which is required to be registered. The decision and order of the hearing examiner is AFFIRMED.



Ruth R. Banks, Chairperson



Daniel B. Jordan, Commissioner

TP 21,759
December 4, 1991

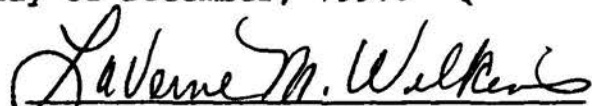
Copies to:

Mark E. Brodsky, Esq.
Sills & Brodsky, P.C.
Sixth Floor
1016 16th Street, N.W.
Washington, D.C. 20036

Dean Lewis
1755 N Street, N.W.
Unit #200
Washington, D.C. 20036

Certificate of Service

I hereby certify that a copy of the foregoing Decision and Order was served, by first class mail, postage prepaid, to the parties listed above this 4th day of December, 1991. ,


Laverne M. Wilkins

Washington City Paper

District Line

From the March 8, 1996 issue.

Downtown Ghost Town

The Last Days of an N Street Apartment Building

By Erik Wemple

Joe Mullin cherishes his one-bedroom apartment at 1755 N St. NW. After all, he moved there way back in 1978, and it's filled with 18 years worth of familiar clutter. He's not bothered by his neighbors: Only three other tenants remain in his 20-unit building. And the 43-year-old Vietnam vet pays a mere \$400 a month in rent—a pittance for his choice downtown location.

All of which explains why Mullin—a self-described “stubborn Irishman”—has almost single-handedly blocked the plans of his landlord, developer Morton Bender, to oust him from the apartment and convert 1755 into commercial office space. Mullin views his fight—which he has waged in rent control hearings, landlord-tenant court, and tête-à-tête with Bender—as a downtown version of David and Goliath.

“He’s an unscrupulous weasel who wants to take my home from me,” says Mullin.

In a larger context, Mullin’s battle represents the last, defiant resistance by the residents of old downtown. He is one of the final holdouts in a long-since-lost struggle by civic groups and tenants to stop developers from gobbling up the mansions and town homes bordering the central business district. Mullin’s block bears testament to the ravages of the struggle. It was once a street of stately houses. Now only the historic façades remain, as offices, hotels, and restaurants have occupied almost every building on the block.

“We have lost some of our finest residential real estate to office uses,” says Kay Eckles, head of the Residential Action Coalition, a Dupont Circle group that fights commercial conversion of residential properties.

For Mullin and his current neighbors—Georgette Miller and Frank and Vera Genovese—the trouble began back in 1988, when Bender paid \$8 million cash for the building and an adjacent property. Bender bought the joint from Hamilton “Polly” Morrison, who had run it as a guest house and apartment building since 1940. Morrison’s motherly ways endeared her to guests and tenants, and her zeal for historic preservation made her a neighborhood favorite. “It was a real community here,” recalls Miller, who moved into her second-floor efficiency in 1984. The Genoveses have lived in the building since 1966.

The change in ownership was a culture shock for the tenants. By Mullin’s account, Bender saw the tenants as one of several irritating yet surmountable challenges to his conversion plan. Mullin recalls numerous snubs and slights, like the time Bender reportedly told him that he could no longer use the building’s patio. The landlord has neglected building maintenance in order to drive out tenants, Mullin charges. He cites a July 1995 city

inspection that turned up 50 housing code violations for everything from cracked walls to missing windows to hole-ridden ceilings.

Bender declined to comment on any of Mullin's complaints, citing ongoing litigation between him and his tenants.

The landlord seems to have hoped for a quick conversion, but snag after snag delayed him. He bought the building just as the thriving '80s real estate market turned south, eroding the value of the property. Then in 1989 the D.C. courts rejected a petition by one of his employees to declassify 1755 as a housing accommodation. Declassification would have cleared the way for eviction and conversion. Bender's streak of bad luck continued in 1990 when Dupont Circle preservationists blocked his proposal to raze the building, preserve the façade, and erect an expanded office complex.

But Bender's maneuvering took its toll on his tenants. One by one, they moved out. Empty units stayed empty, and by 1993 only three apartments were occupied. In August of that year, Bender filed a "hardship" petition with the District's rent control office. "Hardship" provisions of the city's rent control law enable landlords to raise rents above statutory ceilings if rental income does not produce at least a 12-percent return on equity. But Bender was seeking a lot more than higher rents.

"He's not interested in the 'hardship' petition, he's interested in forcing those people out of there," says Jim McGrath, president of TENAC, a pro-rent control tenant group.

On Jan. 18, 1995, Bender got what he wanted: Rent control magistrate Thomas Word issued an order mandating a nearly threefold rent hike for his three tenants.

The order launched Mullin on a rent control crusade. Mullin has plenty of time on his hands—he lives off veteran's disability benefits—so he stormed public libraries, government offices, and the city's courts to pore over the rent control law and case history. He represented himself in landlord-tenant court when Bender sued him for refusing to pay the rent increase. He investigated Word's decision and wrote his own appeal. The Genoveses and Miller hired a lawyer and filed a separate appeal.

In all, Mullin has drafted 17 motions, appeals, and briefs in the past year—all of which bear the archaic typeface of the antique Royal manual typewriter that Mullin bought for \$10 at a secondhand store. Mullin's towering stack of files from the case includes detailed pleas for assistance to D.C. Council Chairman David Clarke and Ward 2 Councilmember Jack Evans. (Mullin says neither has responded.)

Mullin gripes that Word never read the tenants' legal briefs, which Mullin says were missing from the case file at the time of the decision. Word was unavailable for comment, but his supervisor Belva Newsome says that her office scrutinizes all rent control decisions for accuracy and compliance with the law.

In this version of David and Goliath, the giant is going to win. Word's decision has withstood Mullin's appeals to both the Rental Housing Commission and the D.C. Court of Appeals.

None of the tenants can afford the new rent payments. Mullin says his nonpayment of rent has forced an

imminent appointment with the city's eviction squad. (Every week, he calls the U.S. Marshals Service to see if he's been scheduled for removal.) Miller and the Genoveses are not being forced out yet because their separate appeal has placed them on a slower eviction timetable.

But barring an unlikely reversal, Bender will soon prevail in his seven-year bid to convert the building to office space. Once he uproots the tenants, Bender must merely secure a "special exception" from the Board of Zoning Adjustment (BZA) to build offices at the site. Such exceptions are required in "special purpose" zones such as Bender's block of N Street.

When Mullin, Miller, and the Genoveses finally leave, it will signify yet another defeat for D.C. planning theory. City planners intended "special purpose" zones to be a mixture of homes and offices. They are supposed to form the buffer between exclusively residential neighborhoods and high-rise downtown. But to the dismay of civic groups, commerce has all but driven out homes.

"Thanks to BZA's consistent record of favoring developers, our 'special purpose' zones have migrated toward commercial use and away from residential use," says Dennis Bass, a former Dupont Circle Advisory Neighborhood Commissioner and opponent of commercial conversion. He notes that the four blocks of 16th Street between Scott Circle and Q Street are another casualty of the special-purpose scourge: In the past 10 years, commercial developers have taken over all of the 10-plus residential town houses in that stretch.

Devoid of inhabitants, these buffer zones become evening ghost towns. Below Dupont Circle and elsewhere, pedestrian traffic tails off sharply after rush hour, once workers turn out the lights in their cozy-looking offices and hop on the subway. The deserted streets invite petty crime: Last year Mullin's block—an eerie depository of shattered glass—led the entire city in car break-ins. CP

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Washington City Paper

District Line

From the June 12, 1998 issue.

Hissing Fit

*Joe Mullin shall not be moved.***By Jason Cherkis**

When Joe Mullin heard a hissing sound coming from the parking lot behind his apartment on May 4, he didn't think much of it. Mullin was spending a typical night in his one-bedroom at 1755 N St. NW—watching television with the sound off, listening to the radio, sitting at his living room table. About 10 seconds later, he heard the same sound—pffftt!—through his open window. This time, the noise registered with the 45-year-old Corcoran art student and Vietnam vet—it was another tire slashing. "Holy shit," Mullin thought. "I made the connection right there. Son of a bitch."

Mullin raced down the narrow hallway into the lot. Outside, he says, he spotted his landlord, Morton Bender, and a business associate getting into their cars. The burly Mullin lashed out, "You fucking prick!" Two tires had been punctured.

The rear parking lot was a novel place for Mullin to confront Bender. Over the past five years, the two have confined their fights to Landlord and Tenant court. Since purchasing the apartment building in 1988, Bender has sought to convert it to office space—a move that would entail ousting Mullin and the other remaining tenant, Georgette Miller. Both tenants adore the building's Old World touches and refuse to move out of their own free will. (See "Downtown Ghost Town," 3/5/96.)

The conversion would have taken place years ago if not for Mullin's resourcefulness. Equipped with his manual Royal typewriter, Mullin has crafted dozens of landlord-tenant appeals, briefs, and motions that seize on D.C. laws governing property conversions. Although Mullin's avenues for recourse are narrowing, he has cost Bender thousands in forgone revenues and legal fees.

Mullin says his nemesis began to show the strain of battle early last winter. He blames Bender for spray-painting "GO" on his 1965 Volkswagen Bug, prompting parking-enforcement drones to ticket cars parked on private property behind the building, and slashing the tires of Miller and a friend in March. The May 4 incident, Mullin says, only strengthens his case.

After Mullin confronted him, Bender sped away. Mullin says Richard Vermillan, Bender's associate, jerked his 1997 Cadillac Seville into reverse, nearly hitting him. According to Mullin and Miller, who witnessed the confrontation, Mullin leapt on the car's trunk to protect himself and to prevent Vermillan from fleeing. Vermillan, however, managed to buck Mullin and take off. Miller called the cops, who arrived in about 10 minutes.

Officers from the Metropolitan Police Department refused to write up Vermillan for the incident but did file a report on the slashings. (Third District police officers failed to produce a copy of the report when asked by a Washington City Paper reporter.)

On May 8, Mullin awoke at 6 a.m. to a knock on the door. A few 3rd District officers had come to arrest him for allegedly assaulting Vermillan with a knife. Mullin claimed he had never brandished a knife, and the charges were downgraded to simple assault and destruction of property. (Vermillan claimed that Mullin inflicted \$1,500 in damages on his Cadillac, according to the crime report.) Sgt. Dale Sollars, a 3rd District supervisor who reviewed the incident, says, "The person who calls the police first is [usually] the victim. Why [Vermillan] wasn't arrested I don't know." Sollars says there are no suspects and no witnesses in the tire slashings.

Bender denies any wrongdoing and admits only hemming in the tenants' cars with his own. "I own the property," he explains. "I park where I want to park." Bender says he didn't slash anyone's tires.

The arrest came amid other bad news for Mullin. At the end of April, the District's rental housing commission dismissed one of Mullin's appeals. And on May 21, the D.C. Court of Appeals affirmed a previous order by the Landlord and Tenant court authorizing Bender attorney Mark Brodsky to evict Mullin.

Ten minutes before Brodsky and crew were ready to evict Mullin on June 2, the tenacious tenant filed for bankruptcy and got a stay on his eviction. The ploy, says Brodsky, is "another abuse of the system by someone who has masterfully and dutifully and willfully perverted the system that is supposed to protect tenants."

That very system, says Mullin, was designed to protect him: "I'm not going to give up now. It's just the beginning, man....I'm still here, aren't I?"CP

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Washington City Paper

District Line

From the July 10, 1998 issue.

Hitting the Pavement

Joe Mullin's legendary battle against landlord Morton Bender ends on the sidewalk.

By Eve Tushnet

On Tuesday morning, officials from the U.S. Marshals Service dragged the belongings of Joe Mullin from his basement apartment at 1755 N St. NW and deposited them on the curb. The dislodged items included a Fender guitar, an array of creaky furniture, and several board games. The evictors also removed boxes of legal briefs and motions, plus an ancient manual typewriter—relics of Mullin's 10-year battle to keep the marshals at bay.

When Mullin moved into his apartment in 1978, he never expected a fight with his landlord. At the time, Hamilton "Polly" Morrison used 1755 as a hotel and boarding house for her employees. Mullin got a free apartment in exchange for doing maintenance work. Even when he stopped working for Morrison, he paid only \$300 a month, and the rent never went up.

After Morrison's death, developer Morton Bender bought the property. According to Mullin, Bender began a war against the tenants so that he could empty out the building and sell it. Mullin charges that Bender refused to fix leaks in the roof, barred the tenants from the building's patio, and intimidated them into bolting.

Mullin, however, refused to budge, seizing on the city's rent control laws to stave off eviction and preserve 1755 as one of the last residential buildings on the block. Mullin's persistence—he acted as his own attorney and forced Bender to pay thousands in legal fees—turned him into Bender's nemesis. According to Mullin, Bender stopped at nothing—including vandalizing tenants' cars—to retaliate against him and the building's other remaining tenant, Georgette Miller (see "Hissing Fit," 6/12).

Mullin was evicted for failure to pay rent, which he claims is a smokescreen for collusion between Bender and rent control authorities. In 1993, Bender filed a hardship petition, a mechanism that allows landlords to raise rents in order to turn a profit on their properties. Mullin's rent nearly tripled. However, Mullin claims that the hearings on this petition were mishandled. Half of the tapes of testimony in the hearing—testimony in which Mullin and Miller cross-examine Bender—are missing.

"How convenient," Mullin notes, as he whaps a miniature baseball bat against his palm. Eric Rome, an attorney specializing in landlord-tenant law who once represented Mullin, confirms that if the taped testimony is incomplete a "hearing de novo" has to be held.

Mark Brodsky, Bender's attorney, says the matter is much simpler. Mullin, who has filed for bankruptcy, has paid no rent at all since November 1997. "Justice prevailed," Brodsky says. "He didn't pay his rent. It's a fairly

simple axiom that if you can't pay, you can't stay." He calls Mullin a "freeloader," spoiled by years of "ridiculously low" rents. "He leaves the owner owed \$69,000....This is part of what undermines the whole business climate of the District."

ÊÊAfter years of litigation in the case, Brodsky apparently wants more than a mere eviction to chasten Mullin. "[The marshals] found a handgun in his apartment," he points out. "Why they didn't arrest him I don't know."

ÊÊMullin vows that his fight is not over. He has filed a petition for a re-hearing of his eviction and another for a review of the hardship decision. Until then, Mullin will have to live with Brodsky's take on the situation: "Mr. Mullin has painted this as a David and Goliath struggle," says Brodsky. "I think today it's Goliath 1, David 0."CP

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Mark E. Brodsky
Holland & Knight
888 17th Street, N.W., #900
Washington, D.C. 20006

1755 N Street, N.W.
Washington, D.C. 20006

**AUDIT
HARDSHIP PETITION
RACD FILE NO.20,746**

A Hardship Petition for the property located at 1755 N Street, N.W. Washington, D.C. 20006 was filed on August 24, 1993 by Mark E. Brodsky as the authorized representative for the owner, N Street Follies, L.P. with offices located at Holland & Knight 888 17th Street, N.W., #900, Washington, D.C. 20006.

Number of Units Twenty Commercial Space Yes No X
Registration (RACD) Date: August 23, 1993 Number: 39207705
Reporting Period for this Petition: June, 1992 to May, 1993.

II - PETITION SUMMARY

a) GROSS INCOME	<u>\$104,400.00</u>
b) TOTAL OPERATING COSTS	<u>\$46,012.98</u>
Administrative	\$ -0-
Utility Costs	<u>\$ 11,043.00</u>
Operating Costs	<u>\$ -0-</u>
Fixed Costs	<u>\$ -0-</u>
Maintenance	<u>\$ 1,722.00</u>
Real Estate Tax	<u>\$ 33,247.88</u>
Mtge. Interest	<u>\$ -0-</u>
c) NET INCOME	<u>\$ 58,387.02</u>
d) PERCENTAGE INCREASE REQUESTED:	192 %

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III - AUDITOR'S EVALUATION

Following is a review by the Auditor, along with his recommendations. It is based upon a careful evaluation of the income received, costs incurred, method of calculation used and a review of the documentation submitted in support of the petition.

A. MAXIMUM INCOME AT 100% OCCUPANCY.

Amount Reported by the Petitioner \$104,400.00

Amount Accepted by the Auditor \$104,400.00

COSTS CLAIMED BY THE PETITIONER

B. ADMINISTRATIVE COSTS.

a) _____ \$ _____
b) _____ \$ _____
c) _____ \$ _____
d) _____ \$ _____
e) _____ \$ _____

ACCEPTED BY AUDITOR

\$ _____
\$ _____
\$ _____
\$ _____
\$ _____

C. UTILITIES.

a) Electricity \$ 2,364.25
b) Gas \$ 6,720.29
c) Water & Sewer \$ 1,958.86
d) _____ \$ _____
e) _____ \$ _____

\$ 2,364.00
\$ 6,720.00
\$ 1,959.00
\$ _____
\$ _____

D. OPERATING COSTS.

a) _____ \$ _____
b) _____ \$ _____
c) _____ \$ _____
d) _____ \$ _____
e) _____ \$ _____

\$ _____
\$ _____
\$ _____
\$ _____
\$ _____

COSTS CLAIMED BY THE PETITIONER

E. FIXED COSTS

a) _____ \$ _____
b) _____ \$ _____
c) _____ \$ _____
d) _____ \$ _____
e) _____ \$ _____

ACCEPTED BY AUDITOR

\$ _____
\$ _____
\$ _____
\$ _____
\$ _____

F. MAINTENANCE AND REPAIRS

a) Repairs _____ \$ 1,722.00
b) _____ \$ _____
c) _____ \$ _____
d) _____ \$ _____
e) _____ \$ _____

\$ 1,722.00
\$ _____
\$ _____
\$ _____
\$ _____

G. REAL ESTATE TAX \$33,247.98

\$33,248.00

H. MORTGAGE INTEREST \$ -0-

\$ -0-

I. MISCELLANEOUS

a) _____ \$ _____
b) _____ \$ _____

\$ _____
\$ _____

TOTAL OPERATING COSTS \$46,012.98

\$46,013.00

RATE OF RETURN

1. Gross Income from Line 6
of the Operating Income
Schedule. \$104,400.00

\$104,400.00

2. Total Operating Costs
from Line 11 of Operating
Expense Schedule. \$ 46,012.98

\$ 46,013.00

3. NET INCOME (Subtract
line 2 from Line 1) \$58,387.02

\$ 58,387.00

4. Assessed Value from
Real Estate Tax Schedule \$2,158,960.00

\$2,158,960.00

5. Total Encumbrances on
Property \$ -0-

\$ -0-

6. EQUITY: Subtract Line 5
from Line 4. \$2,158,960.00

\$2,158,960.00

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COSTS CLAIMED BY THE PETITIONER		:	ACCEPTED BY AUDITOR
7.	Net Income from Line 5	<u>\$ 58,387.02</u>	<u>\$ 58,387.00</u>
8.	Equity from Line 6.	<u>\$2,158,960.00</u>	<u>\$2,158,960.00</u>
9.	Divide Line 7 by Line 8.	<u>.03</u>	<u>.03</u>
10.	Obtain RATE OF RETURN by multiplying Line 9 X 100.	<u>3 %</u>	<u>3 %</u>
11.	Enter 12% of Equity from Line 6.	<u>\$259,075.20</u>	<u>\$259,075.00</u>
12.	Enter Net Income from Line 3.	<u>\$ 58,387.02</u>	<u>\$ 58,387.00</u>
13.	Subtract Line 12 from Line 11. If result is negative no rent increase will be allowed. If positive, proceed to Line 14.	<u>\$200,688.18</u>	<u>\$200,688.00</u>
14.	Enter Total Scheduled Gross Income from Line 4 of Operating Income Schedule of Petition	<u>\$104,400.00</u>	<u>\$104,400.00</u>
15.	Obtain the PERCENTAGE OF THE HARDSHIP PETITION INCREASE by dividing Line 13 by Line 14.	<u>\$ 1.92</u>	<u>\$ 1.92</u> **
PERCENTAGE RENT INCREASE:		<u>192 %</u>	<u>192%</u>

** Auditor's Calculation:

Line 13 \$200,688.00 Divided by Line 14 \$104,400.00 : = 192 %

NEW RENT CEILINGS:

APT. NO.	CURRENT	NEW CLG.	APT. NO.	CURRENT	NEW CLG.
100	\$500.00	\$1,460.00	102	\$500.00	\$1,460.00
103	\$300.00	\$ 876.00	104	\$400.00	\$1,168.00
200	\$300.00	\$ 876.00	202	\$300.00	\$ 876.00
203	\$300.00	\$ 876.00	204	\$300.00	\$ 876.00
300	\$500.00	\$1,460.00	302	\$500.00	\$1,460.00
303	\$500.00	\$1,460.00	304	\$500.00	\$1,460.00

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NEW RENT CEILINGS:

APT. NO.	CURRENT	NEW CLG.	APT. NO.	CURRENT	NEW CLG.
400	\$500.00	\$1,460.00	402	\$500.00	\$1,460.00
403	\$500.00	\$1,460.00	404	\$500.00	\$1,460.00
500	\$500.00	\$1,460.00	502	\$500.00	\$1,460.00
503	\$500.00	\$1,460.00	504	\$300.00	\$ 876.00

The above change reflects a rent increase of 192 %.

When calculating rent ceilings, the final sum has been rounded to the nearest dollar.

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Joseph Mullin
1755 N St., N.W., #104
Washington, D.C.

Dear Tenant:

Pursuant to Section 212(c) of the Rental Housing Act of 1895, D.C. Law 6-18, the rent and rent ceiling of \$400.00, shall be provisionally increased by the amount decided in the Hardship Petition #20746 filed August 24, 1993.

Your rent increase effective January 1, 1994 is as follows:

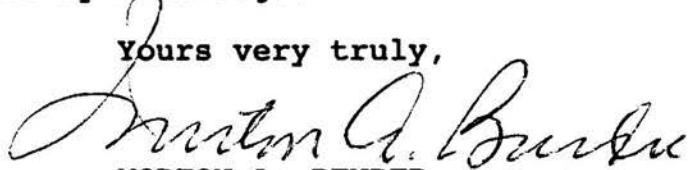
Your current rent:	<u>\$400.00</u>
Your current rent ceiling:	<u>\$400.00</u>
Your new rent ceiling (192%):	<u>\$1,168.00</u>
New rent as of <u>January 1, 1994</u>	<u>\$1,168.00</u>

The method of computation of the increase was set forth in H/P#20,746, a copy of which was furnished to you.

The Landlord Registration number is 39207705.

I certify that this property is in substantial compliance with the D.C. Housing Regulations and that the information in this notice is true and correct to the best of my knowledge.

Yours very truly,



MORTON A. BENDER
GENERAL PARTNER
NST, Follies Limited Partnership

HAND DELIVERED MONDAY, NOVEMBER 29, 1993.

WAS-23348

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OFFICE OF ADJUDICATION
Hearing Examiner Division
Room 706
613 G Street, N.W.
Washington, D.C. 20001

Exceptions/Objections to Audit in H/P #20,746
1755 N Street, N.W.

Following are Exceptions/Objections to the audit report in H/P 20,746 dated January 21, 1994 relating to the above-referenced property. Exceptions/Objections have been filed on behalf of all three occupied rental units in this 20-unit property, and this filing supplements those Exceptions/Objections and is filed specifically on behalf of tenants Frank and Vera Genovese who live in Apartment 300.

1. THE GROSS INCOME IS INACCURATE AND UNDERSTATED.

The present owners of the property have chosen to abandon each unit as it has become vacant, rather than maintaining and renting units. As a result, 17 of the 20 units in the building are vacant and padlocked.

As a result, the Maximum Income reported is based primarily upon rent ceiling levels established by the landlord upon filing its registration statement, and does not take into account the true rental value of the units. The tenants submit that, assuming proper maintenance and upkeep, the units have a significantly higher rental value.

2. THE ASSESSED VALUE IS OVERSTATED.

Conversely, the assessed value is substantially overstated. This has arisen as a result of two factors. First, the landlord has not maintained and rented units, therefore bringing the property into a significant state of disrepair, reducing its value. Secondly, prices in general, and in particular prices for this type of building, have dropped precipitously since the property was acquired in 1987 or 1988 at a price of \$2.5 million. One need only consider other properties on the 1700 block of N Street, approximately 12 of which are presently advertised for sale, to realize that the assessed value is inflated. However, the landlord has apparently not sought a reduction of the assessed value, presumably because it can be used to raise the tenant's rents to unreasonably high levels so they can be evicted.

LAW OFFICES
KASS, SKALET,
EGAN, SPEVACK
VAN GRACK, P.C.

SUITE 1100
17TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 659-6500

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3. THE REQUESTED INCREASE IS NOT FOR THE PURPOSE OF GENERATING RENT IN ORDER TO OBTAIN A RATE OF RETURN ON CAPITAL INVESTED.

The rent increase is a pretext for a forced eviction. The Genoveses' rent would virtually triple, from \$500.00 per month to \$1,469.00 per month. The Genoveses have an extremely small one bedroom apartment with a pullman-style kitchen, miniature refrigerator, tiny sink and no dishwasher. The "bedroom" is so small that it is used as a living room since their bed does not fit in the room. The building itself is virtually abandoned and in a general state of disrepair as a result of the landlord's voluntary actions. Beyond any doubt, the fair rental value is much less than \$1,469.00 and no tenant would pay the rent ceiling rent for this unit. The sole purpose of the proposed new rent ceiling is to force an eviction of the tenants at the property, not to obtain a rate of return on these units.

4. THE HARDSHIP PETITION, IF SUCCESSFUL, CONSTITUTES A DE FACTO DISCONTINUANCE OF HOUSING USE.

The purpose of this hardship petition is not to obtain a fair rate of return, but to evict the tenants in order to discontinue the housing use. If a landlord seeks to discontinue a housing use, it must follow the proper statutory and regulatory scheme and offer the tenants an opportunity to purchase the property.

5. LANDLORD IS NOT ENTITLED TO MANIPULATE THE HARDSHIP PETITION PROCESS TO FORCE EVICTIONS AND DISCONTINUE HOUSING USE.

Landlord has made the following voluntary choices which distort the auditor's findings on the hardship petition:

1. It has chosen not to rent 17 of 20 the apartments.
2. It has chosen not to maintain the building.
3. The inflated real estate tax assessment has not been appealed to bring it into line with present values.
4. It established the rent ceilings in its registration statement, and has retained the ceilings at an artificially low level by not seeking permitted increases. With regard to the vacant units, it appears the landlord had the option of establishing higher rent ceilings. The artificially low rent ceilings have, in turn, reduced the Maximum Income at 100% Occupancy. In addition, the landlord has chosen not to take out any loans against the property to maintain and repair the property.

These factors, taken together, have resulted in an artificially low Maximum Income and an artificially high assessed

value, which is being used as an artifice to evict the remaining tenants.

The purpose of a hardship petition is to afford a landlord a reasonable rate of return on actively managed and operating property. It is not intended, and should not be permitted to be used, as a subterfuge for evicting tenants based upon failure to pay wildly inflated rents, which have no connection to the fair rental value of the property. Granting a 192% rent increase will not serve the purpose of giving the landlord a fair rate of return. To the contrary, it will serve a purpose antithetical to the rent control laws by forcing the eviction of the remaining tenants in this building and, in all likelihood, discontinuance of the housing use.

Attached is a copy of a Notice to Quit and Vacate, which has already been filed against Mr. and Mrs. Genovese. They are informed that an eviction suit will be filed against them this month. This couple, both of whom are well over 70 years old, have been residing in the property and paying their rent without fail for over 28 years. The other two tenants have each resided at the property for well over 10 years.

If the building were maintained and occupied, the fair rental value of the Genovese's apartment would be in the neighborhood of \$700.00 per month. It would be unconscionable to authorize a manipulated hardship petition increase for the sole purpose of evicting them based upon "failure" to pay the inflated monthly rent as referenced in the Notice to Quit and Vacate.

For all of these reasons, and such other reasons as are presented at the hearing on March 30, tenants Frank and Vera Genovese file these Exceptions/Objections to the audit report in H/P #20,746.

Respectfully submitted,

KASS, SKALET, SEGAN, SPEVACK
& VAN GRACK, P.C.

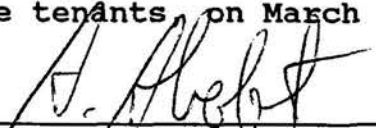
By:


Steven A. Skalet
1050 17th Street, N.W.
Suite 1100
Washington, D.C. 20036
(202) 659-6500

Attorney for Mr. and
Mrs. Genovese

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Exceptions/Objections were hand delivered to the Offices of Mark E. Brodsky, Holland & Knight, 888 17th Street, N.W., No. 900, Washington, D.C. 20006, and was mailed to each of the tenants, on March 8, 1994.



Steven A. Skalet
Attorney for Mr. and Mrs.
Genovese

Date Stamp
copy

BEFORE THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
HOUSING AND ENVIRONMENTAL REGULATIONS ADMINISTRATION

"N" STREET FOLLIES LIMITED	)	
PARTNERSHIP,	)	
Petitioner/Housing	)	
Provider	)	
	)	H/P #20,746
v.	)	
	)	
FRANK GENOVESE	)	
Respondent/Tenant	)	

RESPONDENT GENOVESE'S PROPOSED
DECISION AND ORDER

Jurisdiction

[Standard]

Procedural History

Hardship Petition H/P #20,746 was filed with RACD on August 24, 1993, the matter was heard on March 30th and April 20, 1994.

[Standard]

Present from time-to-time at the hearings were: Morton A. Bender, Managing Partners of Petitioner, "N" Street Follies Limited Partnership; Frank and Vera Genovese, Joe Mullin and Georgette A. Miller, Tenants and Respondents; Mark E. Brodsky counsel for Petitioner and Steven A. Skalet, counsel for Respondents Frank and Vera Genovese.

Issues Considered:

1. Whether 17 of the 20 apartments in the housing accommodation were not held out for rent, are not rental units and cannot be used in calculating maximum rental income.
2. If considered as rental units, were the rent ceilings for those units properly determined.
3. Whether units listed as rental units in the Hardship Petition were used for commercial purposes.

4. Whether the Registration of the housing accommodation was defective.
5. Whether the Certificate of Occupancy of the housing accommodation was invalid.
6. Whether the housing accommodation was properly inspected prior to the filing of the Hardship Petition and whether all of the rental units were inspected in accordance with the requirements of the Act.
7. Whether the Hardship Petition was filed in bad faith and whether the rental ceiling adjustment requested in the amount of 192% is consistent with the intent and purposes of the Rental Housing Act of 1985.
8. Whether the gross income was inaccurate or understated.
9. Whether the assessed value was overstated.
10. Whether the increase requested is not for the purpose of generating rent in order to obtain a rate of return on a capital investment, but is a pretext for a forced eviction and discontinuance of housing use.
11. Whether the Hardship Petition constitutes a de facto discontinuance of housing use.
12. Whether the Landlord has manipulated the Hardship Petition process in an effort to force evictions and discontinue housing use under the facts of this case.
13. Whether Petitioner's case should have been dismissed when the case was called.¹

¹ Petitioner appeared by counsel but did not have a witness present to give testimony when the case was called. Respondents moved to dismiss but Petitioner's counsel argued that the tenants had the burden of producing evidence to refute the Auditor's report. A witness for Petitioner arrived approximately two hours after the hearing was scheduled to commence, and was available to give testimony by the time the Hearing Examiner had considered the case law and was prepared to rule on the tenant's Request for a Dismissal. In the interest of judicial economy, and with the consent of the parties, the Hearing Examiner determined to try the case on the merits, and to withhold a decision on whether or not a dismissal should have been granted, so that all of the facts and circumstances would be before the Rental Commission or the Court of Appeals should an appeal be taken. Counsel for the parties also acknowledged that it was possible that the decision, if favorable

Description of the Property

The housing accommodation is a multi-unit building containing 20 units. It is located on Square 158, Lot No. 64-808, in Ward 2.

Summary of the Case

Petitioner, "N" Street Follies Limited Partnership, acquired the subject property together with a number of other properties on the 1700 block OF "N" Street, N.W. in an all-cash transaction at a total purchase price of over \$8 million in 1988. At the time Petitioner acquired the property, 8 units were occupied and 12 units were vacant. Since acquiring the property in 1988, Petitioner has not made any effort to list or lease any units at the property, and they have been padlocked as they became vacant. Three of the units are used wholly or partially for the storage of inventory or trade goods of a commercial enterprise owned by Mr. Bender, known as Progressive Electric Company. The building has not been well maintained and portions of the building have been closed off.

On March 9, 1989 a Tenant Petition (#21,759) was filed with RACD which placed in issue whether the subject property was subject to the Rental Housing Act. As stated in the Decision and Order in T/P 21,759, the tenant in that case, Dean Lewis rented Apartment #200 at the property at a rent of \$600.00 per month. Following the decision of the Hearing Examiner, and review by the Housing Commission and the District of Columbia Court of Appeals, the Court of Appeals issued a Decision dated March 26, 1993, finding that the accommodation had not been exempt from rent control since 1982. It had, accordingly, been wrongfully unregistered for approximately 11 years.

In 1990 Petitioner proposed a planned unit development for the subject property and a number of adjacent properties on the 1700 block of N Street. The application was denied. Under the proposed PUD, 1755 "N" Street would be converted from residential to commercial use. (See Exhibit R-2).

Following filing of the Hardship Petition, and based upon the documentation supplied by the Petitioner, the Auditor on February 2, 1994 recommended a rent ceiling increase of 192%. The following day, February 3, 1994, Petitioner filed Notices to Quit and Vacate to the tenants in two of the three occupied units and on or about March 17, 1994 initiated a Complaint for Possession of Real Estate against the Genoveses, tenants of Apartment #300 and Ms. Miller, tenant of Apartment #204. Petitioner had previously filed a suit for possession against Joe Mullin, tenant of Unit #104.

to the Respondents, might make the issue of the dismissal moot.

Legal Authorities

I. The following provisions of § 45 of the Act are considered and/or cited:

2501; 2503(20) and (33); 2516; 2517; 2518(b)(2); 2522; 2526; 2552; 2591(a) and (b); 2592

II. The following decisions and orders of the Rental Housing Commission are considered and/or cited:

T/P 21,759

III. The following decisions of the D.C. Court of Appeals are considered: [Copies enclosed with draft]

Hampton Courts Tenant Associations v. District of Columbia Rental Housing Com'n, 573 A.2d 10 (D.C. App. 1990); 599 A.2d 1113 (D.C. 1991) (1 and 2)

Blacknall, et al. v. District of Columbia Rental Housing Com'n, et al., 544 A.2d 710, 711 (D.C. 1988)

Goodman v. District of Columbia Rental Housing Com'n, 573 A.2d 1293 (D.C. 1990)

Tenants of 2301 E Street, N.W. v. District of Columbia Rental Housing Com'n, [cite to be provided later]

"N" Street Follies

Evidence and Pleadings Considered

The following evidence and pleadings were considered by the Examiner in this matter.

1. Hardship Petition 20,746.
2. Exception/Objection filed by J. Mullin on behalf of the present tenants and Exception/Objections to Audit filed by Steven A. Skalet, Esq. on behalf of Frank and Vera Genovese.
3. Testimony given at the hearing.
4. Documents which were filed with the RACD relating to the subject property.
5. The following documents submitted by Petitioner at the hearing: [See exhibit list]

6. The following documents submitted by Respondents at the hearing: [See exhibit list]
7. The parties' post-hearing submissions.
8. The following item over which the examiner took official notice in accordance with the D.C. Administrative Procedures Act, D.C. Code Ann. § 1-1509(c) (1981).

RACD Registration File for 1755 "N" Street, N.W.; File in T/P #21,759.

The Examiner provided the parties time until May 13, 1994 to file post-hearing submissions. The record officially closed on May 13, 1994.

Evaluation and Analysis of the Evidence

Pursuant to the Court of Appeals decisions in "N" Street Follies Limited Partnership v. District of Columbia Housing Commission", the Property was a housing accommodation which should have been registered since 1982, but was not. The Decision of the Court of Appeals was dated March 26, 1993 however, a Registration Statement was not filed until August 23, 1993 (Petitioner's Exhibit 7).

As to each of the units, the rent charged on April 30, 1985 was not included in the Registration Statement and the following notation was inserted instead "excluded until 3/26/93". This notation refers to the fact that the Court of Appeals Decision was dated 3/26/93. With regard to the rent ceiling on April 30, 1985, the Registration Statement improperly relabeled this column to read "rent charge and ceiling at termination of exclusion." However, the Court of Appeals did not rule that an exclusion had been terminated in 1993. Rather, it ruled that the property had not been subject to an exclusion since 1982. Moreover, there is no substantiation in either the Registration Statement nor from the testimony at the hearing, to support the allegations either of the rents charged or of the comparability of the units as claimed.

Finally, the Registration Statement, certified by the Housing provider's attorney-in-fact, is clearly false and in error. Reference to the Decisions of February 12, 1990 in TP 21,759 shows that Mr. Lewis occupied Apartment #200 at a then current rate of \$600.00. Mr. Bender testified, however, that all rents shown on the Registration Statement (Petitioner's Exhibit 7) were set at the highest rent previously charged for the units or rents of comparable units. Unit #200, however, is shown on the Registration Statement with rent at only half the rent actually charged to Mr. Lewis, i.e. \$300.00 per month.

Mr. Morton A. Bender was the only witness who testified on

behalf of the Petitioner and freely admitted that during the entire time the Petitioner has owned the property, it has never advertised any units for rent, listed any units with a rental agent, nor made any effort to rent units. He acknowledged that 17 of the 20 units are not, and have not been, held out for rent. Joe Mullin and Vera Genovese both confirmed this fact and also testified some units were used for significant commercial activity, including storage of electrical supplies and equipment for a related business. Mr. Bender denied receiving rent for that use (he testified that he owns Progressive Electric) but acknowledged some commercial use of portions of the property.

When asked for any documentary evidence to substantiate the claimed prior rents, rent ceilings or rents on comparable units on a unit-by-unit basis, Mr. Bender was unable to produce any records or documents and testified that he had no personal knowledge on the subject.

The testimony equivocally established that the Petitioner has not attempted or intended to rent any units at the property since it was purchased in 1988. To the contrary, Petitioner focused its efforts on vacating the property. Mr. Bender testified that he was the sole managing partner in connection with this rental property, yet testified that he had never advertised, listed, or sought to rent any units at the property as residential housing. Moreover, he was unable to furnish even an estimate of the fair rental value of the units in the property. On a unit-by-unit basis, he was unable to document past rents claimed, rent ceilings or comparable units for any of the units other than the three presently occupied units.

The testimony also failed to establish proof of posting of the Registration Statement or Hardship Petition, as Mr. Bender testified that the only thing posted on the building was the Certificate of Occupancy.

Legal Discussion

A Hardship Petition is governed by the Administrative Procedures Act. As stated in Title 14, DCMR § 4003.1,

"Proponents 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."

As stated in Hampton Court v. Rental Housing Com'n (573 A.2d 10 (1990)) a hearing challenging an auditor's report "is a contested case within the meaning of the District of Columbia Administrative Procedure Act, D.C. Code §§ 1-1501 to 1542 (1987 Repl.), with the proponent of the proposed order, in this case the Landlord, having the burden of production and persuasion to establish entitlement to

the increased rent ceiling." (at 11, emphasis added).

According, it is well established in the District of Columbia that the Petitioner has the burden of production and persuasion, and that if the Petitioner fails to meet those burdens, the petition must be denied.

It is apparent to this Hearing Examiner that the Petitioner fell far short of establishing each finding of fact essential to prove entitlement to the hardship petition increases, and compliance with all regulatory requirements, and that therefore the petition must be dismissed.

A Rental unit is defined in § 45-2503(33) as:

" . . . only that part of a housing accommodation which is rented or offered for rent or residential occupancy . . ."

The evidenced established that 17 of the 20 units at the property are neither rented nor offered for rent. Moreover, it is established under District of Columbia law that where an apartment has been withdrawn from the market and is not held out for rent, it will not be considered a rental unit for purposes of the small landlord exemption provision of the Rental Housing Act, § 45-1516(a)(3). See, Goodman v. District of Columbia Rental Housing Commission, 573 A.2d 1293 (D.C. 1990). Blacknall et al. v. District of Columbia Rental Housing Commission, et al., 544 A.2d 710, 711 (D.C. 1988) and cases cited therein. The same concept should apply whether it is the landlord or the tenant who claims that the unit is not held out for rent and, therefore, no longer constitutes a rental unit within the purview of the Housing Act.

Specific Findings and Conclusions

1. Seventeen of the 20 units are not rented or held out for rent and accordingly are not rental units. The Hardship Petition, which is based upon alleged maximum rental values for those units, is incurably defective. Mr. Bender could not proffer any testimony on a unit-by-unit basis to support either historical, comparative or fair rental values for these units. Moreover, these units lost their exclusion in 1982. No testimony was introduced to meet Petitioner's burden of proof and burden of production to support and document the Hardship Petition figures with regard to these units.
2. The housing accommodation was not properly inspected prior to the filing of the Hardship Petition. Two issues are raised. Respondents claim that the accommodation was not inspected in a timely fashion as required by the Act and Regulations and that all of the units had to be inspected. Petitioner, through testimony of Morton A. Bender and the representations

of this counsel, Mark E. Brodsky, admitted that only the three occupied units had been inspected, but argued that no inspection was required for unoccupied rental units. See also Petitioner's Exhibit 5.

With regard to the inspections, § 45-2518(b)(2) states:

"For purposes of the filing of petitions for adjustments in the rent ceiling as prescribed in § 45-2526, the housing accommodations and each of the rental units in the housing accommodation shall have been inspected at the request of each housing provider by the Department of Consumer and Regulatory Affairs within the 30 days immediately preceding the filing of a petition for adjustment. (emphasis added)

Since it is undisputed that 17 of the claimed rental units were not inspected, the Hardship Petition was improperly filed and must be dismissed. Moreover, Petitioner submitted as its Exhibit 8 a copy of a hand delivered letter dated July 28, 1983 (sic) establishing that the request was made for an inspection on July 28, 1993. The Hardship Petition, Petitioner's Exhibit 6, was filed on August 24, 1993, 27 days after the request for the inspection. Petitioner's Exhibit 5 reveals that the inspection was not actually made until September 8, 1993, after the filing of the Hardship Petition. Accordingly, the record is clear that Petitioner did not request an inspection at least 30 days in advance of the filing of the Hardship Petition, nor were 17 of the 20 alleged rental units inspected. Moreover, although Petitioner placed into evidence a letter from one of the tenants indicating that the majority of the work had been completed and that Mr. Mullin did not wish anything further to be done, no evidence was presented to establish that the Housing Code violations were abated in the other units.

The Hardship Petition itself (Petitioner's Exhibit 1) in paragraph 10 specifically requires a housing inspection report, indicating that the units under petition have been inspected 30 days prior to the filing of the petition (Petitioner's Exhibit 1 (underlining in original)). This box was not checked and the testimony revealed that no such inspection was conducted prior to the filing of the Hardship Petition.

3. The Maximum Possible Rental Income is understated or misstated in an unknown amount. It appears that Unit 200 was rented for \$600.00. It further appears from the testimony that no effort has been made to establish the fair rental value of the remaining 17 units had they been properly maintained and

offered for rent. It appears to the Hearing Examiner that even if the 17 units were rental units, the income for the 17 vacant units was clearly inaccurate and probably significantly understated. This contravenes the stated purpose of the Rental Housing Act, § 45-2502 (5).

It also appears clear to the Hearing Examiner from the testimony and exhibits, that the purpose of this Hardship Petition was not to generate additional rent in order to obtain a rate of return on capital invested, but rather was a pretext for the forced eviction of the remaining three tenants so that the property can be developed for commercial or mixed use.

4. Petitioner's Hardship Petition should have been dismissed when the case was called and Petitioner was not prepared to offer testimony in support of the Petition.

Petitioner argued that the Tenants/Respondents had the burden of proof in establishing that the Auditor's report should not be implemented. This novel contention required review of the case law. Counsel for the Genoveses directed the Hearing Examiner to the case of Hampton Court Tenant Association v. District of Columbia Rental Housing Commission, 573 A.2d 10 (1990) and related cases. Following review of the case law, the Hearing Examiner determined that under the Hampton Court decision and the Administrative Procedure Act that the Petitioner has both the burden of proof and the burden of persuasion with regard to a Hardship Petition. In Hampton Court, the RACD auditor had issued an Audit Report and proposed order granting a provisional \$9.00 per unit, per month, increase. The Tenants excepted. The landlord was not present when the hearing began and the Tenants requested a default. The Rent Administrator declined to grant the default and proceeded with the hearing. The tenants filed a Motion for Summary Reversal on the grounds that the Housing Examiner erred by not granting Tenant's Motion and this was upheld by the Court of Appeals. As stated in the Opinion:

"That hearing is a contested case within the meaning of the District of Columbia Administrative Procedure Act, D.C. Code §§ 1-1501 to 1542 (1987 Repl.), with the proponent of the Proposed Order, in this case the Landlord, having the burden of production and persuasion to establish entitlement to the increased rent ceiling. Since the Landlord had failed to appear and present evidence, the Commission held the Rent Administrator had committed error in denying the Tenants' Motion to Dismiss the Petition."

It is apparent that the Landlord must be present to present evidence when the hearing begins and that a proper request for a dismissal by the Respondent must be granted. The Hearing Examiner did not immediately grant a dismissal, but in light of counsel for Petitioners objections, requested copies of the applicable case law. Some two hours later when the Hearing Examiner was prepared to rule, Petitioner had obtained the presence of Morton A. Bender to testify. In order to preserve administrative economies and to avoid multiple appeals, and with the consent of all parties, this case was thereafter heard on the merits, with a decision on the Motion to Dismiss being reserved. Since the Hearing Examiner has decided that the Hardship Petitioner must be dismissed on the merits, this issue need not be conclusive. However, the Hearing Examiner finds that under the law the Tenants were entitled to a dismissal when the Landlord failed to appear with a witness to present testimony.²

Findings of Fact

After careful evaluation and analysis of the evidence, the Examiner finds, as a matter of fact:

1. The subject property is located at 1755 "N" Street, N.W.
2. "N" Street Follies Limited Partnership owns the subject premises, and is the Petitioner in this matter.
3. The property was unregistered from 1982 until August 24, 1994.
4. That the Registration Statement as filed is defective.
5. 17 of the 20 units are not "rental units."
6. That the Petitioner did not obtain an inspection of all of the units of the accommodation prior to filing its Hardship Petition.
7. That the Hardship Petition is incurably defective.
8. That the Hardship Petition is a pretext by the Landlord to force the eviction of the remaining three Tenants, and is not being sought in order to generate a fair rate of return for

² Mr. Brodsky, counsel for Petitioner, argued that the Petitioner was not "absent" since he was there representing him. However, Mr. Brodsky could not be both an advocate and a witness at the hearing. (Rule 3.7, D.C. Rules of Professional Conduct.) Moreover, it does not appear that Mr. Brodsky had personal knowledge of the matters in dispute, and, in fact, did not ultimately offer any personal testimony at the hearing.

the Landlord. In fact, Landlord has sought no rate of return on 17 if the 20 units for the entire period during which it owned the property. In addition, the provisional rent increases which have resulted in Notices to Quit and suits for possession bear no relationship to the fair rental value of the property and are evidence of the pretextual nature of this claim.

Conclusion of Law

After a careful evaluation of the evidence and Finding of Facts, the Examiner concludes, as a matter of law that Petitioner has not met its burden of proof and production to sustain the Hardship Petition and:

1. Respondent has not properly and accurately registered the property.
2. The Hardship Petition is incurably defective.
3. Respondent wilfully violated §§ 45-2515 and 45-2551(d) and is subject to a civil fine, pursuant to D.C. Code Ann. § 45-2591(b) in the amount of \$_____.
4. That the rent ceiling for the three occupied units are no more than the rents charged prior to the filing of the Hardship Petitioner to wit:

"Unit 104	- \$300.00 per month
Unit 204	- \$300.00 per month
Unit 300	- \$500.00 per month

5. Respondents are entitled to costs and attorneys' fees. Hampton Court Tenants Association v. District of Columbia Rental Housing Com'n, 599 A.2d 1113 (1991); Tenants of 2301 E Street, N.W. v. District of Columbia Rental Housing Com'n, (1990).