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SALES
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AFFIDAVIT OF MARY SCHMITZ

District of Columbia: ss

Re: Apartment 300, 1755 N Street, N.W.

I, Mary Schmitz, being over the age of 18 and competent to testify and having been first duly sworn, hereby testify for my own personal knowledge, information and belief as follows:

During the past ten years I have been a real estate agent working for the James L. Dixon & Co., a full service real estate company and real estate management company. I am a licensed realtor. I manage nineteen residential properties for owners. One aspect of this management is to find tenants to rent the properties. The majority of the properties that I manage are in the District of Columbia, several close to the above subject property.

The most recent one bedroom unit that I rented occurred two weeks ago. The building is Rutland Court, a well maintained co-op at 1725 17th Street, N.E., a few blocks from 1755 N Street, our subject property. The unit was totally renovated in late 1992. The hardwood floors were refinished, walls replastered and painted, electric and plumbing systems replaced and of course a new kitchen with dishwasher and disposal. The rooms are very large, total

Board of Zoning Adjustment
District of Columbia
CASE NO. 17337
EXHIBIT NO. 53A2

A Complete Real Estate Service

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square footage is approximately 950. The rent is \$690.00 a month. The previous tenant paid \$625.00 rent per month.

The apartment that Mr. and Mrs. Genovese occupy at 1755 N Street has no separate kitchen, but only a pullman porter style kitchen with a very small sink and half-height convenience refrigerator. The kitchen is in poor condition and the bathroom and fixtures are very old. The "fireplace" is not usable and the building has few, if any of the amenities. There is no desk clerk, secretarial service or spacious attractive lobby. The apartment itself is very small, and I estimate it has no more than 700 square feet.

While there are many apartments in the Dupont area that rent for more than \$700.00 and even \$800.00 a month, these units almost always have relatively new kitchens and bathrooms. Some have wood-burning fireplaces and balconies. These features demand and receive more rent. Some of the higher rent buildings have swimming pools, roof decks, exercise rooms, party rooms and libraries.

From my experience in renting Dupont area properties, it would be very difficult to find someone willing to pay even \$700.00 a month rent for the unit that Mr. and Mrs. Genovese occupy. Only with expensive renovation would I expect to receive rent over

\$700.00 a month. My recommendation to the owner would be to ask \$625.00 or \$650.00, which, in my opinion, is the fair rental value of this apartment in its present condition.

March 29, 1994
Date

Mary Schmitz
Mary Schmitz

State of DISTRICT OF COLUMBIA

County of _____

I, JIMMA L. LANFORD, a notary public in and for the District of Columbia, do hereby certify that Mary Schmitz, personally known to me as the person(s) who executed the foregoing instrument bearing date of 29th day of March, 1994, personally appeared before me in said jurisdiction and acknowledged said instrument to be _____ and that Mary Schmitz executed said instrument for the purposed therein contained.

Witness my hand and official seal this 29th day of March, 1994.

Jimma L. Lanford
Notary Public
JIMMA L. LANFORD

My Commission Expires: _____
Notary Public, District of Columbia
My Commission Expires Jan 31, 1996

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Procedural History (continued)

Present at the hearing were: Dean Lewis, Petitioner; Christopher Wallis, former employee of Respondent; and Mark E. Brodsky, Respondent's Counsel.

Issues Considered

1. Whether the housing accommodation is properly registered in accordance with the Act or Regulations?
2. Whether Respondent served Petitioner with a notice to vacate which does not comply with the Act?
3. Whether Respondent "knowingly" violated the Act?
4. Whether Respondent "willfully" violated the Act?
5. What remedies, if any, are appropriate in this case?

Description of the Property

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

Summary of the Case

Petitioner, Dean Lewis, assumed occupancy of the subject rental unit, #1755 "N" Street, N.W., on or about January 1, 1989. His current rent is \$600.00 per month.

Respondent, N Street Follies Limited Partnership, owns the housing accommodation.

Legal Authorities

- I. The following provisions of the Act are considered and cited:
- \$103(14), D.C. Code Ann. §45-2503(14) (1986 Repl. Vol.);
 - \$205, D.C. Code Ann. §45-2515 (1986 Repl. Vol.);
 - \$501(d), D.C. Code Ann. §45-2551(d) (1986 Repl. Vol.); and
 - \$901(b), D.C. Code Ann. §45-2591(b) (1986 Repl. Vol.).

Legal Authorities (continued)

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

Reid v. Quality Management Company, TP #11,307 (RHC February 7, 1985)

Gibbons v. Hanes, T/P #11,076 (RHC July 11, 1984);

Young, et al. v. Smith, T/P #11,157 (RHC July 11, 1984); and

Litman v. Howell, T/P #11,855 (RHC August 28, 1986).

III. The following decision of the D.C. Court of Appeals:

Carey v. District of Columbia Unemployment Board, 304 A.2d 18 (D.C. 1973).

Evidence and Pleadings Considered

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

1. Tenant Petition #21,759.
2. Testimony given at the hearing.
3. Documents which were filed with RACD when the Tenant Petition was filed.
4. The following documents submitted by Respondent at the hearing:
 - Respondent's Exhibit #1: Letter from M. Brodsky to E. Rome, dated June 1, 1989;
 - Respondent's Exhibit #2: D.C. Code Ann. §45-2503 (1986 Repl. Vol.), page 873;
 - Respondent's Exhibit #3: Respondent's Memorandum of Law and Documentary Evidence;
 - Respondent's Exhibit #4: May, 1980 Payment Ledger for 1755 "N" Street, N.W.;
 - Respondent's Exhibit #5: D.C. Government Hotel Occupancy Tax Return Instructions; and
 - Respondent's Exhibit #6: Affidavit of C. Wallis; dated February 1, 1989.

Evidence and Pleadings Considered (continued)

5. Respondent's Post Hearing Submission:

D.C. Tax Identification Number.

6. 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), and Carey v. District of Columbia Unemployment Compensation Bd., 304 A.2d.18 (D.C. 1973).

RACD Registration File for 1755 "N" Street, N.W.

Evaluation and Analysis of the Evidence

All testimony and documentary evidence submitted by the parties were admitted into evidence. The Examiner provided the parties time until June 16, 1989 to file post hearing submissions. The record officially closed on June 16, 1989.

1. Registration Status

At the hearing, Petitioner questioned, under oath, whether the subject property was properly registered under the Act. Petitioner's concern about the property's registration was raised when, according to Petitioner, Respondent stated that the building in question is excluded from coverage of the Act, and, therefore, need not be registered with RACD.

In rebuttal, Respondent, through Counsel, stated that the subject property is not a housing accommodation, pursuant to Section 103(14) of the Act, D.C. Code Ann. §45-2503(14) (1986(7) Repl. Vol.), and, therefore, is not covered by any provision of the Act. Specifically, Respondent testified that on May 20, 1980, the subject property contained twenty (20) units, fourteen (14) of which, or seventy percent (70%), were transiently occupied. Respondent also testified that a D.C. occupancy tax and a D.C. 8% sales tax was paid. In support of this testimony Respondent submitted a payment ledger, for May, 1980, from occupants at the subject property, which documented the transient nature of the building. Respondent also proffered to the record a copy of the D.C. Government Hotel Occupancy Tax Instructions, to substantiate payment of the D.C. occupancy tax. Respondents' argument was further buttressed by testimony from Christopher Wallis, a former bookkeeper for the subject property prior to Respondents' ownership. Mr. Wallis attested to the transient occupancy of the subject property, and the payment of the occupancy and sales tax, from May 20, 1980, until early 1982. His testimony was supported by affidavit, dated February 1, 1989. See, T/P #21,759, Case File, pgs. 37-38.

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