DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION

HARRY GURAL Tenant/Petitioner, v. EQUITY RESIDENTIAL MANAGEMENT and SMITH PROPERTY HOLDINGS LP Housing Provider/Respondent.	Case No.: 2016 DHCD TP 30,855 In re: 3003 Van Ness Street, N.W. Unit S-707

NOTICE OF APPEAL

Harry Gural ("Tenant") hereby appeals two decisions by Administrative Law Judge M. Colleen Currie of the Office of Administrative Hearings ("OAH") regarding the case of Harry Gural vs. Equity Residential ("Housing Provider"), no. 2016 DHCD TP 30,855. He appeals the Order Granting in Part and Denying in Part Housing Provider's Motion for Summary Judgment issued on April 12, 2017, concerning the rent increase on his apartment, and he also appeals the Final Order issued on September 12, 2017, concerning his claim that the housing provider retaliated against him for his work as tenant association president to stop the use of "concession" leases to circumvent the DC rent stabilization statute.

Primary reasons for appealing the Order Granting in Part and Denying in Part Housing Provider's Motion for Summary Judgment of April 12, 2017

1) The ruling by the Administrative Law Judge ("ALJ") is not based on the District's rental housing law, but instead relies on the judge's attempt to justify rent "concessions," a concept that does not appear in the law, and on legislation that was introduced by a member of the District's Council after the Housing Provider initiated this practice but which was not

enacted into law. The ALJ acted in apparent violation of the *Code of Ethics for OAH Administrative Law Judges*, which states in paragraph III-E that "decisions of an Administrative Law Judge shall be based exclusively on the law and on all evidence in the record of the preceding."

2) The ruling ignores the basic purposes of the rent stabilization provisions of the Rental Housing Act which, among other things, restricts annual rent increases to inflation plus two percent. The 2006 amendments governing rent stabilization declared rent ceilings to be "abolished" but the ALJ's ruling sought to resurrect rent ceilings and to deny tenant the protections of the 2006 amendments' limits on rent increases. By approving the controversial practice of using rent "concessions" to circumvent the District's rent stabilization statute, the ALJ commits an obvious and egregious error of law. In fact, she not only ignores the express provisions of District law but also subverts them.

3) The ALJ committed a basic error of law and abused her discretion by making a summary judgment ruling although the basic facts were in dispute. For example, the ALJ accepted the Housing Provider's claim that the "rent" is hundreds of dollars per month above the price actually paid by the tenant and accepted as payment in full by the Housing Provider.

4) The ALJ is wrong to pass summary judgment on the highly controversial practice. Summary judgment is appropriate only when the facts and law are not in dispute, and when a reasonable jury acting reasonably would find in favor of the motion. However, the practice of using rent "concessions" is currently the focus of an investigation by the DC Attorney General, it has been challenged in other cases before the OAH and Superior Court, it is the subject of organized opposition by tenants, and it is being characterized as a scandal in the press. No reasonable jury would decide as the ALJ did in this case. This breach of standard summary judgment practices suggests strong bias on the part in favor of the Housing Provider and extreme hostility toward the basic rights of tenants.

5) The ALJ displays willful ignorance of the key concepts. She erroneously assumed throughout her decision that rent "concessions" are *discounts* from market rents and therefore are a

benefit to tenants. The ALJ refused to understand that the supposed discounts are applied to absurdly high rent ceilings, and that the resulting "discounted rent" are simply market rents.

6) The ALJ's decision ignored almost 1,000 pages of overwhelming corroborating evidence obtained via FOIA (http://bit.ly/FOIADC) showing that the Housing Provider has used "concession" leases to circumvent the District's rent stabilization law on a large scale and a systematic basis over many years. The ALJ refused to consider this contextual evidence, which should have informed her understanding of the Tenant's case.

7) The ruling relied heavily on an expired lease from a prior year, ignoring the Tenant's basic rights as a statutory tenant under District law.

Primary reasons for appealing the Final Order of September 12, 2017

1) The ALJ exhibited extreme bias against the Tenant throughout the hearing on retaliation and in her final order on his retaliation claim. For example, she denied the his subpoena of Avis DuVall, Equity Residential Property Manager for 3003 Van Ness, who is the single person most involved in the events cited in the Tenant's case. The ALJ denied his right to call Ms. Duvall as a witness based on a technical argument regarding the manner the subpoena was served on DuVall. In addition, the ALJ permitted DuVall to appear as a party witness for the Housing Provider during the hearing, but barred the Tenant from calling DuVall as a witness even though she was present in the hearing room, was the Housing Provider's sole party witness, and, as a party witness, was not subject to the subpoena requirements under the OAH rules. Further, the ALJ was required to grant a Tenant acting pro se latitude in matters such as service (Padou v District of Columbia, 998 A2d 286 (D.C. 2010), but instead denied him the right to call as a witness the most important person to his case.

2) The ALJ's lightning-fast order granting the Housing Provider's motion to quash implies possible *ex parte* communication between the Housing Provider and the ALJ. The Housing Provider submitted its motion to quash at approximately 9:30 am on May 19, 2017. The Tenant received the motion to quash from the Housing Provider's attorney via email at 12:16 pm. The ALJ emailed her order granting the Housing Provider's motion to quash at 12:43

pm—a little over three hours after the motion to quash had been received and only 27 minutes after it was emailed to the Tenant. This purposely denied the Tenant a chance to oppose the motion to quash and greatly damaged his ability to present his case. Moreover, if *ex parte* communication took place, it would be a violation of the *Code of Ethics for OAH Administrative Law Judges*, which states in paragraph II-D that "an Administrative Law Judge shall not initiate, permit or consider ex parte communications or consider other communications made to an Administrative Law Judge outside the presence of parties concerning a pending or impending proceeding…."

3) At the very beginning of the May 22nd hearing, the ALJ denied an oral motion by the Tenant for reconsideration of the order granting the Housing Provider's motion to quash, refusing even to allow the Tenant to finish his sentence. She then denied his request for her to issue a subpoena to Avis DuVall—again refusing to allow him to finish his sentence. This is further evidence of substantial bias as well as a denial of the Tenant's basic due process rights.

4) The ALJ denied the Tenant's efforts to introduce into evidence emails essential to his case that provided evidence of his activities as president of the tenant association and his work against fraudulent "concession" leases, including emails sent to Avis DuVall. Throughout the hearing, the ALJ repeatedly granted the Housing Provider's requests to block the introduction of evidence the Tenant needed to make his case, ruling that the proffered evidence was not "relevant" or was duplicative without having any knowledge of it.

5) The ALJ incorrectly ruled that the Housing Provider's filing of a suit in Landlord and Tenant Court was not retaliatory, in spite of the fact that Property Manager Avis DuVall was unable to provide any evidence of any other instance in which an eviction proceeding had been initiated in a similar situation.

6) The ALJ wrongly ruled that the Housing Provider is entitled to pursue any legal action whatsoever that is part of an ongoing legal dispute. For example, she claims that the Housing Provider's attempt to prevail in Landlord and Tenant Court by falsely claiming under penalty

of perjury to have served the Tenant by hand was not retaliatory because the case was already in motion at that time.

7) The ALJ wrongly concludes that improperly assessing late fees cannot be considered retaliatory because the negative TransUnion credit report was not discovered until after the filing of the Tenant Petition. In fact, the Tenant had complained to the Housing Provider about the late fees two months earlier and its agents had refused to remove the late fees from his record. The subsequent negative credit report, which specifically named Equity Residential, proved that the Tenant's complaints were justified, yet the ALJ dismissed the report. The ALJ further wrongly claimed that assessing late fees cannot be considered retaliatory because they were triggered by a computer system, despite the fact that the Housing Provider later acknowledged that it could and did make manual adjustments.

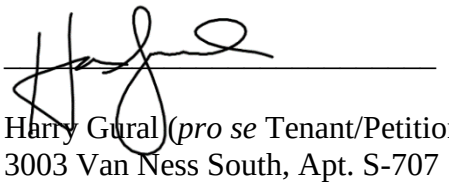
8) The ALJ wrongly argued that the Housing Provider did not retaliate against the Tenant by failing to provide a 30-day notice to vacate as required by District law, claiming that the Tenant had waived that right in a long-ago expired lease.

9) The ALJ wrongly ruled that the Housing Provider may require the Tenant to sign a lease with a false amount listed as the "rent" in violation of his month-to-month statutory tenancy.

10) The ALJ refused to consider numerous additional acts of retaliation that occurred after the filing of the Tenant Petition, which corroborate the Tenant's claims that the earlier actions were retaliatory.

Because of the many egregious errors in the two decisions on this case, the Tenant requests that the Administrative Law Judge's decisions and orders be reversed.

Respectfully submitted,



September 28, 2017

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served on this 28 day of September, 2017, by USPS express mail, postage pre-paid and by email upon:

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September 28, 2017

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