DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION

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HARRY GURAL Tenant/Petitioner, v. EQUITY RESIDENTIAL MANAGEMENT and SMITH PROPERTY HOLDINGS LP Housing Provider/Respondent.	Case No.: RH-TP-16-30,855 In re: 3003 Van Ness Street, N.W. Unit S-707

BRIEF OF APPELLANT/TENANT

Harry Gural ("Tenant") hereby appeals two decisions by Administrative Law Judge M. Colleen Currie of the Office of Administrative Hearings ("OAH") in the case of Harry Gural vs. Equity Residential ("Housing Provider"). He appeals the Order Granting in Part and Denying in Part Housing Provider's Motion for Summary Judgment issued on April 12, 2017, which concerns the question of whether a Housing Provider for a rent-stabilized unit can claim an annual rent increase on the basis of an amount that is substantially higher than the actual rent paid, resulting in a very large rent increase that in this case amounts to $362 per month. The Tenant argues that this grossly violates the intended purpose of the rent-stabilization provisions of Rental Housing Act. The Tenant also appeals the Final Order issued on September 12, 2017, which concerns his claim that he Housing Provider retaliated against him for his work as president of the tenant association and as a leading advocate against the practice of using "concession" leases to circumvent DC rental housing law.

OVERVIEW

The core of case the hinges on the meaning of the word "rent" and the phrase "rent charged." The law defines the word "rent" as "the entire amount of money, money's worth, benefit, bonus,

or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities."[1] The phrase "rent charged" is not defined in the Rental Housing Act. Therefore, the Tenant argues that the phrase "rent charged" should be interpreted applying simple English grammar – "rent that is charged."

However, the Housing Provider claims that the phrase "rent charged" is a term of art specific to the rental housing industry, which it defines as the maximum amount that a housing provider can charge for a unit – a rent ceiling. It claims that a "rent charged" can be hundreds of dollars per month or more above the amount actually paid by the tenant. Materials uncovered by Tenant via several Freedom of Information Act (FOIA) requests reveal that the Housing Provider for years has filed "rents charged" that frequently are as much as $1,500 above the typical rent paid for a one-bedroom apartment in a rent-stabilized building.[2] The material obtained by FOIA reveals that Equity Residential inflated rent filings not only for the apartments at 300 Van Ness Street, but also at its other rent-stabilized buildings in the District. The Tenant testifies that he has helped well over 100 tenants who reported that the Housing Provider attempted to force them to sign leases with the "rent charged" on a one-bedroom apartment listed at $3,500 or more, where in fact the actual rent, and the market price, were less than $2,000. The Tenant has submitted such documents as substantiating evidence in his case.[3]

The Housing Provider claims that the "rent charged" to the Tenant in the period between April 1, 2015 to March 31, 2016 was $2,118.[4] However, the Tenant's Wells Fargo bank statements reveal that he had been paying only $1,930, which includes $100 for parking. The

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[1] D.C. Official Code § 42-3501.03(28)

[2] Exhibits AA through EE, Tenant's Motion for Summary Judgment; rent filings by Equity Residential also are posted online because they exceed 1,000 pages: https://www.fairrentdc.org/gural-vs-equity-residential

[3] Exhibit Q, Tenant's Motion for Summary Judgment, RAD-8 forms by Equity Residential sent to 20 tenants of 3003 Van Ness Street

[4] RAD-8 Form, Tenant's Motion for Summary Judgement, Exhibit D

"rent charged" that the Housing Provider reported to the Rental Accommodations Division (RAD) was $288 dollars per month greater than the amount the Tenant paid per month. Tenant asserts that this was a false claim to the RAD, signed under penalty of perjury, and subject to a fine up to $5,000.

On January 15, 2016, the Housing Provider demanded a rent increase based on the $2,118 that it claimed to be the "rent charged."[5] The RAD-8 form that it submitted to the Rental Accommodations Division and sent to the Tenant stated that the new "rent charged" would be $2,192 – a $362 per month increase over the amount that the Tenant had been paying per month ($1,830). That constitutes an almost 20 percent increase over the rent that the Tenant had been paying per month. At that time, the maximum legal increase under the DC rent stabilization statute was 3.5 percent (2 percent plus 1.5% CPI-W), amounting to $65 per month. The Housing Provider's demand – an increase of $362 per month – is more than five times greater than the maximum increase.

The Administrative Law Judge ruled that the Housing Provider's demand for $362 per month rent increase was permissible under the DC rent stabilization law. This is impossible to reconcile with the rent stabilization provisions of the Rental Housing Act, which were intended to protect tenants from sudden, steep rent increases.

The Rental Housing Commission decision in Gabriel Fineman vs. Smith Property Holdings

On January 18, 2018, the Rental Housing Commission (RHC) issued a decision in Gabriel Fineman vs. Smith Property Holdings LP (RH-TP-16,30842) that firmly rejects the ALJ's ruling in Harry Gural vs. Equity Residential, specifically rejecting the claim that the "rent charged" is a maximum legal rent. Instead, its ruling aligns with the Tenants argument that "rent charged" means "rent that is charged," the actual amount demanded as a condition of occupancy. In

[5] RAD-8 form. January 15, 2016; submitted by both parties as evidence

addition, the RHC specifically stated that the actual amount charged must be the basis for calculating rent increases:

> "For the reasons just described in Part A, the Commission determines that the "rent charged" that must be used as the basis for calculating and reporting rent adjustments on the RAD Forms, in accordance with the statutory meaning of the term "rent" in the Act, is the amount actually demanded, received, or charged as a condition of occupancy of a rental unit, rather than a maximum legal limit that may be preserved by a housing provider. D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.)."[6]

The Rental Housing Commission further ruled that the determination of the "rent charged" should be based on records of what actually was demanded or received as a condition of occupancy:

> "In determining what amount of rent has been charged, the Commission looks to the course of dealings between a tenant and a housing provider to determine how much money or value was demanded or received as a "condition of occupancy" of a particular rental unit."[7]

This applies directly in the current cases. The Tenant's Wells Fargo bank records reveal that he paid to the Housing Provider $1,930 ($1,830 plus $100 parking) in the year prior to the Housing Provider's demand for a $362 rent increase. Therefore, according to the principle stated in the RHC decision, $1,830 must be used as the legal basis for demanding an annual rent increase. Because the maximum percent adjustment for the period in question was 3.5%, the maximum legal rent increase was $65 – not $362, as the Housing Provider claims.

The Rental Housing Commission also repudiated the Housing Provider's claim, accepted by the ALJ, that the Rental Housing Act allows providers to preserve a maximum legal rent – an effective rent ceiling – for future implementation:

> "For the reasons described supra at 17-31, the Commission is not persuaded that preservation of a maximum legal rent level is consistent with the language,

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[6] *Gabriel Fineman v. Smith Prop. Holdings Van Ness LP, RH-TP-16-30,842*

[7] *Ibid.*

> structure, or remedial purposes the Act generally and the purposes of the abolition of rent ceilings specifically. See D.C. OFFICIAL CODE§ 42-3501.02 (2012 Repl.); Goodman, 573 A.2d at 1299; James Parreco & Son, 567 A.2d at 44; 2006 Committee Report at 15."

In other words, treating "rent charged" as a "maximum legal rent" subverts the entire purpose of the rent stabilization provisions of the law.

Therefore, the "rent charged" listed by the Housing Provider on RAD-8 forms and submitted to the Rental Accommodations Division are false. The filings were made under penalty of perjury and the additional monetary penalty for each false filing is up to $5,000. The Tenant can demonstrate that the Housing Provider not only submitted false filings in the documents for 2015 and 2016 that are already part of the record; it also continued to submit false filings in 2017, 2018 and 2019.[8]

A lease does not supersede the law

The Housing Provider claims that a previous lease takes precedence over the rent stabilization provisions of the Rental Housing Act. The ALJ accepted this logic, stating that:

> "Leases are to be construed as contracts. This jurisdiction adheres to an "objective" law of contracts, meaning that the parties' rights and liabilities are governed by the written language unless it is not clear and definite. A contract should "generally be enforced as written, absent a showing of good cause to set it aside, such as fraud, duress, or mistake."[9]

The Tenant testifies that the lease he signed on March 21, 2014 was signed under duress after a long conversation with the rental agent. Moreover, he argues that the lease was fraudulent because it listed as the "rent" a figure that was $288 above the actual rent that would be paid.

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[8] These documents are not part of the official record, but they are available upon request.

[9] *Akassy v. William Penn Apts. Ltd. Partnership, 891 A.2d 291, 298 (D.C. 2006) (quoting Camalier & Buckley, Inc., v. Sandoz & Lamberton, Inc., 667 A.2d 822, 825 (D.C. 1995)*

Tenant argues that a fraudulent lease, or a lease which contradicts the law, cannot take precedence over the law.

In Gabriel Fineman vs. Smith Property Holdings, the Rental Housing Commission ruled that the meaning of the term "rent charged" under DC rental housing law supersedes the way it is used in a specific lease:

> "The Commission determines that the use of the term "rent" in a lease informs, but is not determinative of, the legal conclusion as to what the "rent charged" is for a rental unit for the purposes of the Act's rent stabilization provisions and the relevant RAD Forms."[10]

Furthermore, the RHC ruled that housing providers must use the actual rent, not the higher amounts listed on leases, as the basis for rent filings:

> "The Commission determines that substantial evidence in the record does not support the ALJ's determination that the Housing Provider could use the higher amount of rent stated in the Leases, but not actually demanded or received from the Tenant pursuant to the monthly, recurring concession, as the basis for completing, filing, and serving the relevant RAD Forms."

In addition, the RHC ruled that a lease may not achieve something that is otherwise illegal:

> "A lease, like any other contract, cannot, by its terms alone, accomplish something not permitted by a statute. Goodman, 573 A.2d at 1297 ("The Act forecloses sophisticated as well as simple-minded modes of nullification or evasion.")[11]

For this reason, the Housing Provider has no basis to claim that it could demand a rent increase based on an amount that is higher than the rent demanded and paid as a condition of occupancy. The ALJ not only was wrong to accept the argument that the "rent charged" is a maximum legal rent, she was also wrong to accept the claim that a lease could supersede the law.

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[10] *Gabriel Fineman v. Smith Prop. Holdings Van Ness LP, RH-TP-16-30,842*

[11] Gabriel Fineman v. Smith Prop. Holdings Van Ness LP, RH-TP-16-30,842

New legislation affirms that "rent charged" is the actual amount charged and paid

Members of the City Council have known for several years that some large housing providers have been using "rent concession" leases and a contrived interpretation of "rent charged" to circumvent the rent stabilization provisions of the Rental Housing Act. The Rental Housing Commission decision in Gabriel Fineman vs. Smith Property Holdings laid the basis for safeguarding tenants against such abuses. However, members of the Council believed that clarifying the original intent of the law would ensure that tenants are protected.

The *Rent Charged Definition Clarification Act of 2018*, which was signed into law by Mayor Muriel Bowser on January 17, 2019, reinforces the Rental Housing Commission decision in Gabriel Fineman vs. Equity Residential, affirming that:

> "'Rent charged' means the entire amount of money, money's worth, benefit, bonus, or gratuity a tenant must actually pay to a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities, pursuant to the Rent Stabilization Program."

The legislation confirms that the Rental Housing Commission was correct in its ruling that "rent charged" means the actual amount charged as a condition of occupancy and that it was correct in ruling that rent increases must be based on this amount.

The Housing Provider intentionally broke the law

The Housing Provider likely will argue that the rent stabilization provisions of the Rental Housing Act were ambiguous prior to the passage of the *Rent Charged Definition Clarification Act of 2018*. Therefore, it likely will say, its demand for a $362 per month rent increase was a good faith mistake, not a deliberate attempt to circumvent the law.

However, the Rental Housing Commission's strong decision in Gabriel Fineman vs. Smith Property Holdings was issued months before the passage of the *Rent Charged Definition Clarification Act*. Its central finding in that case – that "rent charged" is the amount that is demanded as the condition of occupancy – is entirely sufficient to reverse the decision of the ALJ in Harry Gural vs. Equity Residential.

The Housing Provider also likely will argue that the passage of the *Rent Charged Definition Clarification Act of 2018* marks the first time that "rent charged" was formally defined and misinterpretation was possible and the fact that it demanded an illegal rent increase from the Tenant was not willful. It will argue that even if Rental Housing Commission decides for the Tenant, the Housing Provider should not be subject to penalty.

However, an analysis of City Council deliberations of the *Rent Charged Definition Clarification Act of 2018* would find that the drafters intended simply to clarify and reinforce the meaning of the words "rent charged" in the Rent Control Reform Act of 2006. Furthermore, it was written to reinforce the conclusions of the Rental Housing Commission in *Gabriel Fineman vs. Smith Property Holdings* in order to protect DC tenants against further attempts to violate their rights by circumventing the rent stabilization provisions of the Rental Housing Act.

The question of whether the Housing Provider acted willfully in the current case should be seen in context of its actions after the Rental Housing Commission issued its decision in *Gabriel Fineman vs. Smith Property Holdings* on January 18, 2018. Recent RAD-8 and RAD-9 filings made by the Housing Provider, obtained via the Freedom of Information Act, show that after the RHC decision the Housing Provider continued to file as "rent charged" amounts that exceeded plausible rents for apartments at 3003 Van Ness by frequently up to $1,500 per month.[12] Based on these extremely high figures, the Housing Provider continued to demand of tenants rent increases that typically exceed $1,000 or $1,500 per month, as reflected in recent Equity Residential RAD-8 forms obtained by another Freedom of Information Act request.[13] The

[12] See extensive files obtained by FOIA at https://www.fairrentdc.org/gural-vs-equity-residential

[13] Ibid.

Housing Provider systematically ignored the ruling of the Rental Housing Commission, willfully breaking the law.

ARGUMENTS FOR OVERTURNING THE OAH DECISION

The Rental Housing Commission may overturn a decision of the Office of Administrative Hearings (OAH) in certain circumstances:

> "The Commission shall reverse final decisions of the [OAH] which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the [OAH]."[14]

The RHC's definition of "substantial evidence" is important.

> "The Commission has consistently defined **substantial evidence** as "such relevant evidence as a reasonable mind might accept as able to support a conclusion." See Fort Chaplin Park Assocs. v. D.C. Rental Housing Commission, 649 A.2d 1076, 1079 n.10; Eastern Savings Bank v. Mitchell, RH-TP-08-29,397 (RHC Oct. 31, 2012); Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012); Jackson v. Peters, RH-TP-12-28,898 (RHC Feb. 3, 2012)."

The Tenant argues that no ordinary person with a reasonable mind would accept the Housing Provider's assertion that the "rent charged" can be several hundred dollars or much more above market rents.

Material obtained via FOIA reveals that Equity Residential appears to have inflated rent filings to the Rental Accommodations on thousands of apartments over many years. On the basis of these inflated rent filings, it has claimed rent increases that appear to have substantially exceeded what is permitted under DC law. This likely has cost DC residents tens of millions of

[14] Gabe Fineman vs. Smith Property Holdings LP

dollars over time. No reasonable person would accept the proposition that this scheme is consistent with rent stabilization.

Although these facts lie outside the specifics of the current case, they provide important context that makes it less likely that any reasonable person would accept the ruling of the ALJ in Harry Gural vs. Equity Residential.

Primary reasons for overturning the OAH order granting the Housing Provider's Motion for Summary Judgment

1) The ruling by the Administrative Law Judge ("ALJ") is not based on the rent stabilization provisions of the law, which clearly were intended to restrict sudden, large rent increases.

2) The ALJ argues without basis that the "rent charged" is a maximum legal rent and that therefore a "rent concession" is a discount that benefits the tenant. Rather, it is an accounting trick that allows the housing provider to circumvent the law.

3) The ALJ's ruling ignores the basic purposes of the rent stabilization provisions of the Rental Housing Act, which restricts annual rent increases to inflation (CPI-W) plus two percent. The ALJ justifies a monthly rent increase that is $362 per month for a one-bedroom apartment in an aging building, an increase of almost 20 percent, more than five times the legal maximum. No ordinary person of "reasonable mind" would accept such a conclusion.

4) The ALJ's ruling would resurrect rent ceilings, which were specifically abolished by the Rent Control Reform Act of 2006.

5) The ALJ committed a basic error of law and abused her discretion by passing summary judgment on a case in which the basic facts were in dispute and which was not a simple matter of settled law. The District of Columbia Court of Appeals has stated that:

> "Summary judgment is appropriate only if no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law.

> GLM Partnership v. Hartford Cas. Ins. Co., 753 A.2d 995, 997-998 (D.C. 2000) (citing Colbert v. Georgetown Univ., 641 A.2d 469, 472 (D.C. 1994). 'A motion for summary judgment is properly granted if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the non-moving party, (3) under the appropriate burden of proof.' Kendrick v. Fox Television, 659 A.2d 814, 818 (D.C. 1995) (quoting Nader v. de Toledano, 408 A.2d 31, 42 (D.C. 1979)).”[15]

6) The ALJ largely ignored substantial portions of the Tenant's Motion for Partial Summary Judgment of March 3, 2017 and she instead focused almost exclusively on the Housing Provider's Motion for Summary Judgment.

7) The ALJ dismissed the simple English definitions of key phrases in the Rental Housing Act, interpreting the language in a way that no ordinary person would, without pointing to any statutory language that would take precedence over the simple English meaning of the phrase "rent charged" or even the statutory definition of "rent" as "the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities."[16]

8) The ALJ displayed 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 acknowledge that the supposed discounts are applied to absurdly high rent ceilings – up to $1,500 or more above actual rents – and that the resulting "discounted rent" are simply market rents.

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[15] Behradrezaee v. Dashtara, 910 A.2d 349, 364 (D.C. 2006):

[16] D.C. Official Code§ 42-3501.03(28).

9) The ALJ's decision ignored almost 1,000 pages of overwhelming corroborating evidence obtained via FOIA, which shows 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.[17] The ALJ refused to consider this contextual evidence, which should have informed her understanding of the Tenant's case.

10) The ALJ bases her argument in part on legislative language that was proposed by a Member of the City Council, but which was not enacted into law.

11) 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.

12) The ALJ altogether ignored other factors that should have given her reason to pay closer attention to the facts of the case. For example, the DC Attorney General has sued Equity Residential for tricking tenants into signing leases with extremely high amounts listed as the "rent charged."

RESTITUTION AND PENALTIES

The law states that a housing provider is liable for treble damages for knowingly overcharging a tenant:

> "Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent charged or **for treble that amount** (in the event of bad faith) and/or for a roll back of the rent

[17] See extensive files obtained by FOIA at https://www.fairrentdc.org/gural-vs-equity-residential

to the amount the Rent Administrator or Rental Housing Commission determines."[18]

As of March 4th, 2019, the Tenant has paid $10,133 into escrow at the Landlord and Tenant Branch of DC Superior Court.[19] This represents the disputed amount – $297 per month – for almost three years. If the Rental Housing Commission decides for the Tenant, the Superior Court should conduct a hearing and should release that amount.

In addition, the Housing Provider should pay the Tenant three times the amount in escrow, which likely will exceed the $10,133 by the time a decision is rendered. Three times that amount will exceed $30,000.

In addition, the Housing Provider should be liable for additional charges that it has demanded of the Tenant, but which haven't been paid into escrow. The Housing Provider has been assessing late fees to the Tenant's account since April 2016. As of March 4th, 2019, the Tenant's online account on the Housing Provider's website showed a balance of $12,591.80. This exceeds the total amount in escrow by $2,458.80. The Housing Provider should be liable for three times this amount, totaling an additional $7,376.40. This figure likely will increase by the time the case is decided.

Primary reasons for appealing the final order regarding retaliation

The ALJ issued a separate decision on the Tenant's claim that he had been retaliated against for his actions as tenant association president and as a leading advocate against the use of "rent concession" leases to circumvent the law. The Final Order on September 12, 2017 dismissed all of the Tenant's claims with prejudice. This decision was wrongly decided for the following reasons:

1) The ALJ exhibited bias against the Tenant throughout the hearing on retaliation and in her final order, denying him the right to call his key witness and blocking the introduction of evidence. The ALJ was required to grant a Tenant acting pro se latitude in matters such as service and evidence, but instead denied him the right to call as a

[18] D.C. OFFICIAL CODE § 42-3509.01

[19] 2016-LTB-10863, DC Superior Court online case search

witness the most important person to his case, and she blocked many documents that the Tenant tried to introduce as evidence.[20]

2) The ALJ blocked the Tenant's 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 should have permitted the Tenant to call Duvall, who was present in the courtroom for the entire proceedings, not only because pro se tenants should be afforded latitude but also because Duvall was the Housing Provider's sole party witness. As a party witness, was not subject to the subpoena requirements under the OAH rules.

3) The ALJ did not apply the correct standard of proof for retaliation, given his active record as president of the tenants' association in the preceding period. This should have triggered a statutory rebuttable presumption of retaliation, forcing the Housing Provider to prove a non-retaliatory reason for such an action. Although the ALJ mentions this issue in her decision, she fails to follow the logic or to apply the correct standard of evidence, that should have required the Housing Provider to provide "clear and convincing evidence" that its actions were not retaliatory. The rebuttable presumption shifts the burden of proof to the housing provider, requiring that it do much more than simply show a legitimate, non-retaliatory reason for its actions against the tenant:

> "But when the statutory presumption comes into play, it will not suffice merely to articulate a legitimate, non-retaliatory reason, because the legislature has assigned a substantial burden of proof ("clear and convincing evidence") to the landlord."[21]

[20] Padou v District of Columbia, 998 A2d 286 (D.C. 2010)

[21] *Gomez v. Independence Management of Delaware, Inc.,* 967 A.2d 1276, 1291 (D.C. 2009).

Under the clear and convincing evidence standard of proof, the proponent of a disputed fact is required to meet a burden of proof that falls somewhere between the more lenient "preponderance of evidence" standard (a greater than 50% probability) standard and the more exacting "beyond a reasonable doubt" standard typically applicable in criminal cases (in the 90-100% certainty range):

> "The preponderance standard is a more-likely-than-not rule, under which the trier of fact rules for the plaintiff if it thinks the chance greater than 0.5 that the plaintiff is in the right. The reasonable doubt standard is much higher, perhaps 0.9 or better. The clear-and-convincing standard is somewhere in between."[22]

4) The ALJ appears to have coordinated with the Housing Provider when she ruled in favor of its motion to quash the tenant's subpoena of Avis Duvall. 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. It seems extremely unlikely that the ALJ, acting alone, could have processed such a decision in such a short period of time.

5) The ALJ's ruling in favor of the Housing Provider's motion to quash the subpoena of building manager Avis Duvall, the Housing Provider's party witness, denied the Tenant the opportunity to question the single person most involved with the case, even though she sat in the room throughout the entire proceedings.

6) The ALJ denied the Tenant's efforts to introduce into evidence emails essential to his case, including emails sent to Equity Residential building manager Avis Duvall, and that

[22] *Brown v. Bowen*, 847 F.2d 342, 345-46 (7th Cir. 1988).

which therefore were already known to the Housing Provider. 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.[23]

7) The ALJ incorrectly ruled that the Housing Provider's filing of a suit in Landlord and Tenant Court was not retaliatory, although 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.

8) The ALJ wrongly dismissed evidence that occurred after the filing of the tenant petition, even though it corroborates evidence that occurred before the filing. For example, the Tenant warned the Housing Provider in writing against attaching improper charges to his account because it could hurt his credit rating. The Housing Provider refused in writing. This alone should have been enough for the ALJ to rule that Housing Provider had retaliated against the Tenant. In addition, the Tenant provided evidence that he received a notice from a credit monitoring agency after he filed his tenant petition, specifically stating that the Housing Provider had reported him for non-payment. The ALJ denied this corroborating evidence and failed to use it to scrutinize the evidence that the Housing Provider had already acted against the Tenant by denying his request not to charge his account improperly. The Tenant also provided evidence that the Housing Provider continued to charge his account improperly in the following months – despite the Tenant's complaints, it refused to stop the practice. This additional information should have helped the ALJ understand that he previous action was retaliatory, but she ignored it.

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[23] Padou v District of Columbia, 998 A2d 286 (D.C. 2010)

9) The ALJ further wrongly claimed that assessing late fees cannot be considered retaliatory because they were triggered by a computer system, even though the Housing Provider later acknowledged that it could and did make manual adjustments. The Housing Provider did not provide "clear and convincing proof" that this action was not retaliatory.

10) 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 an expired lease. The Rental Housing Commission ruled in Gabriel Fineman vs. Smith Property Holdings that a lease cannot disqualify a legal right.

11) The ALJ wrongly ruled that, in order for the Tenant to pay a rent increase that does not exceed the legal limit, the Housing Provider may force the him to sign a lease with a false amount listed as the "rent" in violation of his month-to-month statutory tenancy.

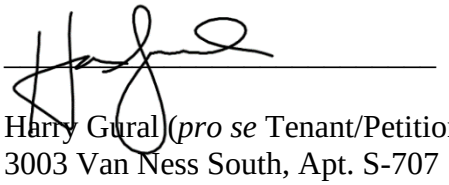
12) The ALJ refused to consider numerous additional acts of retaliation that occurred after the filing of the Tenant Petition, which corroborate the Tenant's claims that the earlier actions were retaliatory.

PENALTIES

The Tenant requests $5,000 per incidence of retaliation – nine counts.

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,



March 4, 2019

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