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In Re: *Pursuant to the authority set forth in § 202(a)(1) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.02(a)(1) (2012 Repl.)) ("Act"), the Rental Housing Commission ("Commission") hereby gives notice of the intent to adopt the following rules related to the Rent Stabilization Program of the Act, registration requirements under the Act, requirements for notices to vacate a rental unit covered by the Act, other tenant rights provided by the Act, and procedures used by the Commission and the Rental Accommodations Division of the Department of Housing and Community Development ("RAD") to processes petitions and adjudicate cases arising under the Act.*

Mr. Mayer:

In response to an invitation published in the August 2, 2019, edition of the D.C. Register, I'm pleased to submit comments on the above-referenced proposed rules, specifically to DCMR §4213, Rent Adjustments by Voluntary Agreement.

CONTEXT

From May 2012 to January 2014, I was one of twelve Respondents in a contested Voluntary Agreement case before the D.C. Rent Administrator (RAD) and the D.C. Office of Administrative Hearings (OAH). It is in the context of that case that I offer comments.

BACKGROUND

In response to an offer of sale in May 2011, tenants at the 114-unit rental housing accommodation at 1841 Columbia Road, N.W. (Ward One) - a ninety-year-old building subject to rent protection under the Rent Stabilization Act - formed a tenant association, retained counsel, and solicited real-estate-development partners to whom to assign their rights as provided for by the Tenants Opportunity to Purchase Act (TOPA).

In October 2011, the tenants association - the Columbia and Mintwood Tenants Association (CMTA) - and real estate developer Urban Investment Partners (UIP) entered into an agreement assigning CMTA's TOPA rights to UIP.

Although a Letter of Intent between CMTA and UIP made passing reference to a "voluntary agreement" between the parties, it was only *after* the assignment of TOPA rights to UIP that even a dim outline of the terms of the "voluntary agreement" appeared and what the consequences of approval of that agreement would mean for rent levels in the building and for the preservation of affordable rental housing in the District.

In a process riddled with self-interest, secrecy, and impropriety, a deeply imperfect "voluntary agreement" was promoted and sold to tenants by a majority of members of the Board of CMTA, acting solely in its own interest and in the interest of the housing provider.

Notwithstanding its patent disqualifications, developer UIP submitted Voluntary Agreement 12,006 to the D.C. Rent Administrator in June 2012.

Among the procedural and substantive flaws exhibited by VA 12,006[1] were:

1. Initiation of the proposed voluntary agreement, circulation of that agreement, and solicitation of tenant signatures by UIP before it actually owned the property

2. Circulation of the proposed voluntary agreement and solicitation of tenant signatures while the voluntary agreement was still in draft form, without full disclosure of all of the terms by which the housing provider and the tenants would be bound

3. Escrow of tenant signatures by the attorney for the tenant association until such time as the putative housing provider owned the property

4. Assessment of rent increases solely to tenants who would occupy the building *after* tenants signing the agreement had vacated the building, in fulfillment of an obligation to vacate in exchange for approval of the agreement and a cash payment from the housing provider

5. Inequity of the percentages and amounts by which rents charged would be raised

6. Inequity of the renovation of rental units. Only units vacated as the result of approval of the voluntary agreement would be renovated

[1] For a detailed explication of the flaws found in VA12,006, see Respondent Tenants Post-Hearing Brief, filed with this submission.

7. Inequity of cash payments to tenants. Only tenants approving the voluntary agreement and vacating the accommodation were eligible for cash payments

8. Failure to disclose renovation costs and to justify proposed rent-charged increases as justified by renovation costs

9. Proposed rent-charged increases as high as 400%, clearly contravening the Rental Housing Act's mandate to preserve affordability for low and moderate-income tenants.

Beginning in May 2012, I lodged a series of objections to VA 12,006 with the Rent Administrator, resulting in the eventual transfer of the case to the Office of Administrative Hearings in January 2013.

A five-day evidentiary hearing on VA 12,006 was held at OAH from July 8 to July 12, 2013. Housing provider UIP and tenant association CMTA appeared jointly as Petitioners, supporting the Agreement, and three individual tenants and a minority tenant association appeared as Respondents, opposing the Agreement.

In January 2014, OAH approved the agreement, justified on the principle of *in pari materia*, wherein two so-called conflicting statutes – in this case the Tenant Opportunity to Purchase Act and the Voluntary Agreement provision – are reconciled. Because VA 12,006 was executed in connection with a TOPA transaction, every flaw and violation evident in the Agreement was deemed of no consequence.[2]

As a result the approval of VA 12,006, some 100 rental units affordable for moderate-income tenants were effectively removed from protection under the Rent Stabilization Act.

Respondent tenants elected not to appeal the decision to the Rental Housing Commission.

COMMENTS: STRENGTHS

Certain proposed changes to DCMR §4213 would address flaws found in VA 12,006, and for that reason are commendable:

1. §4213.2: The filing of any voluntary agreement *first* with the Rent Administrator and then with the non-initiating party

2. §4213.3 (d): The mandatory filing of *all* conditions by which both parties are to be bound

[2] See OAH Final Order for VA 12,006, filed with this submission.

3. §4213.9: Extending the minimum time requirement for consideration of an agreement prior to the filing of any revised terms

4. §4213.14: Stipulation of a definite time at which signatures approving or disapproving an agreement can begin to be solicited

5. §4213.15: Stipulation of a definite time frame within which signatures can be deemed valid;

6. §4213.18 (c): Certification that no consideration has been provided in exchange for signatures

7. §4213.19: Mandatory denial by the Rent Administrator of any agreement that does not meet all baseline procedural and certification requirements

8. §4213.21 (c): Mandatory denial of any agreement that would result in unreasonable adjustments in rent charged

9. §4213.22: Determination of the reasonableness of proposed rents-charged based solely on the cost of proposed improvements in facilities and services

10. §4213.24: Stipulation of a notice of the right to file objections and exceptions to a preliminary finding by the Rent Administrator

COMMENTS: WEAKNESSES

A number of weaknesses in the proposed rules - and remedies addressing those weaknesses - have been cited in comments filed by Ms. Cynthia M. Pols, all of which I endorse. However, in light of our experience with VA 12,006, I point out the following important shortcomings:

1. The failure to define "coercion" so as to include economic coercion, that is, the promise of a benefit in exchange for approval of a voluntary agreement [3]

2. The failure to address the influence of monetary payments to tenants. The pervasive and subversive role of monetary payments in the Voluntary Agreement process – however difficult an issue - cannot and should not be ignored in drafting changes to §4213

3. The failure to disallow approval of Voluntary Agreements solely by virtue of their use in effecting the Tenant Opportunity to Purchase Act.

COMMENTS: RHC FIDDLES, ROME BURNS

[3] For an explanation of economic coercion, see pages 14-16 of Motion to Disapprove Voluntary Agreement and Initiate Show Cause Hearing Volume 1 of 2, in the case of VA 07, 028, filed with this submission.

Considering that the Voluntary Agreement provision of the Rental Housing Act has been hijacked by housing providers for the purpose of destroying rent control, the proposed changes to §4213 fail, in my opinion, not incrementally but profoundly. Real-estate developers and attorneys who have succeeded in neutering §4213 in its present form likely won't be stopped by a few more bothersome procedural requirements. RHC seems to assume that a provision fashioned light years from the present, high-stakes era of profit and plunder is still basically sound, when in fact it's been left for dead. That, as in the case of VA 12,006, a housing provider can flout every procedural rule and violate the plain meaning of the VA provision and succeed in having its subterfuge approved, speaks to the need for a considerably more radical revision of DCMR §4213 than is evident in the proposed changes.

Let me know if you have any questions. I'm happy to be deposed as to full range of fractiousness in prosecuting VA 12,006.

Thanks for your consideration.

Sincerely,

Michael T. Colonna