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May 31, 1990

OPINION OF THE CORPORATION COUNSEL

SUBJECT: May a person who is cited for violating the Housing Regulations appeal that citation directly to the Board of Appeals and Review?

Donald G. Murray
Director
Department of Consumer and Regulatory Affairs
614 H Street, N.W. Suite 1120
Washington, D.C. 20001

Dear Mr. Murray:

This is in response to your May 24, 1990 request for an opinion concerning whether a person who receives a Housing Regulations violation citation may appeal that citation directly to the Board of Appeals and Review ("BAR") under 14 DCMR § 107.1. For the following reasons, it is my opinion that 14 DCMR § 107.1 does not confer such a right.

Title 14 DCMR § 107.1 is the DCMR codification of § 489(a) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, D.C. Law 6-42, D.C. Code § 6-2701 et seq. (1989) ("Civil Infractions Act"). Section 489(a) amended the first sentence of § 1302.1 of the Housing Regulations to read as follows:

Any owner, licensee, or operator of any premises subject to the provisions of these regulations adversely affected by a determination made pursuant to these regulations or titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 may file an appeal in writing with the Board of Appeals and Review.

Section 489(b)(1) of the Civil Infractions Act amended § 2104 of the Housing Regulations by adding the following language (codified at 14 DCMR § 102.4):

Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this Code, or any rules or regulations issued under the authority of this Code, pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this Code shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. [Emphasis added.]

If § 489(a) were interpreted to confer upon a person cited for a violation of the Housing Regulations the right to bypass the hearing procedures established by the Civil Infractions Act and appeal that citation directly to the BAR, such an interpretation of § 489(a) would contradict the underscored language of § 489(b)(1). Such an interpretation of § 489(a) should be avoided because it would be contrary to the principle of statutory interpretation that "whenever possible, a statute should be interpreted as a harmonious whole." Matter of T.L.J., 413 A.2d 154, 158 (D.C. 1980), quoting United States v. Firestone Tire and Rubber Co., 455 F. Supp. 1072, 1079 (D.D.C. 1978). See generally, 2A Sutherland, Statutory Construction § 46.05 (4th ed. 1984). Sections 489(a) and 489(b)(1) are in harmony if the phrase "determination made pursuant to these regulations" in § 489(a) is interpreted to refer to that limited class of Department of Consumer and Regulatory Affairs ("DCRA") final determinations in matters where there is not provision for administrative adjudication of the imposition of civil fines, penalties, and fees for violations of the Housing Regulations. An example of such a DCRA determination is a determination on a request for a variance from the strict application of the Housing Regulations. See 14 DCMR § 109.

Moreover, the conclusion that § 489(a) of the Civil Infractions Act was not intended to give a person the right to appeal directly to the BAR from a Housing Regulations violation citation is strongly buttressed by other provisions of the Civil Infractions Act and by its legislative history.

The language of § 489(a) is based on § 517 of Bill 6-187, the bill which became the Civil Infractions Act. Bill 6-187 was introduced by Council Chairman Clarke at the request of the Mayor. At page 2 of his transmittal letter, the Mayor stated that one of the major problems that Bill 6-187 was intended to address was the problem of "[h]ousing code enforcement." The Mayor went on to state in his transmittal letter (at p. 2):

As a partial solution, I am proposing adoption of this bill. If adopted, the act would authorize designated personnel to issue "citations" to violators who must either forfeit a pre-determined collateral fine or appear before a hearing examiner within fifteen (15) calendar days. After consideration of the evidence and arguments, the hearing examiner would determine whether or not a violation has occurred and enter an appropriate order. The order is considered the "final decision" of the Director, DCRA. [Emphasis added.]

Further, as is stated in § 101 of the Civil Infractions Act, D.C. Code § 6-2701 (1989), one of the primary purposes of the Civil Infractions Act was to provide for "a uniform...system of administrative adjudication with respect to the infractions" for which civil sanctions could be imposed. (Emphasis added.) Thus, an interpretation of § 489(a) that would give an alleged Housing Regulations violator the choice of either requesting a hearing before a DCRA hearing examiner or bypassing that remedy and appealing directly to the BAR would be at odds with the Council's purpose of establishing a "uniform" system of administrative adjudication of civil infractions, such as violations of the Housing Regulations.

Most importantly, § 301 of the Civil Infractions Act, D.C. Code § 6-2721 (1989), provides that the civil infractions appeal jurisdiction of the BAR is jurisdiction to "entertain and determine appeals timely filed by persons aggrieved by final orders issued by hearing examiners pursuant to this act...." (Emphasis added.)

Based on the foregoing, I am of the opinion that § 489(a) of the Civil Infractions Act, 14 DCMR § 107.1, can not reasonably be interpreted to confer upon a person cited for a violation of the Housing Regulations the right to appeal that citation directly to the BAR. Such person must first exhaust his right to a hearing before a DCRA hearing examiner pursuant to the Civil Infractions Act.¹ Stated otherwise, the BAR has no jurisdiction to entertain and determine an appeal taken directly from a citation for a violation of the Housing Regulations. The BAR's review jurisdiction in this regard is limited to reviewing final orders of DCRA

¹ Compare Whitney Bank v. New Orleans Bank, 379 U.S. 411, 422 (1965) (where Congress "has enacted a specific statutory scheme for obtaining review,...the doctrine of exhaustion of administrative remedies comes into play and requires that the statutory mode of review be adhered to notwithstanding the absence of an express statutory command of exclusiveness"). Accord: Smith v. Murphy, 294 A.2d 357, 359 (D.C. 1972).

hearing examiners issued pursuant to the provisions of the Civil
Infractions Act.

Sincerely,

A handwritten signature in dark ink, appearing to read "Herbert O. Reid, Sr.", with a stylized flourish at the end.

Herbert O. Reid, Sr.
Corporation Counsel, D.C.

cc: Irena I. Karpinski, Esq.
Chairperson
Board of Appeals and Review