IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, **Plaintiff,** **v.** **EQUITY RESIDENTIAL MANAGEMENT, L.L.C., *et al.*,** **Defendants.**	**2017 CA 008334 B** **Judge Yvonne Williams**

ORDER DENYING DEFENDANTS' OPPOSED MOTION TO RECONSIDER THE COURT'S OCTOBER 8, 2021 ORDER ON REMEDIES

Before the Court is Defendants Equity Residential Management, L.L.C and Smith Properties Holding Van Ness, L.P.'s (collectively, "Equity"[1]) Opposed Motion to Reconsider the Court's October 8, 2021 Order on Remedies ("Motion"), filed on November 8, 2021. Plaintiff District of Columbia (the "District") filed its Opposition to Defendants' Motion to Reconsider the Court's Order on Remedies ("Opposition") on November 17, 2021. For the reasons explained below, the Motion shall be **DENIED**.

I. RELEVANT BACKGROUND

This case concerns findings that Equity's advertising and leasing practices regarding a 625-unit rental apartment property located at 2002 Van Ness Street, NW, Washington, DC 20008 ("Property"), are in violation of the Consumer Protection Procedures Act ("CPPA"). *See generally* Order (Apr. 23, 2021). The District initiated this lawsuit on December 13, 2017; filed its Second Amended Complaint on October 5, 2018; and filed its Third Amended Complaint on February 24, 2020. The Court bifurcated this matter into two phases: Liability and Remedies.

[1] The Parties have stipulated that "for the limited purposes of this trial," Smith Properties Holdings Van Ness, L.P. and Equity Residential Management, L.L.C. may be referred to jointly or singularly as "Equity," and distinguishing between the affiliates is not necessary in this instance. *See* PTX385.

This matter appeared before the Court for a Non-Jury Trial on liability from December 7, 2020 through December 16, 2020. On April 23, 2021, the Court issued an Order wherein it entered judgement in favor of the District and against Equity for violations of the CPPA, specifically D.C. Code §§ 28-3904(e) & (f)[2]. Order at 28 (Apr. 23, 2021). Equity was found to have violated the CPPA because it engaged in unfair or deceptive trade practices by making material misrepresentations and failing to disclose material facts regarding Equity's rent concession practices. *Id*. at 7, 28 (Apr. 23, 2021). Specifically, from February 2013 to February 2019, Equity advertised apartments on its website, third-party-websites, during leasing tours, in online and paper applications, and in conversations between prospective tenants and leasing agents without properly disclosing that the advertised rent amount included monthly concessions, or recurring discounts, subtracted from the total monthly rent. *Id*. at 2-5 (Apr. 23, 2021). Many prospective tenants did not know that the advertised rent included a monthly concession until after their application for lease had been approved. *Id*. at 4 (Apr. 23, 2021). While Equity informed potential tenants that the property subject to District of Columbia rent control laws, it failed to properly disclose that future rent increases would be based on the higher pre-concession rent, not the post-concession rent. *Id*. (Apr. 23, 2021). These tenants experienced an unexpected, significant increase in their rent payments upon lease renewal. *Id*. at 12 (Apr. 23, 2021). The Court found Equity liable for its failure to properly disclose concession and pricing information that a reasonable consumer could find important in determining where to lease an apartment, which created a net impression in prospective tenants' mind that tended to mislead them about future rent increases. *Id*. at 18 (Apr. 23, 2021).

[2] The CPPA makes it unlawful to engage in an unfair or deceptive trade practice, including to: "(e) misrepresent as to a material fact which has a tendency to mislead;" or "(f) fail to state a material fact if such a failure tends to mislead." §§ 28-3904(e), (f). The plaintiff need not establish that a material misrepresentation or failure to disclose is intentional. *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013).

On September 23, 2021, this matter appeared before the Court for a Remedies Hearing. On October 8, 2021, the Court issued its Judgment and Order and Order on Remedies wherein the Court awarded restitution in the amount of $869,344.19 plus two (2) percent simple prejudgment interest and attorneys' fees and costs in the total amount of $1,010,493.00. Order at 21 (Oct. 8, 2021). Restitution was awarded for rent overcharges and application charges. *Id*. at 10 (Oct. 8, 2021). Equity does not seek reconsideration of the $150,214.67 award for application charges. Rather Equity seeks to reconsider the award of $719,129.52 for rent overcharges. The Court found that Equity's failure to state pricing that accurately or fully inform its potential residents of future rent increases allowed Equity to increase rent prices above the amounts that would have been permissible had Equity's initial representations about rent been accurate. *Id*. at 12 (Oct. 8, 2021). As such, rent overcharges were awarded as "a direct result of Equity's core deceptions" and were intended to ensure that Equity is not unjustly enriched. *Id*. at 12-13 (Oct. 8, 2021).

In the instant Motion, Equity seeks reconsideration of the Court's October 8, 2021 Order on Remedies regarding the award for restitution the included the rent overcharges. The District filed its Opposition on November 17, 2021.

II. LEGAL STANDARD

Equity moves for reconsideration of the Court's October 8, 2021 Order on Remedies under Rules 60(b) and 59(e). District of Columbia Superior Court Civil Procedure Rule 60(b) provides for relief from a final order based on "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); … or (6) any other reason that justifies relief." While the Court may consider additional circumstances, "neither Rule 59(e) nor Rule 60(b) is designed to enable a party to complete presenting its case after the court has ruled against it," and any motion for reconsideration of a final order "may not be used to raise arguments or present evidence that

could have been raised prior to the entry of judgment." *See District No. 1 – Pacific Coast District v. Travelers Casualty & Surety Co*., 782 A.2d 269, 278 (D.C. 2001) (quotations, brackets, ellipses, and citations omitted). Further, "cases applying Rule 60 (b) have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner." *Onyeneho v. Allstate Ins. Co.*, 80 A.3d 641, 647 (D.C. 2013) (internal citations omitted).

III. DISCUSSION

The Court finds that reconsideration of its October 8, 2021 Order on Remedies is not merited. Equity submits that rent overcharges should be excluded from the award of restitution because the Court found that Equity's renewal pricing was not contrary to the relevant portions of the Rental Housing Act ("RHA") in ruling for Equity on its *Bassin* claim and because the overcharges sought are related to new leases. Alternatively, Equity claims that rent overcharges should be calculated according to Equity's calculations rather than the District's calculations. The District argues that Equity's motion fails to substantiate an error of law or fact and merely seeks to relitigate arguments already rejected by the Court.

While Equity is correct that the Court previously determined that its rent renewal increases were lawful under the RHA, Order at 27 (Apr. 28, 2021), it is incorrect in its assertion that rent overcharges were only relevant to the relief sought under the *Bassin* claim. The Court awarded rent overcharges as "a direct result of Equity's core deceptions." Order at 12 (Oct. 8, 2021). Equity's deceptions involved misrepresenting or omitting the accurate base price for renewals in nearly every communication with consumers. Even though Equity advertised rent-control as a key feature of living on the property, Equity failed to properly inform potential tenants that the rent prices advertised to them reflected a rent concession. Prospective residents were misled into believing that any increase in rent upon renewing a lease would be based on the advertised pricing. As a result, tenants experienced significant and unanticipated increases in their monthly rent upon

renewal. Thus, it is proper for Equity to disgorge any rent amounts it received that were increased above the amounts that would have been permissible for Equity to receive had Equity's representations about rent renewals been accurate.

Equity's assertion that rent overcharges should not be awarded because the overcharges are related to new leases that were executed over a year after the conduct that the Court found misleading is not convincing. As noted by the District, the Court has already considered and denied this argument. Order at 12 (Oct. 8, 2021) (finding that, "much like the concept that 'fraud vitiates everything' so too does Equity's misrepresentations and omissions; therefore, restitution based on rent overcharges is not limited to an initial lease renewal.") Rent overcharges are based on the direct harm caused by Equity's misrepresentations and omissions about their rent concession practices. Equity mischaracterizes these leases as "completely new." Mot. at 2. The relevant leases were contractually created a year after Equity's misrepresentations and omissions because they were renewed. Even though tenants were fully advised of Equity's concession prior to signing the initial lease and before lease renewal, the tenants were misled into believing that annual rent increases would be based on the post-concession rent price rather than the pre-concession rent price. Although Equity's misrepresentations and omissions occurred a year prior to lease renewal, the harm was not realized until these leases were renewed and tenants were surprised by significant rent increases. Any increase in rent amounts at lease renewal that were the result of Equity's initial wrongdoings are ill-gotten gains. Thus, overcharges shall include rent related to all leases that were affected by Equity's misrepresentations and omissions, including those renewed after Equity ceased its concession practices.

Finally, Equity's alternative argument that the Court should re-calculate rent overcharges using trial evidence is improper. Equity is not permitted to raise an argument that the Court could

have considered in earlier stages of the litigation. *See District No. 1*, 782 A.2d at 278. Equity requests that the Court calculate rent overcharges according to DTX270, Equity's Summary of Overcharges and Undercharges Associated with Renewals Calculated According to the Assumptions and Methodology Alleged Required by the District (Def. Exhibit A), instead of the District's evidence, the Declaration of Rory Pulvino. As Equity notes, DTX270 was admitted into evidence at trial and subject to cross-examination. *See* Mot. at 3. Further, Equity had the opportunity to raise this argument at the September 23, 2021 Remedies Hearing and in its Opposition to District of Columbia's Brief on Remedies filed on August 13, 2021. The only time Equity has previously referred to DTX270 has been to argue that according to its calculations, Equity suffered a net loss and not a profit. *See* Opp'n to District of Columbia's Br. on Remedies at 40. The instant motion marks the first occasion Equity has argued that DTX270, a chart created by Equity's legal team, should control the Court's decision regarding the calculation of rent overcharges and not the Declaration of Rory Pulvino, Senior Data Analyst with the Attorney General for the Government of the District of Columbia. Even though DTX270 does contain countervailing methodology or figures regarding the calculation of rent overcharges, the Court has already weighed this evidence and decided to limit restitution to the evidence provided by the District despite Mr. Pulvino's impeachment at trial. Order at 13 (Oct. 8, 2021). Equity has failed to show good reason for failing to raise this argument sooner. *See Onyeneho*, 80 A.3d at 647. Thus, the Court declines to re-calculate rent overcharges according to DTX270.

Upon reconsideration, the Court finds sufficient cause to deny Equity's request to exclude rent overcharges from the award of restitution or, alternatively, to re-calculate rent overcharges according to Equity's trial evidence. Equity has not met the requirements under Rule 60(b) to receive relief from the Order on Remedies. Equity does not sufficiently allege that the Court's

Order presented a "mistake, inadvertence, surprise, or excusable neglect." *See* D.C. Super. Ct. R. Civ. P. 60(b)(1). Further, Equity does has not submitted newly discovered evidence nor has Equity proposed any other reason that justifies relief. *See* D.C. Super. Ct. R. Civ. P. 60(b)(2)-(6). The Court properly awarded rent overcharges to disgorge Equity of the benefit it received from making material misrepresentations and omissions that mislead its potential residents about the base rent for annual rent increases at its property. Rent overcharges are properly based on the amount of rent received by Equity that was over and above what would have been permissible had the post-concession rent been the actual rent for purposes of applying annual rent increases. Finally, Equity has failed to show good reason why the Court should re-calculate rent overcharges based on evidence that has already been considered by the Court. For these reasons, the Court denies Equity's request to exclude rent overcharges from the restitution award and to re-calculate restitution according to Equity's calculations.

Accordingly, it is on this 11th day of January, 2022, hereby,

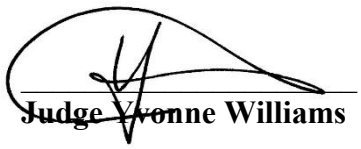
ORDERED that Defendants' Opposed Motion to Reconsider the Court's October 8, 2021 Order on Remedies shall be **DENIED**; it is further

ORDERED that within sixty (60) days of the entry of this Order, Defendants shall pay $869,344.19 plus 2 percent simple prejudgment interest in restitution to the District of Columbia; and it is further

ORDERED that the District shall use all amounts collected as restitution to pay restitution to consumers who have been harmed by Equity's unlawful practices. The District shall distribute this restitution in an amount equal to the application fees and/or overcharges each consumer paid Equity, less any amount that Equity has already refunded to the consumer, with an applied 2 percent interest. Restitution may be distributed *pro rata* to consumers if Defendants fail to pay all

restitution due. The District shall hold any unpaid restitution amounts either as an unclaimed fund for the consumer or it shall use the funds for any other lawful purpose designated by the Attorney General.

IT IS SO ORDERED.



Judge Yvonne Williams

Date: January 11, 2022

Copies to:

Laura C. Beckerman
James Graham Lake
Jimmy R. Rock
Ben Wiseman
Jamil Zouaoui
Gary M. Tan
Counsel for Plaintiff

Carey S. Busen
John S. Letchinger
Robert C. Gill II
Counsel for Defendants