

submitted an amended 70% Voluntary Agreement accompanied with a copy of a sample Letter of Agreement, which the Housing Provider presented to each tenant with the Voluntary Agreement. The amended 70% Voluntary Agreement references the Letter of Agreement as a document contemporaneously presented to and executed by each tenant who signed the Voluntary Agreement. I have attached a copy of the sample Letter of Agreement with this Order.

On February 8, 2008, the Housing Provider filed with RAD a final executed petition representing the requisite number of signatures based on the number of occupied units and affirmations from eligible tenants that the agreement was entered into voluntarily, without any form of coercion on the part of the Housing Provider. Also filed were Letters of Agreement for each approving tenant.

On February 15, 2008, tenants, Blake J. and Wendy Nelson filed the following Motions with RAD: Motion to Disapprove Voluntary Agreement and Initiate Show Cause Hearing; Request for Hearing; and Motion to Permit Discovery or Issue Subpoena. On March 4, 2008, tenants Blake and Wendy Nelson filed a Motion to Stay and Consolidation. On March 4, 2008 tenants Kenneth A. Mazzer and Wendy Tiefenbacher, filed a Motion to Disapprove Voluntary Agreement and Initiate Show Cause Hearing; Request for Hearing; and Motion for Discovery or in the Alternative, To Issue a Subpoena. (Tenants Blake J. and Wendy Nelson, Mazzer and Tiefenbacher hereinafter will be collectively referred to as the "Objecting Tenants").

Findings of Fact and Conclusions of Law

The petitioner in this matter, Klinge Corporation, is the owner of the Housing Accommodation, which is also known as the Kennedy-Warren Apartments. The application pending before RAD seeks to establish rent levels pursuant to 14 DCMR 4213.1, which allows housing providers and tenants to enter into voluntary agreements for this purpose, as well as to change related services or facilities or to provide for capital improvements and ordinary maintenance and repairs. In the instant case, the Housing Provider asserts that \$40 million is required to renovate and upgrade the Housing Accommodation, which is comprised of the historic wing of this 75 year old building and contains 316 units, all of which are subject to the provision of the Rental Housing Act of 1985, as amended, (the Act). As of the date of this voluntary petition, there are 107 occupied units, leaving approximately two-thirds of the accommodation vacant. According to the uncontested information submitted by the Objecting Tenants, the Housing Provider began taking the now vacant units off the market as early as 2005 as existing leases terminated. The petitioner has submitted the final executed agreement with over 70% of the remaining tenants approving the Voluntary Agreement as well as a fully executed Letter of Agreement for each approving tenant. Pursuant to 14 DCMR 4213.19 the Rent Administrator may disapprove a voluntary agreement that has been approved by 70% or more of the tenants only in the following circumstances:

- (a) *If all or part of the tenant approval has been induced by duress, harassment, intimidation or coercion;*

- (b) *If all or part of the tenant approval has been induced by fraud, deceit or misrepresentation of material facts; or*
- (c) *If the voluntary agreement contradicts the provisions of Section 102 of the Act or results in inequitable treatment of the tenants.*

For the reasons more fully stated below, I find that (1) the final voluntary agreement and accompanying Letters of Agreement coercively induced all or part of the tenant approval; (2) the proposed rent levels in the voluntary agreement contradict the provisions of Section 102 of the Act; and (3) the voluntary agreement and accompanying Letters of Agreement result in inequitable treatment of tenants.

1. The Voluntary Petition and Letter of Agreement Coercively Induced Approval

The regulation 14 DCMR 4213.19 (a) specifically allows disapproval of an approved agreement where all or part of the tenant approval has been induced by duress, harassment, intimidation or coercion. The proposed voluntary petition filed by the petitioners on December 11, 2007, included a rent schedule with no other terms by which the parties intended to be bound. An inquiry by RAD to the housing provider with respect to all written agreements or notices given to tenants resulted in an amended filing referencing specifically to the Letter of Agreement and a copy of the agreement given to the tenants contemporaneously with the petition.

The Letter Agreement consists of 26 provisions offering current tenants no reasonable option other than to accept the proposed terms or otherwise face penalizing and oppressive terms. The numerous incentives offered to tenants in exchange for their approval include: rent increases tied only to cost of living increases for the length of tenancy; 10% reduction of rent during the relocation and renovation process; payment for all moving expenses prior to and following renovation; waiver of parking fees for up to 2 years; lump sum payments up to \$52,020 to approving tenants who elect to permanently vacate the Housing Accommodation. The Letter of Agreement is conditioned on approval of the Voluntary Agreement and requires tenants' support in obtaining such approval.

The term "Coerce" is defined in Black's Law Dictionary, Fifth Edition as, *Compelled to compliance; constrained to obedience, or submission in a vigorous or forcible manner.* Black's Law Dictionary further defines "Economic Coercion" as conduct that constitutes the improper use of economic power to compel another to submit to the wishes of one who wields it. The District of Columbia Rental Housing Commission has found that voluntary agreements, with 70% approval can be disapproved by the Rent Administrator upon a showing of coercion. Dixon v. Majeed, TP 20658 (RHC October 4, 1989)

I find this agreement to be patently coercive in nature and punitive to those tenants who disapprove. There is no true choice for a tenant, who is faced with a rent increase between 100-300% above the current charge. An illustration of a coercively induced term is found in Paragraph 5 of the Letter of Agreement, entitled Retain Current Rent Rate For Tenant states:

5. *In exchange for the 70% Voluntary Agreement, you can retain your Unit and your current rent will be retained, except for cost of living increases, as described below.*

*The new market rate rents permitted by the 70% Voluntary Agreement may be charged **only to new tenants** (and any existing tenants who choose not to sign the 70% Voluntary Agreement).*

This provision is a form of economic coercion. There can be no true approval when the only option is to receive no benefit and suffer financial penalty. Approving tenants are further provided with no reasonable option in Paragraph 22 of the Letter of Agreement, **Effect on Non-Signers**, which states:

22. *For any tenant who chooses not to enter into this Agreement, neither the benefits nor the obligations of this Agreement shall apply. Nevertheless, if a non-signing tenant agrees in writing not to challenge or support a challenge to the validity of this Agreement and the related 70% Voluntary Agreement and agrees to temporarily relocate during the renovation by executing a Temporary Relocation Agreement in a form substantially similar to Exhibit A, we agree not to utilize the lawful opportunity afforded us to raise the rents of non-signers to amounts permitted under the 70% Voluntary Agreement, but instead to limit the rent and charges to those tenants to the rents and charges otherwise permitted under the applicable D.C. laws. For Example, and by way of illustration only, those tenants will continue to be obligated to pay the current surcharges and we may impose additional surcharges in the future.*

This provision clearly reinforces that non-signers will not benefit from this agreement and goes on to condemn non-signers if they challenge or support a challenge to the validity of the agreement and the “related 70% Voluntary Agreement”. The Housing Provider will only exempt those non-signers from the imposition of penalties, if they agree **in writing** not to challenge or support a challenge to the agreements. This is plainly coercive.

(a) **The Letters of Agreement must be incorporated into the 70% Voluntary Agreement**

The regulation, 14 DCMR 4213.11, requires a housing provider or tenant who initiates a 70% proposed Voluntary Agreement to provide, in relevant part, the following information:

- (c) All other conditions (including specific repairs to be made) by which the housing provider agrees to be bound;
- (d) All other conditions by which the tenants agree to be bound [.]

In the amended filing, the Housing Provider attached a sample Letter of Agreement which specifically outlines the parties' roles:

2. **Klingle's Role**

Klingle Corporation, the owner of the Property requests your Cooperation as the tenant with respect to approval of a 70% agreement, which will enable us to perform certain renovations at the property.

3. **Tenant's Role**

You will cooperate with our effort to make certain renovations to the Property and to obtain approval of a 70% Voluntary Agreement.

The Letter of Agreement was provided to all tenants contemporaneously with a copy of the proposed voluntary agreement. As such, the terms of this agreement were incorporated into the Voluntary Agreement and formed the basis for tenant approval. The proposed increase in rent levels, in accordance with the Letter of Agreement, would not be borne by the approving tenants, but rather by non-approving tenants and new tenants. This result creates a disparate treatment of tenants, especially in light of the predominance of vacant units in the Housing Accommodation.

These Letter Agreements must be incorporated as a vital component of the Voluntary Agreement.

2. **The Voluntary Agreement Contradicts the Provisions of Section 102 of the Act**

The regulation, 14 DCMR 4213.19 (c) in relevant part allows the Rent Administrator to disapprove a voluntary agreement that has been approved by 70% or more of the tenants if the voluntary agreement contradicts the provisions of Section 102 of the Act (codified at D.C. Office Code section 42-3501.02 (2001)), which sets forth the purposes of the Act. Section 102 states the purposes of the Act as follows:

- (1) To protect low-and moderate income tenants from the erosion of their income from increased housing costs;
- (2) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the district;
- (3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;
- (4) To protect the existing supply of rental housing from conversion to other uses; and
- (5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their

investments.

To properly evaluate the issue presented by the petition, the purposes and structure of the Rental Housing Act must be considered. The Act represents a comprehensive scheme for the regulation of rental housing in the District. *Winchester Van Buren Tenants Ass'n v. District of Columbia Rental Housing Com'n*, 550 A.2d 51, 53 (D.C. 1988). "Briefly put, the goal of this scheme, born of a perceived severe housing shortage in the District, is to ensure that decent, affordable housing is available for the various sectors of the population, while at the same time landlords are allowed a fair rate of return on their investments." *Sawyer v. DC Rental Housing Com'n*, 877 A.2d 96, 103 (DC 2005) (internal quotations omitted). "In passing the [Rental Housing] Act, the Council attempted to avert the economic hardships which tenants would confront in an unregulated housing market while at the same time accommodating the legitimate concerns of landlords." *Winchester*, 550 A.2d at 53. The Act must be interpreted to accommodate its purposes.

The District of Columbia Court of Appeals has held that the Rental Housing Act should be liberally construed to achieve its purposes. *Goodman v. District of Columbia Rental Housing Com'n*, 573 A.2d 1293 (D.C. 1990). Great deference has been given to the interpretation by an agency of a statute or regulation which it administers. *Tenants of 738 Longfellow Street v. District of Columbia Rental Housing Com'n*, 575 A.2d 1205. I find that this voluntary agreement violates the purposes under the Act.

(a) **The Voluntary Agreement Erodes Income from Moderate Income Tenants**

The tenants affected by this petition represent moderate income renters, as reflected in current rent schedules. The terms of this voluntary agreement and accompanying Letter of Agreement will in effect erode the income for disapproving tenants and impose the full burden of significantly higher rent levels. The terms of the Letter of Agreement clearly address disapproving tenants and impose increased rent levels on their tenancies.

The principle behind housing providers and tenants agreeing to increase rent levels is to provide current tenants with the ability to set levels for their own rent. Under the terms of this voluntary agreement, the approving tenants agree to increase rent levels which they will not have to pay. They are therefore ensuring no erosion of their income while imposing greater rent levels for disapproving tenants and future tenants.

(b) **The Voluntary Agreement Erodes Moderately Priced Rental Housing and Provides The Housing Provider with an Excessive Rate of Return on their Investments**

The Kennedy-Warren Apartments is located in Ward 3 of the District of Columbia. The housing provider in this petition has systematically reduced the number of occupied units from 316 to 107. Although it is important to encourage housing providers to construct new rental units and to rehabilitate vacant rental units, incentives to encourage the creation of such new housing stock must not work to the detriment of the current housing stock, either through extended periods of vacancy or through the

elimination of moderately-priced housing units.

The Voluntary Agreement would effectively eliminate all currently vacant units from rent control and the remaining units upon the expiration of current tenancies. The immediate and permanent loss of 209 available moderately priced rental units in a Ward that has long been identified as having higher home purchase prices and lower rental vacancy rates is detrimental to the current housing stock.

The 2006 American Community Survey has reported that the percentage of all households in the District of Columbia that can afford a monthly rent of \$2,790, which represents the lowest rent monthly rent proposed by the petitioner in the Voluntary Agreement at the Kennedy Warren, is 22%. But only 2% of District households can afford a monthly rent of \$9,500, the highest monthly rent proposed by the petitioner in the Voluntary Agreement. Even fewer renter households in the District can afford the proposed monthly rents—9% can afford the lowest proposed rent, while the percent of renters that can afford the highest proposed rent is statistically zero. Current monthly rents at the Kennedy Warren range from \$604 to \$6,500, however, only 43 of 316 apartments (14%) now rent for more than \$2,500 per month. The proposed increase will significantly reduce the affordability of this Housing Accommodation.

The nearly \$1 million in additional monthly rent that would be permitted under the higher rent levels is not proportional to the Housing Provider's asserted \$40 million investment in the Housing Accommodation, especially when amortized over 240 months as provided in the case of substantial rehabilitation. *See* 14 DCMR 4212.10(a).¹ The proposed Voluntary Agreement results in an erosion of moderately priced rental housing and provides the Housing Provider with an excessive rate of return on investment.

3. The Voluntary Agreement Results in Inequitable Treatment of the Tenants

The Letter of Agreement serves to subvert the purpose of the voluntary agreement process, as the regulations require that an approved voluntary agreement will be binding on all tenants of the housing accommodation, including those who did not sign the agreement, 14 DCMR 4213.17. As discussed above, there are clear provisions, within the voluntary agreement that distinguish the benefits for approving tenants and the respective penalties for disapproving tenants. The Letter of Agreement violates the purpose of 14 DCMR 4213.17.

ORDER

Therefore, it hereby ORDERED on this 24th Day of March that:

70% Voluntary Petition 07, 028 is **DENIED**.

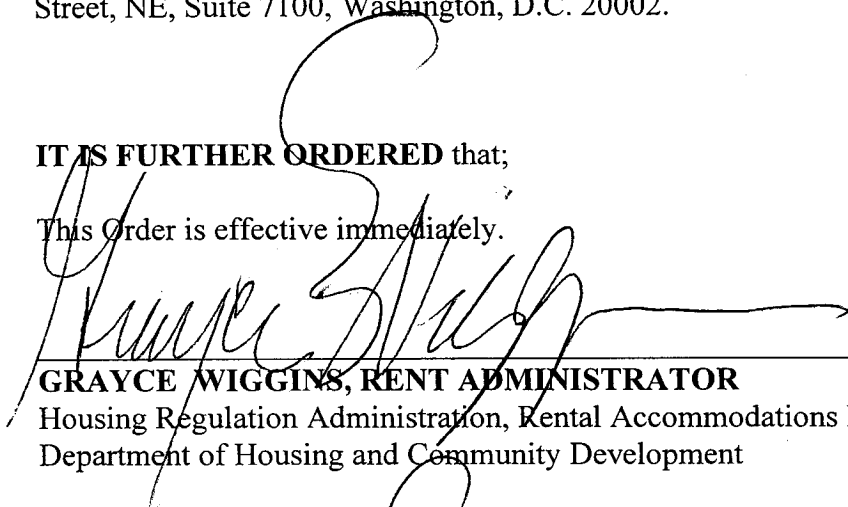
¹ In the absence of regulations governing the computation of reasonable return on investment in the context of review of voluntary agreement, it is appropriate to look elsewhere in the regulations under the Act that address this issue. In this case, the formula set forth at section 4212.10(a) is appropriate in determining the reasonableness of the proposed rent increases in light of the amount of the investment in the Housing Accommodation.

IT IS FURTHER ORDERED that;

Parties may submit written objections to the Rent Administrator, with notice to all parties, within thirty (30) days of this Order, on or before April 28, 2008 (includes 3 days for mailing). Parties must file all objections at RAD located at 941 North Capitol Street, NE, Suite 7100, Washington, D.C. 20002.

IT IS FURTHER ORDERED that;

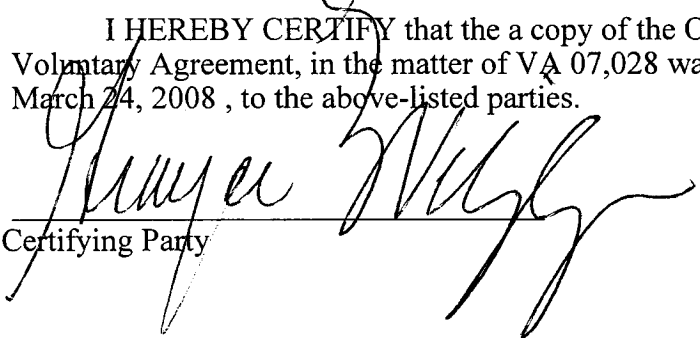
This Order is effective immediately.



GRAYCE WIGGINS, RENT ADMINISTRATOR
Housing Regulation Administration, Rental Accommodations Division
Department of Housing and Community Development

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the a copy of the Order denying the 70% Voluntary Agreement, in the matter of VA 07,028 was sent by Priority Mail, on March 24, 2008 , to the above-listed parties.



Certifying Party

Copies to:

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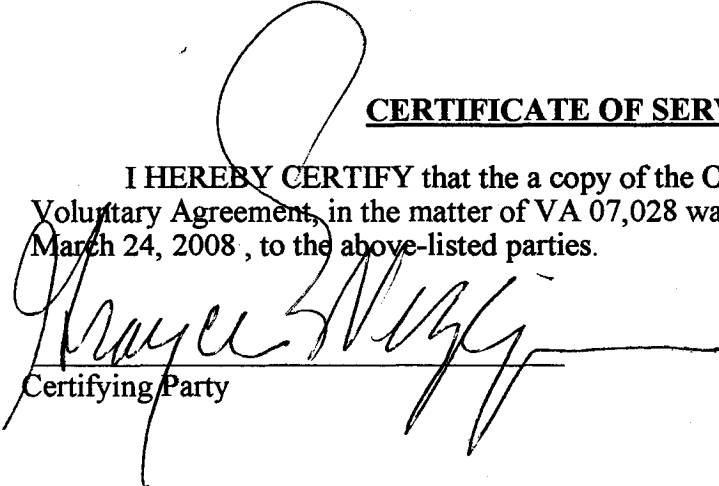
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Order denying the 70% Voluntary Agreement, in the matter of VA 07,028 was sent by Priority Mail, on March 24, 2008, to the above-listed parties.



Certifying Party