

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

NEW CAPITOL PARK PLAZA	)	
TENANTS ASSOCIATION, INC.	)	
201 I Street, SW, #103	)	
Washington, DC 20024	)	Case No. 04-CA-7465
	)	
TENANTS' ADVOCACY	)	Civil Calendar No. 7
COALITION, INC. ("TENAC")	)	Judge Kravitz
P.O. Box 7237	)	
Washington, DC 20044	)	
	)	
THOMAS L. SEIDMAN	)	
201 I Street, SW, #103	)	
Washington, DC 20024	)	
	)	
ANTONIO J. GONZALEZ	)	
201 I Street, SW, #238	)	
Washington, DC 20024	)	
	)	
KEVIN FITZGERALD	)	
201 I Street, SW, #511	)	
Washington, DC 20024	)	
	)	
JUNIENNE B. REED	)	
201 I Street, SW, #841	)	
Washington, DC 20024	)	
	)	
RICHARD COWARD	)	
201 I Street, SW, #131	)	
Washington, DC 20024	)	
	)	
1816 KALORAMA ROAD, NW	)	
TENANTS ASSOCIATION, INC.	)	
1816 Kalorama Road, NW, #301	)	
Washington, DC 20009	)	
	)	
BARRY WEISE	)	
1816 Kalorama Road, NW, #301	)	
Washington, DC 20009	)	
	)	
JULIA ROTA	)	
1816 Kalorama Road, NW, #306	)	
Washington, DC 20009	)	
	)	

KERI NASH	)
905 Sixth Street, SW, #104	)
Washington, DC 20024	)
	)
ANDREW JARED CRITCHFIELD	)
103 G Street, SW, #511	)
Washington, DC 20024	)
	)
PAULETTE V. HOWARD	)
101 G Street, SW, #510	)
Washington, DC 20024	)
	)
<i>Plaintiffs,</i>	)
	)
v.	)
	)
DISTRICT OF COLUMBIA	)
1350 Pennsylvania Avenue, NW	)
Washington, DC 20004,	)
	)
DAVID A. CLARK	)
IN HIS OFFICIAL CAPACITY AS	)
DIRECTOR,	)
D.C. DEPARTMENT OF CONSUMER	)
AND REGULATORY AFFAIRS	)
941 North Capitol Street, NW	)
Washington, DC 20001	)
	)
<i>Defendants.</i>	)
_____	)

**FIRST AMENDED COMPLAINT**

**Introduction**

1. This lawsuit challenges the unlawful practices of public officials with the D.C. Department of Consumer and Regulatory Affairs that undermine tenant rights and frustrate the purposes of the Rental Housing Conversion and Sale Act (hereinafter “Sale Act”) by facilitating what have become known as “95/5” sales of rental properties.

2. Title IV of the Sale Act creates rights for tenants in rental property that the owner seeks to sell or demolish, requiring the owner to first negotiate with the tenants and offer them the opportunity to purchase the property on terms that are at least as favorable as those offered to other parties desiring to purchase the property. See D.C. Code § 42-3404 *et seq.*
3. DCRA has frustrated the purposes of this legislation by improperly adopting a *de facto* rule that purports to create a loophole for developers. Specifically, DCRA issues letters to developers – without authority and essentially upon request – purporting to certify exemption from the Sale Act of any transaction that effects a transfer of a 95% ownership interest in a rental property.
4. DCRA does so in violation of the Sale Act and the D.C. Administrative Procedures Act (APA). It has never followed the procedures required to adopt any rule related to the scope of applicability of the Sale Act, and its continued enforcement of this rule is unlawful.
5. Thus, the rights and procedures created by the City Council are unlawfully and undemocratically undone by DCRA.
6. This practice is indicative of the nature of DCRA as a “captured agency,” doing the bidding of developers to the frustration of the public policy of the District of Columbia and of the rights of renters in this city.
7. The Sale Act is remedial legislation reflecting important public policy concerning the rights of District residents and the need to address the lack of affordable housing in this city. The legislation itself sets forth a number of purposes:

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

(1) To discourage the displacement of tenants through conversion or sale of rental property, and to strengthen the bargaining position of tenants toward that end without unduly interfering with the rights of property owners to the due process of law;

(2) To preserve rental housing which can be afforded by lower income tenants in the District;

(3) To prevent lower income elderly tenants from being involuntarily displaced when their rental housing is converted;

(4) To provide incentives to owners, who convert their rental housing, to enable low income non-elderly tenants to continue living in their current units at costs they can afford;

(5) To provide relocation housing assistance for lower income tenants who are displaced by conversions;

(6) To encourage the formation of tenant organizations;

(6a) To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement; and

(7) To authorize necessary actions consistent with the findings and purposes of this chapter.

D.C. Code § 42-3401.02

8. Plaintiffs here are tenants and tenant associations in housing concerning which DCRA issued such letters, and whose housing was sold thereafter without benefit of the procedures contemplated under the Sale Act. More fundamentally, Plaintiffs are concerned by the government's unlawful actions that frustrate the purposes of the Sale Act and aggravate the housing crisis in this city. Several Plaintiffs have been outspoken advocates for tenant rights generally and against DCRA action that frustrates rights under the Sale Act in particular.
9. This lawsuit asks the Court to enjoin unlawful action by public officials that are beyond the scope of their authority and that serve only to frustrate the public policies duly adopted by the City Council. It is fundamental that public

officials may only adopt rules pursuant to law, and that their actions may not be contrary to the laws and public policies set by the legislature. Plaintiffs seek equitable relief holding the DCRA letters null and void, and enjoining DCRA from continuing this practice.

**Parties**

10. Plaintiff Tenants' Advocacy Coalition, Inc. ("TENAC") is an organization incorporated pursuant to the District of Columbia Nonprofit Corporation Act. It is a voluntary association of tenants and tenant organizations throughout Washington, DC. TENAC provides a variety of services, including assisting tenants in forming new tenant associations, and assisting existing associations in formalizing and registering the organization. In doing such work, TENAC stresses the importance of the Sale Act and of organizing tenants into associations that will leave them ready to exercise their rights under the Sale Act in appropriate circumstances. TENAC's constituents and members are greatly interested in the Sale Act and are concerned by the misconduct challenged in this litigation, and TENAC regularly responds to questions and provides other assistance in this area. This associational plaintiff testified before the City Council concerning, among other things, the unlawful DCRA-created loophole challenged in this action; and it has been outspoken concerning this issue in a variety of fora.
11. Plaintiff 1816 Kalorama Road, NW, Tenants Association, Inc. is an organization incorporated pursuant to the District of Columbia Nonprofit Corporation Act. It is a voluntary association of tenants residing at 1816

Kalorama Road, NW, Washington, DC. This associational plaintiff testified before the City Council concerning, among other things, the unlawful DCRA-created loophole challenged in this action.

12. Plaintiff The New Capitol Park Plaza Tenants Association, Inc. is an organization incorporated pursuant to the District of Columbia Nonprofit Corporation Act. It is a voluntary association of tenants and former tenants at 201 I Street, SW, Washington, DC. This associational plaintiff testified before the City Council concerning, among other things, the unlawful DCRA-created loophole challenged in this action.
13. Plaintiffs Thomas L. Seidman, Barry Weise, Keri Nash, Julia Rota, Antonio J. Gonzalez, Kevin Fitzgerald, Junienne B. Reed, Richard Coward, Andrew Jared Critchfield, and Paulette V. Howard are natural persons and residents of the District of Columbia. Plaintiffs Fitzgerald and Weise testified before the City Council concerning, among other things, the unlawful DCRA-created loophole challenged in this action.
14. Defendant District of Columbia is a municipal corporation and constitutes the local government of Washington, DC.
15. Defendant David A. Clark is the Director of the Department of Consumer and Regulatory Affairs, and is being sued in his official capacity.

**Jurisdiction**

16. This Court has jurisdiction pursuant to D.C. Code § 11-921, *inter alia*.

## **Facts**

17. DCRA has *de facto* adopted a rule to the effect that transactions are exempt from the Sale Act so long as any fraction of interest in the property – however insignificant – will be retained by the existing owner.
18. The existence of a generally applicable rule is evidenced by DCRA’s conduct in issuing letters purporting to certify transactions as exempt from the Sale Act, without following the procedures that would be required prior to issuing a declaratory order.
19. The Sale Act provides that owners that are “uncertain as to the applicability” of the law are considered “aggrieved” for purposes of seeking review from the Courts or the Mayor. D.C. Code § 42-3404.02.
20. Thus, such an owner may seek declaratory relief from the Courts. D.C. Code § 42-3405.03.
21. Alternatively, such an owner “may petition the Mayor for declaratory relief.” D.C. Code § 42-3405.03a.
22. The Mayor may not provide declaratory relief on an *ad hoc* basis, however. This provision of the Sale Act specifies that “[u]pon a showing of reasonable grounds, the Mayor shall grant a hearing and may issue findings of fact, conclusions of law, and declaratory orders and take other enforcement actions provided by this subchapter.” Id.
23. The Sale Act requires hearings prior to making a determination as to the applicability of the Sale Act to a particular transaction.

24. The Sale Act requires a showing of reasonable grounds before such hearings may be granted.
25. The Sale Act requires that such hearings follow the procedures specified in the Administrative Procedures Act. D.C. Code § 42-3405.08.
26. The Sale Act requires rule making. D.C. Code § 42-3405.01.
27. The Mayor has not prescribed by rule the procedure for the submission, consideration, and disposition, of any requests by anyone to determine whether or not the Sale Act is applicable to a particular transaction.
28. The Mayor has not properly designated DCRA to exercise his authority under D.C. Code § 42-3405.03a.
29. DCRA did not prescribe by rule the procedure for the submission, consideration, and disposition, of any requests by anyone to determine whether or not the Sale Act is applicable to a particular transaction.
30. DCRA does not conduct hearings prior to informing developers that they are exempt from the Sale Act.
31. Rather, DCRA has, in effect, adopted a rule to the effect that transfers of 95% ownership interest are exempt from the Sale Act.
32. DCRA purports to give Mrs. Linda W. Harried authority to “sign off” on requests by developers that DCRA issue a letter stating that their proposed transaction is exempt from the Sale Act.
33. Mrs. Harried does not conduct a hearing prior to issuing letters stating that a transaction is exempt from the Sale Act.

34. Rather, Mrs. Harried follows DCRA's generally applicable rule that transfers of 95% ownership interest are exempt from the Sale Act, and issues letters so stating to architects of such transactions at their request.
35. Mrs. Harried, on behalf of DCRA, signed a letter dated October 4, 2001, bearing the subject line "re: Exemption from Title IV of the Rental Housing Conversion and Sale Act of 1980, as amended, D.C. Law 3-86, for 1816 Kalorama Road, N.W."
36. Mrs. Harried, on behalf of DCRA, signed a letter dated May 1, 2002, bearing the subject line "re: Exemption from Title IV of the Rental Housing Conversion and Sale Act of 1980, as amended, D.C. Law 3-86, for 201 Eye Street, S.W. and 101 and 103 G Street, S.W. (Capitol Park Apartments, Twins and Plaza Buildings)".
37. On information and belief, Mrs. Harried, on behalf of DCRA, signed a similar letter purporting to exempt from the Sale Act a sale of 95% of the ownership interest in Waterside Towers, 905 6th Street, SW, Washington, DC. Such a sale occurred in or around December 2003.
38. Mrs. Harried did not conduct a hearing in relation to the facts underlying the above-referenced October 4, 2001, letter.
39. Mrs. Harried did not conduct a hearing in relation to the facts underlying the above-referenced May 1, 2002, letter.
40. On information and belief, DCRA, through Mrs. Harried, has issued and continues to issue similar letters purporting to certify exemption from the Sale Act, upon request and in the absence of a hearing.

41. In each instance, Mrs. Harried followed DCRA's generally applicable rule that transfers of 95% ownership interest are exempt from the Sale Act, and issued letters so stating to architects of such transactions upon request.
42. DCRA does not require hearings in such circumstances because it views such letters as a means of implementing its generally applicable rule that transfers of 95% ownership interest are exempt from the Sale Act.
43. This rule has been a windfall to persons seeking a means of circumventing tenant rights under the Sale Act; so much so that a lexicon has developed concerning "95/5" sales and obtaining the imprimatur of a "Linda Harried letter."
44. DCRA has *de facto* adopted a rule that transfers of 95% ownership interest are exempt from the Sale Act.
45. DCRA has never published a notice in the District of Columbia Register regarding a rule that would provide that transfers of 95% ownership interest are exempt from the Sale Act.
46. DCRA did not follow the procedures required by the District of Columbia Administrative Procedures Act, D.C. Code § 2-501 *et seq.*, prior to adopting and enforcing its rule that transfers of 95% ownership interest are exempt from the Sale Act.
47. As a substantive matter, DCRA's rule is not supportable.
48. Any transfer of ownership interest should be treated as a "sale" under the Sale Act.

49. DCRA should not be permitted to frustrate the remedial purposes of the Sale Act by deeming real estate transactions exempt from this law so long as some insignificant fraction of ownership interest is maintained by the existing owner.

### **COUNT I**

#### **Equitable Relief for Unlawful Action By Public Officials; Failure to Comply with Sale Act and Administrative Procedures Act**

50. Plaintiffs incorporate by reference all preceding paragraphs as if fully restated herein.
51. DCRA enforces a generally applicable rule that purports to exempt from the Sale Act real estate transactions that effect transfer of less than 100% of the ownership interest in the property, including transactions that transfer 95% of the ownership interest, as was the case in the transactions related to Plaintiffs' homes.
52. The D.C. Administrative Procedures Act requires notice of proposed rules, and an opportunity to comment upon proposed rules, prior to such rules being enforced by an Agency of the District of Columbia government (except in the case of emergency rules).
53. DCRA did not provide notice of any proposed rule that would exempt from the Sale Act real estate transactions that effect transfer of less than 100% of the ownership interest in the property.
54. DCRA did not comply with the requirements of the Administrative Procedures Act in adopting and enforcing a rule that exempts from the Sale

Act real estate transactions that effect transfer of less than 100% of the ownership interest in the property.

55. DCRA lacks authority to establish and enforce rules except pursuant to the procedures established by law.
56. DCRA's rule that exempts from the Sale Act real estate transactions that effect transfer of less than 100% of the ownership interest in the property is without authority and of no legal force or effect.
57. Accordingly, DCRA's actions that purport to implement that rule, including the issuance of letters purporting to certify that transactions are exempt from the Sale Act, are without authority and of no legal force or effect.
58. In the alternative, and to the extent that DCRA claims that such letters are declaratory orders, DCRA did not conduct a hearing, as required by the Sale Act. D.C. Code § 42-3405.03a.
59. Moreover, and again to the extent that DCRA claims that such letters are declaratory orders, DCRA did not prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition, as required by the Administrative Procedure Act. D.C. Code § 2-508.
60. Accordingly, DCRA's letters purporting to certify that transactions are exempt from the Sale Act cannot be valid even as declaratory orders.
61. DCRA's rule and actions purportedly certifying exemption from the Sales Act of sales of 95% ownership interest in rental properties are arbitrary, capricious, not in accordance with law, and in excess of its statutory jurisdiction and authority.

**COUNT II**  
**Review of DCRA Action Pursuant to the Sale Act**

62. Plaintiffs incorporate by reference all preceding paragraphs by reference as if fully restated herein.
63. In the alternative, if this Court finds that DCRA had authority to determine whether or not the transactions were exempt from the Sale Act, this Court should reverse DCRA's substantive determination.
64. Agency actions concerning the applicability of the Sale Act are subject to *de novo* review by this Court.
65. DCRA, like the Courts, is obligated to interpret the term "sale" to promote "strengthening the legal rights of tenants or tenant organizations to the maximum extent permissible under law." D.C. Code § 42-3405.11.
66. A rule or declaratory order that exempts all transactions from the Sale Act provided that some insignificant fraction of the ownership interest is not transferred, would create an obvious injustice and would frustrate the remedial purposes of the Sale Act.
67. DCRA's rule and actions purportedly certifying exemption from the Sales Act of sales of 95% ownership interest in rental properties are arbitrary, capricious, not in accordance with law, and in excess of its statutory jurisdiction and authority.

**Prayer for relief**

68. WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant the following relief:

- a. entry of a declaratory order that any rule under which DCRA was or is operating that purports to exempt from the Sale Act real estate transactions that effect transfer of less than 100% of the ownership interest in the property is without authority and of no lawful force or effect;
- b. entry of a declaratory order declaring null and void the letter signed by Mrs. Harried, on behalf of DCRA, dated October 4, 2001, and bearing the subject line “re: Exemption from Title IV of the Rental Housing Conversion and Sale Act of 1980, as amended, D.C. Law 3-86, for 1816 Kalorama Road, N.W.”;
- c. entry of a declaratory order declaring null and void the letter signed by Mrs. Harried, on behalf of DCRA, dated May 1, 2002, bearing the subject line “re: Exemption from Title IV of the Rental Housing Conversion and Sale Act of 1980, as amended, D.C. Law 3-86, for 201 Eye Stret, S.W. and 101 and 103 G Street, S.W. (Capitol Park Apartments, Twins and Plaza Buildings)”;
- d. entry of a declaratory order declaring null and void any letter or other document issued by DCRA purporting to certify as exempt from the Sale Act any transaction that effected a transfer of 95% of the ownership interest in any property, including any such letter or document related to Waterside Towers, 905 6th Street, SW, Washington, DC;
- e. entry of a permanent injunction prohibiting DCRA from enforcing any rule with respect to determining the applicability of the Sale Act to any

real estate transaction unless and until such rule is properly promulgated pursuant to the Administrative Procedures Act;

- f. entry of a permanent injunction prohibiting DCRA from making any determination concerning the applicability of the Sale Act to any real estate transaction unless and until procedures for making such determinations are properly adopted pursuant to the Administrative Procedures Act;
- g. costs;
- h. reasonable attorney's fees; and
- i. such other and further relief as to this Honorable Court appears just and proper.

**Jury trial demanded**

69. Plaintiffs demand trial by jury on all issues of fact so triable.

Respectfully submitted,

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Zachary Wolfe (DC Bar No. 463548)  
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**Certificate of Service**

I certify that a copy of the foregoing was served via hand delivery this 20<sup>th</sup> day of  
October, 2004, upon:

Andrew Saindon  
DC Office of the Attorney General  
441 4<sup>th</sup> Street, NW  
6<sup>th</sup> Floor South  
Washington, DC 20001

\_\_\_\_\_  
Zachary Wolfe