

STATEMENT OF

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SUBMITTED TO THE COMMITTEE ON CONSUMER & REGULATORY AFFAIRS
OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

IN CONNECTION WITH

PUBLIC OVERSIGHT ROUNDTABLE ON
VACATING BUILDINGS FOR REHABILITATION, TENANT OPPORTUNITY TO
PURCHASE, AND OTHER ISSUES AT SPECIFIC RENTAL PROPERTIES

NOVEMBER 21, 2005

CHAIRPERSON GRAHAM AND MEMBERS OF THE COMMITTEE:

My name is Jonathan K. Tycko, and I am a partner with the law firm of Tycko, Zavareei & Spiva LLP. That you for this opportunity to address the Committee on the important issue of reform of Section 501(f) of the Rental Housing Act, current codified at D.C. Code § 42-3505.01(f).

My law firm, along with the law firm of Mehri & Skalet, PLLC, represents tenants and tenants' associations at two different building where the tenants have either been evicted or threatened with eviction under Section 501(f). Those two buildings are located at 1823 Newton Street, N.W., and 933 L Street, N.W.

Our experience with representing the tenants at those two buildings has led us to conclude that Section 501(f) is being abused by landlords, who use that provision as a means to evict tenants in situations where the landlords do not truly intend to re-rent the units to the existing tenants. Instead, the landlords use Section 501(f) as a means to clear entire buildings so that the buildings can be turned into either more expensive rental accommodations, or converted into condominiums. These landlords have used Section 501(f) because they believe that it offers them a way to evict existing tenants through a quick process that is not subject to any challenge by the tenants.

The primary problem that we see with Section 501(f) is that (at least as currently administered by DCRA) a landlord can obtain approval from the Rent Administrator to proceed with evictions under that section without any notice to or input from the tenants. Instead, the Rent Administrator will issue approval letters based solely upon fairly informal written submissions by a landlord or its attorneys. The Rent Administrator does not conduct any independent investigation, and does not conduct any sort of evidentiary process. Rather, the Rent Administrator merely accepts the written representations made by or on behalf of the landlord. The tenants first learn of the Rent Administrator's approval under Section 501(f) when they are served with a 120-day Notice To Vacate.

Thus, the procedure that is used by DCRA to issue approval letters under Section 501(f) is very similar to the procedure that, until earlier this year, was used to issue the so-called "95-5" exemption letters. It is informal, non-public, secret from the tenants, and based solely upon one-sided information provided by the landlord.

The dangers of this type of process are obvious. The Rent Administrator may be convinced to give approval to evictions based upon incomplete or inaccurate information. This danger is amply demonstrated by what occurred with respect to 1823 Newton Street, N.W.

That property is owned by a limited-liability company called Newton Partners, LLC (hereinafter "NPL"). NPL obtained ownership of that property through a "95-5" transaction. On February 8, 2005, an attorney for NPL (Richard Luchs of Greenstein, DeLorme & Luchs, P.C.) sent a letter to the Rent Administrator, stating that NPL "plans to undertake extensive improvements with respect to the Property which cannot be safely

performed with tenants in occupancy,” and enclosing “a description of the improvements, as well as plans indicating some, but certainly not all, of the areas in which the work must be performed at the Property.”

Submitted with that letter was a document titled “Proposal Of Scope For Improvements” issued by a company called Bogdan Builders. The Bogdan Builder’s report was presented in a way that made it appear to be a report of an outside expert, in some sort of arms-length relationship with NPL.

For example, the Bogdan Builders report was addressed to:

Ms. Robin Wertlieb
Newton Parnters, LLC
1823 Newton Street, N.W.
Washington, D.C. 20010

The Bogdan Builders report indicated that it was prepared in response to “specifications provided by NPL,” and “criteria set forward by NPL,” and stated that “[a] final quote to carry out the work will be provided after confirmation of the scope by Newton Street, LLC.” The Bogdan Builders report concluded with the statement: “We look forward to hearing your response to this scope. When an approval has been made, we will develop a final price for the above scope.”

The Bogdan Builders report listed a number of repairs that needed to be made generally to the property (primarily, the common elements), but provided no indications of how the work would be conducted, what the costs would be, or how long the repairs would take to complete. But despite the lack of detail, it contained the following conclusion: “Due to the scale of the electric and plumbing overhaul needed, all tenants should be removed from the building during this time frame. In addition, demolition needed to repair deflection within floors, might expose more significant concerns that will necessitate removal of tenants.”

On the basis for the letter from Mr. Luchs and the Bogdan Builders report, the Rent Administrator gave approval for eviction of the tenants under Section 501(f). In late-February or early-March of 2005, the tenants were served with 120-day Notices To Vacate. That was their first notice that NPL had applied for approval from the Rent Administrator under Section 501(f).

What the Rent Administrator had *not* been told prior to issuing her approval (but what we subsequently learned through our own efforts) was that 99% of NPL is owned by Christopher Bogdan, and same individual who owns Bogdan Builders. And Robin Wertlieb – to whom the Bogdan Builders report was addressed – is actually an employee of Bogdan Builders who does *not* reside at the property.

In other words, the Bogdan Builders report was *not* an independent report of an outside consultant or expert. Rather, it was simply a document generated by the owners of the property, purporting to give themselves advice on what to do. In our view, the

Bogdan Builders report was a highly suspect document, apparently crafted to create a false impression.

On April 25, 2005, I sent a letter to the Rent Administrator, laying out what we had learned about the Bogdan Builder's report, and asking her to revoke her approval of NPL's Section 501(f) request. A copy of that letter and the attachments thereto, which include Mr. Luch's letter and the Bogdan Builders reports, is attached hereto at Tab A. A copy of Mr. Luch's response to my letter is attached hereto at Tab B.

To date, the Rent Administrator has not acted on our request to revoke her approval.

In July of 2005, after the expiration of the 120-day period, NPL brought eviction actions against the tenants in the Landlord & Tenant branch of the Superior Court. Those eviction actions are now moving forward, and the tenants are, therefore, under continuing threat of eviction.

It should also be noted that the tenants, and their tenants' association, brought a lawsuit against NPL and the prior owners of the property, challenging the "95-5" transaction through which NPL obtained title to the property, as well as the subsequent sale of 100% of the shares of NPL, in which Mr. Bogdan obtained his 99% share. That lawsuit was filed on June 10, 2005, and also remains pending in the Superior Court.

I believe that the history of what has occurred to date with respect to 1823 Newton Street, N.W., demonstrates the dangers in the current version of Section 501(f). The remedy is to require some basic due process. The tenants should be notified when a landlord makes a request to the Rent Administrator under Section 501(f), and should be given a reasonable period of time to respond, before the Rent Administrator makes a decision on the landlord's request. That is the best way to assure that inappropriate or deceptive requests are not granted by the Rent Administrator.

Thank you for the opportunity to provide this statement on this important issue.