

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING**

August 10, 2023

6:00 P.M.

CITY HALL

1 FRANK H. OGAWA PLAZA, HEARING ROOM #1

OAKLAND, CA 94612

MINUTES

1. CALL TO ORDER

The Board meeting was administered in-person by B. Lawrence-McGowan from the Rent Adjustment Program (RAP), Housing and Community Development Department. B. Lawrence-McGowan explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Ingram at 6:24 p.m.

2. ROLL CALL

| MEMBER | STATUS | PRESENT | ABSENT | EXCUSED |
|----------------|----------------------|----------------|---------------|----------------|
| Vacant | Tenant | | | |
| D. WILLIAMS | Tenant | X | | |
| J. DEBOER | Tenant Alt. | | | X |
| M. GOOLSBY | Tenant Alt. | | | X |
| D. INGRAM | Undesignated | X | | |
| C. OSHINUGA | Undesignated | | | X |
| M. ESCOBAR | Undesignated | | | X |
| Vacant | Undesignated Alt. | | | |
| Vacant | Undesignated Alt. | | | |
| D. TAYLOR | Landlord | X | | |
| K. BRODFUEHRER | Landlord | X | | |
| C. JACKSON | Landlord Alt. | | | X |
| Vacant | Landlord Alt. | | | |

Staff Present

Braz Shabrell

Marguerita Fa-Kaji

Briana Lawrence-McGowan

Deputy City Attorney

Senior Hearing Officer (RAP)

Administrative Analyst II (RAP)

3. WELCOME NEW BOARD MEMBERS

- a. Chair Ingram and fellow Board members welcomed new landlord representative, Kara Brodfuehrer. Member Brodfuehrer briefly introduced herself.

4. PUBLIC COMMENT

- a. No members of the public spoke during public comment.

5. CONSENT ITEMS

- a. Approval of Board Minutes, 7/27/2023: Chair Ingram moved to approve the Board Minutes from 7/27/2023. Member Williams seconded the motion.

The Board voted as follows:

Aye: D. Ingram, D. Taylor, D. Williams, K. Brodfuehrer
Nay: None
Abstain: None

The minutes were approved.

6. APPEALS*

- a. T23-0019, Barragan v. Mead Holding LLC

Chair Ingram announced that this appeal hearing has been postponed.

- b. T19-0384, Salvador v. Fong

Appearances: May Fong & Michael Lee Owners
Gregory Ching Tenant Representative

This case involved an owner appeal of a decision that invalidated a previously granted certificate of exemption on the basis of fraud or mistake. A certificate of exemption is a determination by the Rent Adjustment Program (RAP) that a property is permanently exempt from the rent controls of their Rent Adjustment Ordinance. In this case, the exemption was granted based on the Costa Hawkins condo exemption—which exempts a dwelling or unit that is alienable separate from the title to any other dwelling unit. The certificate of exemption was granted in 2019.

Under the Rent Adjustment Ordinance, tenants may contest a previously granted certificate of exemption on the basis of fraud or mistake. Initially, the Hearing Officer denied the tenant's petition on the basis that the court order from the exemption case prohibited relitigating between the parties. The tenant appealed that decision, and the case first came before the Board in 2021. The Board agreed with the tenant and found that the court order in the exemption case did not preclude the current matter, because the court order did not decide the issue of fraud or mistake—the court order in the previous case was limited to a sold separate analysis of the Costa Hawkins statue. The Board remanded the case for a hearing on the issue of fraud or mistake.

After the case came before the Board in 2021, both parties submitted additional briefings and a hearing on the merits took place over two days in January and March 2023. On the merits, the Hearing Officer agreed that there had been fraud or mistake and that the certificate of exemption should not have been issued. The Hearing Officer found that there had been fraud or mistake because the certificate of exemption was issued based on the representation that the unit was a separate condo; and because there were misrepresentations about the layout of the property. The unit is not its own condo—it is a unit as part of the structure that contains 2 separate units. At the prior hearing for the certificate of exemption, the owners denied the existence certain documents, such as the CC&Rs, and stated that they were verbal—both of which were not true. Discovery of the CC&Rs demonstrated that the parcel map conflicted with the actual layout of the property and the tenant's petition was granted.

The owner has now appealed that decision on two grounds. The owners assert that the decision conflicts with the court order on the exemption case and that there is insufficient evidence to support a finding of fraud. On the first ground raised by the owner, this issue was already argued and decided upon by the Board in 2021. The Board previously determined that the court order did not conflict with the current petition. The following issue was presented to the Board:

1.) Was there sufficient evidence to support the finding of fraud or mistake?

The owners contended that this case has gone through two Oakland Rent Board hearings and a Supreme Court hearing—and that the Oakland Rent Board was ordered to issue their exemption because they had met the burden of proof under Costa Hawkins. The owners argued that the Rent Board was barred from relitigating this case by collateral estoppel, that the tenant and the Rent Board did not appeal the matter, and that the matter has already been adjudicated. The owners contended that the tenant and

the Rent Board are now trying to overturn the Supreme Court order by claiming fraud, that there was no extrinsic fraud, and that collateral estoppel has been ordered.

The owners argued that res judicata applies in this case and that only extrinsic fraud can overturn these doctrines. The owners contended that if extrinsic fraud is shown, a judgment is normally voidable—but that this case did not involve extrinsic fraud and that only intentional deceptive artifacts can reach the level of extrinsic fraud. The owners argued that they were unaware of the CC&Rs and that there was no intentional deception—and that they are requesting for the Board to vacate and dismiss the remand decision that Hearing Officer issued on May 12, 2023.

The owners contended that unit 1354A is in fact a condominium and that they did not commit any fraud or misrepresentation. The owners argued that they bought the unit as a foreclosure, that they were given odd paperwork, and that the previous owners did not have any CC&Rs. The owners contended that they went to the county recorder's office to find all the paperwork but did not receive the CC&Rs.

The tenant representative contended that the property owners have presented both verbally and in their brief three main arguments—preclusion should apply to this petition and prohibit further litigation, the decision was not supported by sufficient evidence, and that the owners lacked knowledge of the fraud or mistake that took place. The tenant representative argued that preclusion exists as a legal doctrine to prevent overburdening courts with unnecessary relitigating of already decided issues; however, preclusion does not apply to this petition because the issue of fraud was not raised in the prior litigation during which the property owners sought the exemption. The tenant representative contended that the Superior Court did not preclude further litigation and that they only decided on one single issue—which was that multiple condominiums purchased by a single bona fide purchaser may satisfy the sold separately prong of the Costa Hawkins exception analysis. The tenant representative argued that the Superior Court did not rule on the issue of fraud and that the owners' fraud was not discovered until after their court appearance had already taken place.

The tenant representative argued that the Board previously decided on the issue of whether or not preclusion applied in this case—and in 2021, the Board ruled that the petition was not precluded from relitigating because the issue of fraud or mistake had not been raised and was not apparent at the time to prior litigation. The tenant representative contended that the Hearing Officer was not mistaken by granting the relitigating. The tenant

representative argued that the owners have argued that there was no evidence of fraud—however, in this case, significantly more than a near scintilla of evidence has been presented. The tenant representative contended that the Hearing Officer was presented with evidence that included an audio recording of the owners’ sworn testimony and exemption petition hearing that took place in 2017 and certified copies of the covenants, conditions, and restrictions (also known as CC&Rs) delivered directly to RAP by the Alameda County clerk recorder’s office. The tenant representative argued that the CC&Rs were recorded in 2007 and include a map—which shows the actual boundaries of the condominium units in question. The tenant representative contended that the Hearing Officer also heard sworn testimony from a witness—who discovered the CC&Rs through a public records request with the county recorder’s office. The tenant representative argued that the witness had also visited the site and testified that he observed and inspected the property and noted that the boundaries as set forth in the CC&Rs for the condominium in question are almost double that of the tenant’s home—and that the boundaries of the condo 1354A, that was mistakenly granted an exemption, included 2 separate apartments. The tenant representative contended that the Hearing Officer also heard sworn testimony from the tenant, who testified that she had not been informed of the CC&Rs by the owners—and confirmed that her home encompassed only approximately half of the 1354A condo unit—with the other half belonging to her neighbor.

The tenant representative contended that the owners argued that they were unaware of the pre-existing CC&Rs, and as such, they could not have committed fraud—but that the owners fundamentally misunderstand the knowledge inquiry of fraud and of mistake. The tenant representative argued that in the 2017 exemption hearing, the Hearing Officer asked the owners directly if they were aware of any CC&Rs and the owners responded by saying no—however, the CC&Rs did exist and were duly recorded with the Alameda County clerk recorder’s office in 2006. The tenant representative argued that it is factually impossible for CC&Rs to not exist and to exist but be verbal—and that the owners’ contradictions amounted to a misrepresentation of the CC&Rs. The tenant representative contended that the Hearing Officer was more than justified and correct in determining that the owners had committed fraud or that a mistake had occurred regarding the misrepresentations of the CC&Rs.

The tenant representative argued that the owners keep stating that they were unaware of the existence of the CC&Rs—however, they were submitted into evidence to the Hearing Officer, they did exist, and they were available through public records request through the Alameda County clerk recorder's office. The tenant representative contended that the CC&Rs were in existence and since 2007 and that they were easily

discoverable. The tenant representative argued that it is the owners' burden when seeking an exemption to provide all documentation necessary for a Hearing Officer to determine whether or not an exemption should be granted. The tenant representative contended that the owners did not provide these—and that even if the owners were unaware of the existence of the CC&Rs, they asserted and stated affirmatively upon questioning by the Hearing Officer that the CC&Rs did not exist. The tenant representative argued that the owners also stated that they existed but were verbal. The tenant representative contended that if the owners did not know truly know about the existence the CC&Rs—they could have stated such, rather than making an assertion and misleading the Hearing Officer. The tenant representative also argued that the owners could have also asked for more time to supplement the record—and then they could have inserted the CC&Rs upon discovery.

The tenant representative argued that the owners have not tried to correct the record, even after certified copies of the CC&Rs were provided to RAP directly from the county clerk recorder's office. The tenant representative contended that it is true that the CC&Rs exist and that they have existed since 2007—and argued that even if the owners were unaware of the CC&Rs, they asserted that they knew something about them, that they knew that they did not exist; but at the same time, somehow—they did exist, but only in verbal form. The tenant representative argued that this is enough to constitute a misrepresentation because the owners stated things that they did not know to be true.

After parties' arguments, questions to the parties, and Board discussion, Chair Ingram moved to uphold the Hearing Officer's remand decision on the basis that the determination made by the Hearing Officer, that there was mistake or fraud, was supported by substantial evidence. Member Williams seconded the motion.

The Board voted as follows:

| | |
|-----------------|---------------------------------------------------|
| Aye: | D. Ingram, D. Taylor, D. Williams, K. Brodfuehrer |
| Nay: | None |
| Abstain: | None |

The motion was approved.

7. RESOLUTION TO RECOMMEND AMENDMENT TO THE RENT ADJUSTMENT PROGRAM REGULATIONS

- a. Chair Ingram and Deputy City Attorney, Braz Shabrell, presented to the Board a proposed resolution to recommend amendments to the Rent Adjustment Program Regulations. Final revisions will be made and the final proposed resolution will be brought back to the Board at a future meeting.

8. INFORMATION AND ANNOUNCEMENTS

- a. Deputy City Attorney, Braz Shabrell, staff, and fellow Board members wished Chair Ingram a Happy Birthday.
- b. Chair Ingram thanked all the Board members who attended the Board and Commissions mixer that was hosted by the City Administrator's office.

9. SCHEDULING AND REPORTS

- a. None

10. OPEN FORUM

- a. No members of the public spoke during open forum.

11. ADJOURNMENT

- a. The meeting was adjourned at 7:24 p.m.