Circuit Court for Montgomery County
Case No. 460855-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 914

September Term, 2019

VIDA KHALATBARI

v.

ANTHONY BONETTI, et al.

Nazarian,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 4, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Vida Khalatbari, appellant, challenges the affirmance, by the Circuit Court for Montgomery County, of a decision by the Commission on Landlord Tenant Affairs for Montgomery County ("Commission") in favor of Anthony Bonetti and Matthew Perra, appellees. Alternatively, Ms. Khalatbari challenges the amount of punitive damages awarded by the court. For the reasons that follow, we shall affirm the judgment of the circuit court.

On April 7, 2014, the parties executed a deed of lease under which Ms. Khalatbari agreed to lease to appellees a property on Bloomingdale Drive in Rockville. The parties agreed that the term of the lease would commence on May 1, 2014, and that appellees would pay Ms. Khalatbari $3,400 per month in rent. The deed indicated that appellees had paid to Ms. Khalatbari a security deposit in the amount of $3,400.

On March 1, 2016, Mr. Bonetti sent to Ms. Khalatbari's husband, Allen Khalatbari,[1] an e-mail in which Mr. Bonetti stated that appellees would "not be renewing [the] lease upon its expiration on April 30," 2016. On April 30, 2016, Mr. Perra sent to Mr. Khalatbari an e-mail in which Mr. Perra stated that appellees were "finished at the house" and had "sent the keys and garage opener via FedEx." On May 1, 2016, Mr. Khalatbari sent to appellees an e-mail in which he stated:

> I finished my inspection of the house a few hours ago and it seems that you've done a reasonable job for the most part. There remains however a few issues that need to be addressed. 1. There is a lot of trash in the backyard and a trunk full of trash under the spiral stair case. Unused fire logs need to be removed ASAP as they attract termites. 2. There are some metallic shelves in the kitchen that need to be removed and walls restored to original

[1]Before the Commission, Ms. Khalatbari referred to Mr. Khalatbari as the "property manager" and "the only one who has been in contact or . . . doing business with" appellees.

> condition. 3. All burned out/missing light bulbs need to be replaced. 4. The wooden medicine cabinet in the master bath needs to be removed. 5. The oven is so filthy that I am not sure it can be cleaned; and refrigerator needs to be professionally cleaned. 6. A massive touch up painting is needed as all nail holes need be patched up and black marks on walls covered. Let me know if you need any help with the above.

Later that day, appellees sent to Mr. Khalatbari an e-mail in which they challenged the "issues." On May 2, 2016, Mr. Khalatbari sent to appellees an e-mail in which he stated that he had "talked to a contractor . . . to take care of the issues," and the "best price [was] $800." Mr. Perra replied, via e-mail: "$800 is reasonable for the items we discussed so you can deduct that from the security deposit before returning the remainder."

On May 6, 2016, Mr. Khalatbari sent to appellees an e-mail in which he stated:

> FedEx package came today and so did the contractor who gave me the $800 estimate. Before getting started, I asked him to itemize in writing the work he was planning to do so we would not have any legal issues. As it turns out, he said his estimate was for cleaning only and that he was going to bring his buddy to give me an estimate for painting. I am getting another estimate tomorrow. Meanwhile, if you have anyone who can do the job would be helpful.

Mr. Bonetti replied, via e-mail: "As for the $800, that's the agreement. Anymore [sic] is unacceptable and we will definitely have legal issues." On May 7, 2016, Mr. Khalatbari sent to appellees an e-mail in which he stated:

> The only legally binding agreement we have is the lease; we never had an agreement worth $800. A contractor had proposed to do what I thought would be all cleaning and repairs; turns out he was either dishonest or we had a language barrier. Now that I have had a chance to go over the house with a more critical view, I can see a lot more work that needs to be done. Your outdoor furniture has killed the backyard grass; I either have to get someone to sod it or put down pavers like you had done for under your potbelly grill. Two years of algae growth on top of backyard walls need[s] to be removed. Furnace filters need to be replaced. Abandoned bike racks in the utility room need to be discarded. Utility room and garage have to be broom cleaned.

> Aquarium filled with pebbles need[s] to be discarded. Broken trash can need[s] to be discarded. Washer and dryer are filthy and have smell of mold. The house is supposed to be professionally cleaned – it is not. You have chipped the enamel on the oven, removed the back legs to lower the oven and make the damage invisible. There is so much mold and mildew under the kitchen sink that it needs to be scraped. You could've and should've addressed many of these issues without incurring any costs. I will try to remedy these problems as economically as possible and you'll get whatever refund you are due. You still have an opportunity to do much of the work yourself; just let me know when you can meet me at the house.

On May 31, 2016, appellees received by certified mail a check, made out to Mr. Perra and signed by Ms. Khalatbari, in the amount of $857.68. Included with the check was a document, dated May 22, 2016, from "Ticos Painting Co." ("Ticos"), which stated:

> We hereby submit specifications and estimates for:
>
> 1. Trash removal
> 2. Clean up
> 3. Touch up paint
>
> We propose to furnish material and labor in accordance with the above specifications for the sum of . . . $2400.

Also included was a Washington Suburban Sanitary Commission ("WSSC") water and sewer bill for the billing period from February 29 to May 10, 2016, and in the amount of $144.53.

On June 1, 2016, appellees sent to Mr. Khalatbari an e-mail in which they stated that Mr. Khalatbari would "be receiving a copy of a Landlord-Tenant Complaint," due to his "failure as [the] landlord to return [the] security deposit in full, not providing a written list of damages with the actual cost incurred, not providing a written explanation regarding why a portion of the deposit was withheld, and for deducting the amount [of] the final WSSC water bill that was not yet due and [that appellees] paid." Mr. Khalatbari replied,

via e-mail: "The certified mail included a copy of the contractor bill for his services; in my previous emails, I had enumerated most of the damages."

Appellees subsequently filed a complaint with the Montgomery County Department of Housing and Community Affairs ("Department"). On February 7, 2017, the Department recommended that the Commission conduct a hearing on the complaint. On June 13, 2018, the Commission conducted the hearing, at which appellees and the Khalatbaris testified. Included in the exhibits for the hearing is a copy of a check, dated May 24, 2016, to Ticos in the amount of $2,400.00, and with a post date of May 25, 2016.

Following the hearing, the Commission issued a "Decision and Order," in which it concluded, in pertinent part, that Ms. Khalatbari "failed to send [to appellees], by first class mail, within 45 days after the termination of the . . . tenancy a list of damages claimed against their Deposit, which constitutes a violation of" Md. Code (1974, 2015 Repl. Vol.), § 8-203(g)(1) of the Real Property Article ("RP"), and "[c]onsequently pursuant to [RP] § 8-203(g)(2), [Ms. Khalatbari has] forfeited [her] right to withhold any portion of the . . . Deposit for damages."[2] The Commission further concluded that Ms. Khalatbari's "actions

[2]RP § 8-203(g) states:

> (1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred.
>
> (2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages.

were unreasonable and egregious," and her "conduct rises to a level of egregiousness and bad faith necessary to award a penalty." Accordingly, the Commission ordered that Ms. Khalatbari pay to appellees "$3,504.10, which sum represents[] the . . . security deposit ($3,400.00); plus accrued interest ($154.26); less the amount previously refunded ($1,002.21); less the amount to which [appellees] previously conceded ($800.00); plus a penalty ($1,752.05)."

On December 19, 2018, Ms. Khalatbari filed in the circuit court a petition for judicial review of the Commission's decision. Following a hearing, the court affirmed the Commission's decision, and ordered Ms. Khalatbari to pay to appellees "$7012.86 . . . , which represents the sum of the following: [appellees'] security deposit ($3400.00); accrued interest on the security deposit . . . ($158.92); less the amount previously refunded ($1002.21); less the amount to which [appellees] previously conceded ($800.00); plus, pursuant to [RP] § 8-203(e)(4),[3] threefold the penalty previously imposed by the Commission (($1752.05 which represents the amount the Commission finds was wrongfully withheld) x 3=$5256.15)." (Footnote omitted.)

Ms. Khalatbari contends that the court erred in affirming the Commission's decision for three reasons. First, she contends that during the hearing on appellees' complaint, the

[3][RP] § 8-203(e)(4) states: "If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees."

Commission failed to comply with Rule 5-603.[4] The pertinent portion of the transcript of the hearing reads as follows:

> CHAIRMAN SHARMA: Okay. So will everyone who will be making statements tonight please raise your right hand, and so we'll administer the oath. Do you declare and affirm under the penalties of perjury that the testimony you are about to give is true to the best of your knowledge, information[,] and belief?
>
> MS. KHALATBARI: I do.
>
> MR. KHALATBARI: I do.
>
> CHAIRMAN SHARMA: Thank you. Okay.

Ms. Khalatbari contends that the Commission violated Rule 5-603 because "the transcript . . . clearly shows that only two witnesses took the oath." But, the fact that the court reporter did not transcribe a response to the Chairman's question from either of the appellees does not mean that appellees failed to respond. Also, Rule 5-101(a) states that "the rules in . . . Title [5] apply to all actions and proceedings in the *courts* of this State" (emphasis added), and Ms. Khalatbari does not cite any authority that states that Rule 5-603 is applicable to an administrative agency proceeding. Further, we have stated that a "party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceedings, may not thereafter complain about the error at a judicial proceeding." *Cremins v. Washington County*, 164 Md. App. 426, 443

[4]Rule 5-603 states: "Before testifying, a witness shall be required to declare that the witness will testify truthfully. The declaration shall be by oath or affirmation administered either in the form specified by Rule 1-303 or, in special circumstances, in some other form of oath or affirmation calculated to impress upon the witness the duty to tell the truth."

(2005) (internal citations and quotations omitted). Assuming, *arguendo*, that appellees failed to declare that they would testify truthfully, Ms. Khalatbari knew or should have known that appellees had so failed and that the Commission erred in subsequently accepting appellees' testimony. Ms. Khalatbari failed to object, and hence, she may not complain about the error now.

Ms. Khalatbari next contends that the Commission erred in concluding that she violated RP § 8-203(g)(1), because "the list of damages supplied totally complies with the statute's requirement," and the "invoice" from Ticos "serves as the statement of the cost actually incurred especially when supported by a cancelled check as proof of payment." We disagree for two reasons. First, Ms. Khalatbari did not present in the documents received by appellees on May 31, 2016, or mail to appellees thereafter, a written list of the damages cited in Mr. Khalatbari's e-mails of May 1 and 7, 2016. Second, Ticos expressly stated in the document dated May 22, 2016, that the document was an estimate and proposal. Ms. Khalatbari did not present in the documents received by appellees on May 31, 2016, or mail to appellees thereafter, a statement of the cost actually incurred, and hence, the Commission did not err in concluding that Ms. Khalatbari violated RP § 8-203(g)(1).

Ms. Khalatbari next contends that the "Commission/[c]ourt" erred in failing "to consider breach of lease by [a]ppellees," and in "disregarding" RP § 8-203(f)(1), which states, in pertinent part, that a "security deposit, or any portion thereof, may be withheld for . . . damage due to breach of lease." But, Ms. Khalatbari does not specify any damage to the property that constituted a breach of the lease, and does not cite any authority that

would have rendered her exempt from the requirements of RP § 8-203(g)(1) in the event of such a breach. Hence, the Commission did not "disregard" RP § 8-203(f)(1), and the court did not err in affirming the Commission's decision.

Alternatively, Ms. Khalatbari contends that the court erred in "award[ing] additional penalties in the amount of $3,504.10" pursuant to RP § 8-203(e)(4), because the "Commission and [c]ourt . . . failed to identify a single act of bad faith or egregiousness by" her. *See Rohrbaugh v. Estate of Stern*, 305 Md. 443, 451 (1986) ("the amount of punitive damages actually awarded [pursuant to RP § 8-203] will depend on the egregiousness of the landlord's conduct in withholding the excessive amount"). We disagree. The Commission found, and the court recognized, that after appellees "agreed to a withholding of $800.00 from the Deposit by [Ms. Khalatbari] for repairs to the Property as proposed by [Mr. Khalatbari] in [his] May 2, 2016 email," he "informed [appellees] that there would be additional charges for painting in excess of the $800.00 originally proposed and agreed upon." The Commission also found, and the court recognized, that there was "no probative evidence that [Ms. Khalatbari] requested a walkthrough inspection via certified mail," or that she "sent to [appellees], by first class mail, an itemized list of damages claimed against the Deposit together with costs actually incurred within the 45-day period required by [RP] § 8-203(g)(1)." Finally, the court noted that in Ms. Khalatbari's memorandum of law in support of her petition for judicial review, she claimed that "the property was not available for occupancy until May 22, 2016 and was rented as of June 15, 2016," but before the Commission, she testified that "the property was actually relet on May 13, 2016." We conclude that this conduct was sufficiently egregious to justify

the amount of punitive damages actually awarded, and hence, the court did not misapply RP § 8-203(e)(4).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.