STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Judy Estes and David Estes **"Complainants"** **v.** **Pine Gardens Manufactured Homes, Inc.** **And** **Joseph Dupont** **"Respondents"**	)))))))))	**Docket No. 18-02**

Hearing held on December 15, 2017 at Concord, New Hampshire.

DECISION

This matter came on for hearing before the Board of Manufactured Housing (hereinafter referred to as the Board) on the complaint of David Estes and Judy Estes (hereinafter referred to as the "complainants") against Pine Gardens Manufactured Homes, Inc. and Joseph Dupont (hereinafter collectively referred to as the "respondent") alleging the respondent's conduct to be in violation of 205-A:2 VIII (d). At the hearing, the complainants proceeded pro-se and the respondent appeared and was represented by counsel, Matthew V. Burrows, Esq. Michael Bennett, the park manager, testified on behalf of the respondent. After careful consideration of all the evidence presented, including the exhibits offered and the testimony adduced, the Board finds the following facts and makes the following rulings:

FINDINGS OF FACT

The complainant Judy Estes and the Respondent Joseph Dupont are brother and sister. They each have resided for a number of years at separate residences in Pine Gardens Mobile Home Park, Belmont, New Hampshire. There has been a long history of poor relations between the complainants and respondent over the years. This poor relationship culminates from time to time in petitions filed with this board. With respect to the complaint now before us, at some point during July of 2017 complainant Judy Estes filed a petition under RSA 540-A alleging that the respondent turned off the water supply to the outside watering spigot. The outside watering system is supplied by a non-potable water source. The respondent was ordered by the court to turn the system back on. For reasons not related to this complaint, the water service to the complainants' outside system was not restored by the respondent until August 8, 2017. The respondent

through counsel filed a motion to vacate the order and the complainant did not pursue the action. The next day the respondent sent a letter to the complainant, Judy Estes, requesting that she, "remove the block wall you have been building for the last few years." This "block wall" consists of small bricks and cinder blocks neatly arranged on the ground and approximately 4"-8" high to serving as edging along the perimeter of their driveway at most places one tier high and towards the back of the driveway two tiers. The rationale contained in the letter of August 9, 2017 was mainly the threat to underground utilities posed by the "wall" and the park prohibition against erecting fences. The letter also contained the warning, "No changes, alterations, or additions to the lot shall be made by the resident without prior written consent of Park Management." [emphasis original]. The parties offered multiple exhibits for the board's consideration including photographs which were carefully noted. In and around 2010 the blocks had comprised a tortoise garden in the back of their lot arranged in a rectangular fashion on the ground with permission of the respondent. Sometime in 2011 the tortoise fled his enclosure, never to be seen or heard from again, and in 2012 the complainants began to dismantle the tortoise garden and stored the blocks at their homesite. In an around 2015 they decided to use the blocks they had to place them around the sides and back of their driveway and began assembling the blocks and acquiring more blocks to serve as edging. Photographic evidence was offered suggesting that the wall was substantially completed by September, 2015. The blocks running alongside their driveway extend from the back of the driveway to approximately 8 feet from the road and both parties agreed their presence does not interfere with snowplowing operations. The complainants responded to the August 9, 2017 letter with a letter dated August 18, 2017 essentially disagreeing with the respondent's classification of the blocks as a permanent fixture, that the blocks were not below ground, and questioning why after two years the blocks had become an issue. They accused the respondent of retaliatory action as a result of their seeking an order under RSA 540-A requiring him to restore water to the irrigation system. The respondent then sent through his counsel a "Second Notice of Violation of Park Rules" citing rule Section 12 (E) and restating, "No changes, alterations, or additions to the lot shall be made by the resident without prior written consent of Park Management." It references the letter of August 9, 2017 and promises pursuit of eviction proceedings including a request for attorney's fees. It requires removal of the "cinder block wall" and restoration of the affected portion of the lot to its "original" condition. The complainants declined to do so and were subsequently served with an eviction notice.

RULING

Notwithstanding their consanguinity, the complainants are tenants within the meaning of RSA 205-A:1, IV and the respondent is a manufactured housing park owner as defined by RSA 205-A:1, V. They are therefore the proper parties before the board. (RSA 205-A:27, IV). The board is charged with hearing rules disputes governed by the provisions of RSA 205-A:2, 7 & 8. (RSA 205-A:27, I). "The board shall have the power to issue a decision as to whether a rule of a manufactured housing park is reasonable as applied to the facts of a specific case. If the board determines that the rule is unreasonable, such ruling shall be binding on the parties in any subsequent court proceeding between the parties, unless the board's decision is reversed on appeal under

RSA 205-A:28." (RSA 205-A:27, I-a.) The complainants allege a violation of RSA 205-A:2, VIII, d which provides as follows:

No person who owns or operates a manufactured housing park shall make or attempt to enforce any rule which...

"(d) Requires a tenant to sell or otherwise dispose of any personal property, fixture, or pet which the tenant had prior permission from the park owner or former park owner to possess or use; provided, however, that such a rule may be made and enforced if it is necessary to protect the health and safety of other tenants in the park."

The present configuration of the driveway block edging was substantially in place by September, 2015. The testimony and documentary evidence support a determination that the complainants in fact had prior permission to assemble their driveway edging, notwithstanding the respondents assertion some 2 years after the fact that no prior written consent was obtained by the complainants. The provisions of RSA 205-A:2, VIII, (d) do not require that the prior permission the complainants had be explicit. (See Hynes v. Hale, 146 N.H. 533 (2001)) Indeed, based upon the testimony of the respondent's witness, Michael Bennett, the park manager, the practice in the park is that an oral request to do something would be presented by the tenant to him for approval. He testified he, "Runs requests by Joe [referring to the respondent] ... if Joe says yes, I pass it along." Additionally, the board is not convinced that cinder blocks arranged on the surface of the lot interfere with the service and maintenance of underground utilities of the park as advanced by the respondent in his August 9, 2017 letter. The respondent offered no evidence as to what utilities were being interfered with. More importantly, he offered no evidence that the cinder blocks could not easily be temporarily moved to permit service or repairs to whatever utilities he envisioned and then restored after such repairs. No issues of aesthetics were raised by the respondent in his violation letters. There was no evidence offered by the respondent to indicate that the blocks interfered with snow-plowing operations. As noted, the parties agreed that such was not the case. In fact, no tangible reason was offered either in writing to the complainants or to the board at the hearing to support the reasonableness of the respondent's determination that the complainants had to get rid of their cement-block edging or face eviction. The board further finds and rules that whether or not it can be classified as a fixture, the brick and cinder block edging is personal property within the meaning of RSA 205-A:2, VIII (d).

Accordingly the board UNANIMOUSLY finds and rules that the respondent's effort to enforce its rules against the complainant with respect to the brick and cement block edging is UNREASONABLE as applied to the facts of this case.

The evidence is compelling that the respondent issued his August 9, 2017 violation letter because he was angry with the complainants for seeking court assistance to compel him to restore their irrigation service and that he retaliated against them for this. Given that the letter was dated the day after he restored service, and considering the lack of any rational support for his newly advanced position with respect to the complainants' brick and cinder block edging on that date almost two years after substantial completion of the same, the board UNANINMOUSLY finds and rules that the respondent's conduct constitutes a willful and knowing violation of RSA 205-A:2, VIII, (d). (See RSA 205-A:27, I-b.)

The respondent's requests for findings of fact and rulings of law are granted and denied as follows: Requests Nos. I, 1, 3, 4, & 5 are GRANTED. Requests Nos. I, 8, 9, 10,

14, 15, 16, 17, 18. II A, B, & C are DENIED. Request No. I, 2 is granted subject to the authority of the board to review the park rules and their application as set out in RSA 205-A:27, I, I-a, I-b and subject to the limits set in RSA 205-A: 27,II. Requests Nos. I, 6, 7, 11, 12, 13 are ruled upon consistent with this decision. The respondent's prayers for relief contained in the request for findings of fact and rulings of law A, B, C, & D are DENIED. Prayer B of the respondent's pending objection to complainants' motion to amend which seeks dismissal of the complaint is DENIED.

Man 211.01 Motions for rehearing, reconsideration or clarification or other such post hearing motions shall be filed within 30 days of the date of the Board's order or decision. Filing a rehearing motion shall be a prerequisite to appealing to the superior court in accordance with RSA 205-A:28 II.

SO ORDERED
BOARD OF MANUFACTURED HOUSING

Dated: 3-9-2018

By: ______________________
Mark H Tay, Esquire, Chairman

Members participating in this action:

Mark Tay, Esquire
Representative Franklin Sterling
Representative Thomas Laware
Judy Williams
Kenneth Dame
Adam Gidley