

**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 June 8, 2018 at Concord, New Hampshire.

Ruling

This matter came on for hearing before the Board of Manufactured Housing (hereinafter referred to as the Board) on the motion for rehearing of Pine Gardens Manufactured Homes, Inc. and Joseph Dupont, (collectively referred to herein as the "respondent"). At the hearing on the motion, the complainants were present and represented by Brad C. Davis, Esquire and the respondent (whose appearance was excused with prior board permission) appeared through his counsel, Matthew V. Burrows, Esq., and Ari B. Pollack, Esq.

Man 211.02(a) requires the moving party to demonstrate that the Board's decision is unlawful, unjust or unreasonable. Man 211.01 clarifies this standard by requiring the moving party to describe how each error causes the Board's decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary, unreasonable or capricious.

Counsel for both parties were well-prepared and focused their arguments on the board's finding 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.) Other issues were raised in the filings and are acknowledged by the board to have not been waived although not argued.

At the hearing the parties were in agreement that the complainants never actually sought permission of the respondent to construct the driveway edging but that they had had prior permission (from the prior owner) to use the blocks as a turtle enclosure and fire-pit at different places on their home site. RSA 205-A:2, VIII, (d) provides that no park owner or operator 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.” While the complainants had permission of the prior owner to use the blocks for turtle and then fire-pit enclosures, they did not seek to secure the respondent’s permission to use the same as a driveway edging. Upon reconsidering its order, and based upon the facts of this case, the board concludes that because no permission was sought, the mere failure to enforce park rules even for an arguably open and readily-observed violation of park rules over a period of time, does not rise to the level of implied permission. There were no further circumstances presented to the board to support its earlier finding that the respondent ever expressly or impliedly granted such permission. Because the granting of prior permission, either express or implied, is a necessary element of the prohibition contained in RSA 205-A:2, VIII (d), there can be no violation of the same by the respondent.

After careful consideration of the arguments presented, the board finds and rules that the respondent has met its burden and accordingly **VACATES** its finding that the respondent’s conduct constitutes a willful and knowing violation of RSA 205-A:2, VIII, (d). However, the board finds that the respondent has not met its burden with the remainder of the decision and for all the reasons expressed therein, restates its finding that the respondent’s effort to enforce its rules against the complainants with respect to requiring them to remove the brick and cement block edging around their driveway is **UNREASONABLE** as applied to the facts of this case.

A PARTY’S RIGHT OF APPEAL AFTER REHEARING TO THE SUPERIOR COURT IS SET OUT AT RSA 205-A: 28, II WITH REFERENCE TO RSA 677:2-14.

SO ORDERED

BOARD OF MANUFACTURED HOUSING

Dated: August 17, 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
Anna Mae Twigg