

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Charles and Gladys Broussard)	
)	
v.)	Docket No. 004-95
)	
Edward Santoro - Cavalier Realty Corp.)	

Hearing held on January 5, 1996, at Concord, New Hampshire.

ORDER

This Order addresses two related issues: 1) The Broussard’s standing regarding RSA 205-A:2 VIII (b) and (d) and RSA 205-A:2 XI; 2) the Broussard’s standing regarding Cavalier Realty Corp. Park Rule, VI PETS, A, B and C, and VII CONDUCT B.

The board has determined:

- 1) the Broussard’s complaint regarding RSA 205-A:2 VIII (b) and RSA 205-A:2 XI are relevant; however RSA 205-A:2 VIII (d) is not pertinent because no park rule exists which either prohibits or requires the removal of pets or other personal property.
- 2) the Broussard’s complaint regarding Cavalier Realty Corp. Park Rule, VI PETS, A, B and C, and VII CONDUCT, B is relevant.

BOARD’S RULINGS AND FINDINGS

The board convened January 5, 1996, to hear testimony given by complainants Charles and Gladys Broussard, 6 Buttonwood Lane, Merrimack, New Hampshire, regarding actions and conduct by Edward Santoro, Cavalier Realty Corp., One Nottingham Lane, Merrimack New Hampshire. The board found:

- 1) the testimony relating to RSA 205-A:2 VIII (b) (i.e., overnight guests) testimony given indicated that both the complainant and respondent are uncertain of the parameters of Cavalier Realty Corp. Park Rule, VII B.

2) the issue relating to RSA 205-A:2 XI (i.e., to provide park rules) to be moot, in that the issues of the complaints are unaffected because the rules dated January 1984, which the complainant possessed, and the rules dated October 1, 1993, which the respondent submitted, are stated in exactly the same language.

3) the issue relating to Cavalier Realty Corp. Park Rule VI PETS, A, B and C to be the main complaint in this case. Charles and Gladys Broussard testified that they had read the park rules which was corroborated by Exhibit A, respondent, a signed statement by Charles and Gladys Broussard, and believed themselves to be in compliance with these park rules. Exhibit B, "General Notice to All Tenants", dated April 26, 1995, and Exhibit C, "Request To Keep A Pet On The Park Grounds" were distributed to the Broussards and were directed by text of Exhibit B to respond on Exhibit C before May 15, 1995. Complainants believed Exhibit C to be unreasonable and refused to sign the requested form because the condition stated in the form prohibited them from taking their pet off the lot after sunset and before sunrise. Complainants, on May 14, 1995, submitted information requested by Exhibit B, respondent, as demonstrated in Exhibit R, "information provided by the Broussards" about their pet in an attempt to comply without signing the request form. The complainants stated that their home is located three lots from Camp Sergeant Road, and believed the requirement to confine their pet inside their home from that date forward as stated in Exhibit L, Letter, Winer and Bennett, Attorneys at Law," respondent, to be unreasonable. The complainants further stated and had documented a log that alleged Mr. Santoro had on a number of occasions monitored their home in an attempt either to intimidate or to enforce confinement of their pet to their home. On June 19, 1995, the complainants mailed a formal complaint to the Consumer Protection and Antitrust Bureau, Exhibit J, respondent.

Mr. Santoro stated the rules controlling pets have been in effect since the first park rules were written, and that in early spring he had received numerous calls from tenants about animal excrement and urine on their front lawns. On April 26, 1995, a notice Exhibit B, along with a request to keep a pet, Exhibit C, were sent to all tenants explaining the situation. Mr. Santoro threatened to prohibit all dog walking if the practice did not cease. The respondent further stated that the problem did lessen but did not completely stop. "It became obvious that the tenants who prefer to walk their dogs after dark, some as late as 10:00 and 11:00 at night, were

doing so to avoid picking the crap up,” quoted from text of response, dated December 1, 1995, and that he did not feel that tightening up the existing dog rules constitutes rule change. The respondent continued, “All tenants complied except the Broussards and her neighbor”, and “The intention was to upgrade our records on pets, and at the same time attach conditions of agreement from pet owners that they would comply with the rules governing pets in Lord Cavalier Estates,” quoted from response text dated December 1, 1995.

State Representative Dennis H. Fields testified he had received a number of calls from constituents regarding park rules at Lord Cavalier Estates.

After deliberation the board concluded the following:

a. The Broussards were not in compliance with Cavalier Realty Corp. Park Rule, VI PETS, A, B and C, dated October 1, 1993, because the Broussards did not sign a “Request To Keep A Pet On The Park Grounds” when they obtained their dog. No change in these rules had occurred because Exhibit B, respondent, “General Notice to All Tenants”, dated April 26, 1995, did not specify a rule change, but attempted to impose additional provisions not specified in the park rules, and also failed to provide a ninety (90) day advance notice as required by RSA 205-A:2 XI. Historically, enforcement of these rules has been lax and has contributed to the dilemma. Considering that the park rules have authorized homeowner tenants for the past 22 years to keep pets, the board deemed Mr. Santoro’s letter, Exhibit M, dated October 20, 1995, ordering the Broussards to restrict their pet to the confines of their home to be unreasonable. The board also recognizes the potential for intimidation as demonstrated by threats found in Exhibit M, “The management and this office will be monitoring your lot and your actions pertaining to dog violations regarding this matter, and will go forward with eviction of you and your home if such violations occur”. This supports the Broussard’s testimony about a log recording visits that may have been made to monitor their activities.

b. Mr. Santoro stated in early spring he had received numerous complaints from tenants about animal excrement on their lawns. Mr. Santoro testified that pet rules had been in effect since the park rules were written. The board can sympathize with Mr. Santoro’s efforts to control pet related complaints, but must also note by his own rule, pets have been allowed in this park for many years without restriction other than being kept on a leash, not allowed to make excessive noise, or to create disturbances. Unchallenged and undisputed testimony

indicated that excrement was found on some front lawns and the challenge to prevent future occurrences is the responsibility of both pet owners and park management. However, sudden imposition of an arbitrary order prohibiting walking of all pets after sundown and before sunup on park streets as a remedy unjustly impacts all resident pet owners and does not address the irresponsible owners of the offending pets for appropriate action. Such an order is unreasonable as it also violates the prior notice requirement for those park tenants who had not given their consent regarding rule changes pursuant to RSA 205-A:2 XI since the changes were not the park rules, as a new or amended rule then there is no justification for such an order. Mr. Santoro testified that all tenants complied except the Broussards and a neighbor, yet there was conflicting testimony to the effect that some pet owners were still exercising their dogs between sundown and sunup. The board concurs that the walking of pets at early and late hours of the day or night are routine for many pet owners depending upon their schedules and the health and welfare of the animal. Arbitrary time constraints could be unfair, unreasonable and as a practical matter virtually impossible to monitor and enforce.

DECISION

- 1) The board, pursuant to RSA 205-A:2 VIII (b), orders the respondent to rewrite and clearly define provisions of Cavalier Realty Corp. Park Rule VII B, requiring consent for visits exceeding thirty (30) days and that such consent shall not be unreasonably withheld.
- 2) The board, pursuant to RSA 205-A:2 XI, issues no decision.
- 3) The board, pursuant to RSA 205-A:2 VIII (c) and Cavalier Realty Corp. Park Rule VI PETS, A, B and C, orders the respondent to withdraw and rescind his order directing Charles and Gladys Broussard to restrict their pet to the confines of their home. The board further orders the respondent to adhere to the provisions of Cavalier Realty Corp. Park Rules and to refrain from general notices, letters, or any other correspondence that adds conditions, alters rules, or otherwise attempts to change the provisions of the park rules as written unless proper notice has been given for amendments to rules, additional rules and that any and all changes to the rules shall be reasonable.

4) The board, pursuant to RSA 205-A:2 VIII (c) and Cavalier Realty Corp. Park Rules VI PETS, A, B and C, orders the complainant to sign and file with park management the amended “Request To Keep A Pet On Park Grounds”.

A decision of the board may be appealed, by either party, by first applying for a rehearing with the board within twenty (20) business days of the clerk’s date below, not the date this decision is received, in accordance with Man 201.27 Decisions and Rehearings. The board shall grant a rehearing when: (1) there is new evidence not available at the time of the hearing; (2) the board’s decision was unreasonable or unlawful.

SO ORDERED:

BOARD OF MANUFACTURED HOUSING

By: _____
Beverly A. Gage, Chairman

Members participating in this action:

Patricia A. Dowling
Beverly A. Gage
Kenneth R. Nielsen, Esq..
Jimmie D. Purselley
Florence E. Quast

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Charles and Gladys Broussard and Edward Santoro, Cavalier Realty Corp.

Dated: _____

Anna Mae Mosley, Clerk
Board of Manufactured Housing

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