

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Lafayette Road Residents Association))	
(Ellen Walker))	
)	Docket No. 005-95
v.)	
)	
Hillcrest Estates (Theresa M. Desfosses))	

Hearing held on January 19, 1996, at Concord, New Hampshire.

ORDER

The Board of Manufactured Housing issues the following order in the matter of Lafayette Road Residents Association v. Hillcrest Estates and addresses complainant Ellen Walker’s claims under RSA 205-A:2, VIII, IX and X, and Hillcrest Estates Rules and Regulations dated January 1, 1990; complainant Arna Thibeau’s claims under RSA 205-A:2, VII and IX and Hillcrest Estates Rules and Regulations dated January 1, 1990; and respondent RLD and AMD Revocable Trust’s (d/b/a Hillcrest Estates) motions to dismiss complaint for lack of adequate notice; to dismiss complainants Walker, Thibeau and Lafayette Road Residents Association for lack of standing; and to dismiss complainants Walker and Thibeau for failure to make good faith effort at settlement.

PRELIMINARY FINDINGS AND RULINGS

1) The board first addresses respondents’ motion to dismiss.

2) Respondent’s motion to dismiss for lack of adequate notice under RSA 541-A:31: Since respondents had researched the issues and appeared at the hearing well-prepared to testify on the matters in dispute, and further did not ask for a plain and simple statement of the factual issues raised by the complainants pursuant to RSA 531-A:31, I(d), respondent’s motion to dismiss for lack of adequate notice is dismissed, except as it relates to their claim that they did not have adequate notice of Ms. Walker’s claim that their method of calculating increases in water and sewer rates violates RSA 205-A:2, VIII.

3) Respondent's motion to dismiss Lafayette Road Residents Association for lack of standing: Since the board finds that the Lafayette Road Residents Association lacks standing to bring the above complaint, respondent's motion to dismiss is granted.

4) Respondent's motion to dismiss complainants Ellen Walker and Arna Thibeau for lack of standing: Since the board finds that Ellen Walker and Arna Thibeau, both residents of Hillcrest Estates and both signatories to the complaint against respondents, have standing, respondent's motion to dismiss them for lack of standing is denied.

5) Respondent's motion to dismiss for complainant's failure to make good faith settlement attempts under Man 201.14(a): The board finds that both the certified complaint, as required by Man 401.01(1), and the letter dated November 18, 1996, cited oral negotiations between the parties. These extended oral negotiations constitute evidence of a good faith effort to settle the dispute without filing a complaint. The board does not find complainant's insistence that the residents association represent her interests in the dispute and her refusal to negotiate with the park owners directly to be persuasive evidence that she never tried to resolve the dispute informally. For purposes of board rule Man 201.14 we find that the requirement of good faith negotiation may be met when the complainant is represented by another, such as an attorney or a residents' association. Respondent's motion to dismiss for failure to make good faith effort at settlement is denied.

SUBSTANTIVE FINDINGS AND RULINGS

6) Complainants' substantive complaints involve an upgrade of the electrical system at Hillcrest Estates and who should pay for it. RSA 205-A:2, IX, and Hillcrest Estates Rules and Regulations Section IV(C) (January 1, 1990). Ms. Walker and Ms. Thibeau make separate complaints against the owners of Hillcrest Estates as well. Ms. Walker alleges she was charged an improperly inflated water and sewer rate. RSA 205-A:2, VIII. Ms. Thibeau alleges she was not notified of all the terms and conditions of moving into Hillcrest Estates within a reasonable time, RSA 205-A:2, VII, and also that she was not given the name or phone number of a park manager who resides within 10 miles of the park. RSA 205-A:2, X. We address each of these claims in turn.

Claim under RSA 205:A:2, IX

7) RSA 205-A:2, IX, prohibits park owners from charging or attempting to charge a tenant for repairs or maintenance to any underground system, such as oil tanks, or water, electrical or septic systems for causes not due to the negligence of the tenant. The statute also prohibits park owners from transferring or attempting to transfer to a current tenant responsibility for such repair or maintenance by gift or otherwise of all or part of any such underground system. Hillcrest Estates Rules and Regulations Section IV(C), Responsibility for Repairs, states the “the community is responsible only to the fuse box directly below the meter. All electrical cables from your home to this fuse box directly below the meter is (sic) your responsibility.”

8) The board thus must determine whether the upgraded system is underground for the purposes of the statute, and whether the owners of individual units or the owners of the park are required to pay for it.

9) Some background is helpful. In general, electrical power runs into the park via power company cables. The cables lead to so-called meter poles and through the poles to individual fuse boxes. The power then travels through the fuse boxes into tubes that ultimately connect to the meter sockets of electrical panels in individual homes.

10) The parties agreed that prior to the upgrades at Hillcrest Estates, the electrical system in the older section of the park where Ms. Walker and Ms. Thibeau live was entirely above-ground, and that the meter poles were generally placed very near the resident’s units.

11) In upgrading the older section of the park, the park owners decided to move the entire system, including the tubes that lead from the meter poles to the individual units, underground. For reasons that are not entirely clear from the record, the meter poles were built at distances ranging from 20 feet to 28 feet from the units. In addition, the entrances to the meter poles were located in the underground tubes.

12) The upgrade necessitated the following steps: excavating and burying the connecting tubes and wires, buying and installing circuit breakers, and connecting the tubes to the meter sockets and electrical panels inside the individual units. Following the upgrade, power now comes into the park through the meter poles and into the underground tubes. The tubes are connected to circuit breakers, which are connected to meter sockets, which in turn are connected to the electrical panels in individual units.

13) The dispute before us is over who is required to pay for the above steps. The complainants allege that Hillcrest Estates attempted to pass on the costs to them, which they allege is an unfair interpretation of park rule Section IV(C) and a violation of RSA 205:A:2, IX. The park owners allege that park rule IV(C) allows them to charge their tenants with the cost of upgrading the underground system.

14) As a preliminary matter, the board finds the network of tubes and wires is a “system” that is unquestionably “underground” until it reaches the residents’ units. It thus is an underground system within the meaning of RSA 205-A:2, IX.

15) We now move on to the more difficult issue of who is required to bear the cost of the upgrade. In the case of Ms. Thibeau, who paid a total of \$660 for the portion of the upgrade that affected her unit, this inquiry will also determine whether Hillcrest Estates is required to reimburse her.

16) The park owners testified that once underground tubes and wires are installed, some owners might take the apparatus with them when they move. In our view, that is unlikely because most homes in manufactured housing parks are sold on-site, the cost of removing such apparatus is potentially quite expensive and it is unlikely that the apparatus would fit future sites. In addition, one purpose of the tube is to allow old wires to be pulled out or new wires to be passed through without having to do additional excavation.

17) Thus, even though park rule IV (C) might have been reasonable at a time when manufactured housing was more mobile and the entrances to meter poles were shorter, above-ground and more portable, the board finds that the rule is no longer reasonable for tubes and wires that are longer than in the past, underground and essentially permanent. Accordingly, the board finds that park rule IV (C) is unreasonable as applied to complainants to the extent that it would require them to pay to excavate, install and maintain underground tubes and wires from their units to the meter pole.

18) Instead, the board finds that the park owners are obligated to pay for the costs associated with connecting the underground tubes and wires from the meter pole to the meter sockets, including the excavation, purchase, installation and burial of the underground tubes; the purchase and installation of circuit breakers; and the connection of circuit breakers to the meter sockets.

19) The board finds that the individual unit owners are responsible for “incidental connections,” that is, the connection between the individual electrical panel inside each unit and the wire that extends from the underground circuit to the homeowner’s electric panel.

Claim under RSA 205-A:2, VII

20) The board now turns to Ms. Thibeau’s claim under RSA 205-A:2, VII. The statute prohibits owners of manufactured housing parks from failing to disclose to each prospective tenant, in writing and in a reasonable time prior to the signing of a rental agreement, all terms and conditions of the tenancy, including rental, utility, entrance and service charges.

21) Neither Ms. Thibeau nor the respondents deny that Ms. Thibeau did not receive notice of the planned upgrades prior to moving into the park on and incurred an unexpected financial burden as a result. Respondents contend that giving notice was the responsibility of the realtor. However, the statute places all notice responsibility squarely on the shoulders of the park owner. Thus, the Board finds that Hillcrest Estates failed to adhere to RSA 205:A-2, VII.

Claim under RSA 205-A:2, VIII

22) The board now considers Ms. Walker’s claim under RSA 205-A:2, VIII. RSA 205-A:2, VIII (a), prohibits a manufactured housing park owner from making or attempting to enforce any rule which establishes an additional charge or increased rental payments, directly or indirectly, for persons under the age of 18 residing in manufactured housing. Ms. Walker offered testimony and documents alleging that the method Hillcrest Estates used in calculating her sewer and water fees was based on the number of persons residing in her unit, including children under the age of 18, thereby establishing an “additional charge” based on age. The board finds that Ms. Walker’s complaint form and attached documents when construed as a whole may be found to give fair notice of the claim. However, the board also finds that the factual basis of the claim could have been stated with more clarity in the complaint. Therefore, the board makes no findings or rulings on this claim. The complainant, however, may file an additional complaint on this issue.

Claim under RSA 205-A:2, X

23) The board now considers Ms. Walker’s complaint under RSA 205-A:2, X. The statute prohibits park owners from failing to provide each tenant with the name, address and

telephone number of a manager or agent who resides within 10 miles of the park if the park owner does not reside within 25 miles of the park.

24) The board finds that park owners met the dictates of RSA 205-A:2, X, by having an answering machine and a park owner living within 10 miles.

ORDER

25) In view of the above findings, the board orders the following actions regarding complainants' claims:

26) Ms. Thibeu: Pursuant to RSA 205-A:2, IX, the owners of Hillcrest Estates are ordered to reimburse Ms. Thibeu a total of \$660 for her costs in connecting to the meter socket installed by Public Service Company of New Hampshire.

27) The board further orders that the cost of connecting Ms. Thibeu's electrical panel to her meter socket is her financial responsibility and the park owners are not obligated to pay this expense.

28) The board also orders that the park owners can order Ms. Thibeu to connect to the upgraded system, but also that the owners must provide tubes that are long enough to enable Ms. Thibeu to connect her electrical panel to the wire that extends from the underground circuit to the homeowner's electric panel. Ms. Thibeu is responsible for the cost of this incidental connection.

29) The board further orders the respondents, at their own expense, to provide and connect a second circuit breaker to Ms. Thibeu's meter socket; provide, install and bury the second conductor; and connect this conductor to Ms. Thibeu's electrical panel restoring the fast recovery rate that she previously enjoyed. Ms. Thibeu is obligated to arrange for the incidental connection of the second circuit breaker to her electrical panel at her own expense.

30) Pursuant to Ms. Thibeu's complaint under RSA 205-A:2, VII, the board orders the respondents to disclose in writing all terms and conditions of her tenancy, including rental, utility, entrance and service charges. The board further orders the respondents to provide Ms. Thibeu with a copy of Hillcrest Estates Rules and Regulations dated January 1, 1990.

31) Ms. Walker: Pursuant to Ms. Walker's complaint under RSA 205-A:2, IX, the board orders the owners of Hillcrest Estates to excavate; install an underground tube; and purchase and install the appropriate circuit breakers and meter sockets in the underground tube

leading to Ms. Walker's unit. Ms. Walker is obligated to pay the cost of connecting to the wire that extends from the underground circuit to the homeowner's electric panel.

32) The board orders that the park owners may order Ms. Walker to connect to the upgraded electrical system by providing her with conductors that sufficiently long to allow connection to the meter sockets for her unit. She is obligated to pay for the "incidental connection" to the wire that extends from the underground circuit to the homeowner's electric panel.

33) 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:

Beverly A. Gage
Elizabeth A. Martin
Jimmie D. Purselley
Florence E. Quast
Edward A. Santoro

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Theresa M. Desfosses, Hillcrest Estates, Ellen Walker and Arna Thibeau.

Dated: _____

Anna Mae Mosley, Clerk
Board of Manufactured Housing

