THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Edith S. Ruta	)	
	)	Docket No. 004-96
v.	)	
	)	
Cavalier Realty Corporation	)	
(Lord Cavalier Estates)	)	
(Edward A. Santoro)	)	

Hearing held on July 23, 1996, at Concord, New Hampshire.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Board of Manufactured Housing ("the Board") makes the following findings of fact and conclusions of law and issues the following order in the above-referenced matter.

PARTIES

1. Edith S. Ruta ("Complainant") is a lawful tenant of the Lord Cavalier Estates MHP, a manufactured housing community located in Merrimack, New Hampshire.

2. Lord Cavalier Estates MHP ("the park") is a manufactured housing community located in Merrimack, New Hampshire. Cavalier Realty Corporation ("Cavalier Realty"), a New Hampshire corporation, is the owner and operator of Lord Cavalier Estates MHP. Edward a. Santoro is the president of Cavalier Realty. For all purposes, Mr. Santoro and Cavalier Realty and Lord Cavalier estates MHP shall be treated in this Order as a unified entity and shall be identified as "Respondent." [1]

[1] Mr. Santoro is a member of the Manufactured Housing Board. He appeared before the Board to give testimony in his capacity as President of Lord Cavalier Estates MHP. He has taken no part in the consideration of, nor has he voted with respect to any matter presented by this case.

MATTERS AT ISSUE

Mrs. Ruta seeks the following determination from this Board:

(a) That the Respondent may not require her to remove a utility shed from her premises or to modify the shed to conform with height and other dimension requirements set out in the Lord Cavalier Estates MHP Rules as a condition of sale of her manufactured housing unit.; and

(b) that Respondent's attempt to require removal or modification of the utility shed violates RSA 205-A:2, VIII (d) which forbids MHP management from requiring "a tenant to sell or otherwise dispose of any personal property, fixture, or pet which the tenant had prior permission from the park owner ... to possess or use...."

FINDINGS OF FACT

3. Mr. and Mrs. Ruta moved into Lord Cavalier Estates in or about October 1984. On October 19, 1984, Mrs. Ruta signed an acknowledgment sheet certifying that she received a copy of the rules of the Lord Cavalier Estates. *Response To Complaint ("Response")*, Attachment B.
4. The Board finds that there have been no changes in any rule of relevance to this matter between October 19, 1984 and the present.
5. In or about June, 1992, Complainant's husband and son began construction of a utility shed on their lot site at 5 Sherwood Lane . At the time of the construction, the park was under the control of a trustee in bankruptcy. There appears to be no dispute that, at the time of the shed's construction, Mr. Santoro had been appointed as manager of the park by the trustee in anticipation of the purchase of the park by Cavalier Realty.
6. There also is no dispute that the shed, as designed and as it was being constructed in 1992, did not conform to the size and dimension requirements set out at paragraph I.G of the Lord Cavalier Estates Rules ("the utility shed rule") .
7. Specifically, the shed as designed was to be located on a 12' x 12' footprint, with a sloped roof peaking a t a height of 12'. The utility shed rule calls for 10' x 10' or 8'x 20' ground dimensions, with a maximum of height of 8"4". *Rules*, par I.G.
8. Both Mr. Santoro and Mr. Ruta testified that the additional height of the Complainant's shed was necessary to accommodate Mr. Ruta's woodworking activities, which occasionally involved the use or storage of long pieces of lumber .

9. In addition, the Complainant admits that her family did not seek written permission of the park owner or management prior to construction of their shed in apparent violation of park rules. *Rules*, par. II (Requiring written authorization from park owner for construction of any "appurtenant structure" within their lot site).
10. There is no dispute that, while the shed was being constructed, but before it had been roofed, Mr. Santoro approached the Ruta's and informed them that the shed did not conform to park rules. While the parties' recollections as to the tone and specific content of the ensuing conversation differ, both Complainant and Respondent testified that the Ruta's and Mr. Santoro reached a verbal agreement at that time, under which the Ruta's modified their plans for the utility shed by installing a flat, rather than sloping roof, at a maximum height of 9', rather than the 12' originally intended.
11. The Complainant contends that this verbal agreement constitutes a blanket permission for the permanent construction of a non-conforming shed on their lot site. Respondent denies making any such verbal agreement and takes the position that his verbal agreement to allow construction of a non-conforming shed was an accommodation to the Ruta's, but was not intended to waive any rights of management to require the removal or modification of the non-conforming shed pursuant to park rules covering the sale of homes. See *Rules*, par. IX (b).3.b; par. IX(b).4.
12. In the spring of 1996, the Ruta's informed Mr. Santoro that they intended to place their home on the market. By letter of May 20, 1996, Mr. Santoro informed the Ruta's that Cavalier Realty would require removal or modification of the shed as a condition of approving sale of the Complainant's unit. *Complaint, Attachment A*.
13. The parties testified as to various attempts to settle the resulting dispute amicably. However, no agreement could be reached and, on June 11, 1996, the Ruta's signed a purchase and sale agreement for the sale of their unit. *Complainant's Exhibit no. F*. Paragraph 19 of the P&S agreement recited as an "additional provision" that the seller would be obligated to remove the shed from the premises in connection with the sale. *Id*.[2]

[2] Complainant's agreement with her buyer to remove the shed appears at first glance to render the dispute at issue in this case moot. However, Complainant has testified that she agreed to the provision solely to lock in her sale under the conditions asserted by park management; and asks this Board to declare those conditions unenforceable. In view of the conclusions reached by the Board, we need not address the issue of whether Complainant's agreement with her buyer essentially forecloses further action by this Board.

CONCLUSIONS OF LAW

1. As a preliminary matter, the Board finds that Lord Cavalier Estates Rules Section I.G (establishing dimension requirements for utility buildings) and section II (requiring written permission of park management prior to construction of "appurtenant buildings") are facially reasonable.
2. The Board further finds that Lord Cavalier Estates Rules Sections IX (b).3.b and IX(b).4 (requiring permitted non-conforming structures to be modified or removed prior to sale or transfer of a unit) are also reasonable on their face.
3. The Board finds that the Complainant and her family violated Section II of the park rules by failing to seek written authorization from park management, either through the trustee in bankruptcy or through Mr. Santoro in his capacity as appointed manager prior to beginning construction of their utility shed.
4. The Board further finds that the shed as designed -- and as ultimately constructed -- does not conform t the footprint and height requirements of Lord Cavalier Estates Rules Section I.G .
5. The Board finds that Mr. Santoro, by intervening at the time of the shed's construction and agreeing to a modification of its design, effectively waived his right to require that the Ruta's modify or remove the shed during the remainder of their tenancy.
6. However, the Board is not persuaded that Mr. Santoro's verbal agreement with the Ruta's in 1992 contemplated any waiver of rights to require that the shed be modified or removed at the end of their tenancy pursuant to valid and reasonable park rules.
7. The Board cannot but note that failure of both the Complainants and the Respondent to memorialize their 1992 agreement in writing has led to the confusion and misunderstanding that brings this case before it today. Nevertheless, the Board sees no basis in the Complainant's testimony to accept her contention that park management, having come upon the already-commenced construction of an unauthorized and non-conforming structure, would, by agreeing to permit its completion as modified, agree to waive all rights to enforce relevant park rules requiring its modification or removal prior to sale.

8. In particular, the Board notes that the particular use of the shed by Mr. Ruta for woodworking supports the conclusion that the permission granted by park management was intended to apply only to the Ruta's tenancy and was not intended as transferable to all future tenants.
9. Moreover, the Board notes that it is the Complainant's burden to prove that park management did in fact grant her permission of the scope she maintains. The Board finds that the testimony of the Complainant and of Mr. Ruta fails to persuasively establish that management has, in fact, granted her and her successors as tenants a perpetual right to maintain a non-conforming structure on her lot. The Board finds that there is no basis in the testimony or documents submitted at hearing to find that management granted such a right explicitly, by word, deed or in writing. The Board further declines to find that any such right was implicitly established by management, either at the time of the shed's construction, or at any time afterwards.
10. Therefore, the Board finds that neither the 1992 agreement between Respondent and Complainant's family permitting the construction of a non-conforming shed, nor any subsequent act or omission by management amounts to permission to permanently maintain the shed on their lot site without modification. Accordingly, park management' s May 20, 1996 letter to the Complainants requiring removal or modification of the shed in connection with the sale of their unit did not revoke any prior permission with respect to the shed. As such, it did not, and does not violate RSA 205-A:2, VIII (d).[3]

ORDER

THEREFORE, and in view of the above, the Complaint in this matter is hereby DISMISSED.

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, <u>not the date this decision is received</u>, in accordance with Man 201.27 Decisions and Rehearings. The board shall grant a rehearing

[3] In addition, the Complainants' agreement to remove the shed in their purchase and sale agreement appears to reflect the next tenant's unconcern with the maintenance of the shed on the premises.

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 THIS _____ DAY OF AUGUST, 1996

BOARD OF MANUFACTURED HOUSING

By: _____

Beverly A. Gage, Chairman

Members participating in this action:
Beverly A. Gage
Stephen J. Baker
Leon Calawa Jr.
Rosalie F. Hanson
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Eric Rodgers

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Edith S. Ruta and Edward A. Santoro.

Dated:_____ _____

Anna Mae Mosley, Clerk
Board of Manufactured Housing

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