THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Charles and Gladys Broussard	)	
	)	Docket No. 008-96
v.	)	
	)	
Cavalier Realty Corporation	)	
(Lord Cavalier Estates)	)	
(Edward A. Santoro)	)	

Hearing held on September 24, 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. Charles and Gladys Broussard ("Complainants") are lawful tenants 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]

MATTERS AT ISSUE

[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.

The Broussards seek the following determinations from this Board:

(a) That the Respondent has failed to comply with the prior order of this Board in the matter of Broussard v. Cavalier Realty, Docket No. 004-95, that it promulgate an updated and comprehensive set of rules governing the Park; or, alternatively, that the Board order Cavalier Realty to promulgate such rules within a reasonable period of time;

(b) That the Respondent may not enter their leased premises, i.e. their ground lot, except in conformity with RSA 540-A:3, IV (Supp. 1995); and that any rule or policy promulgated by Cavalier Realty to the contrary is unreasonable;

(c) That Respondent may not impose a financial penalty in the form of a rent reduction for alleged violation of park rules without establishing the fact of, and criteria for, such rent reduction within the park rules;

(d) That the Board order Mr. Santoro to cease various actions which the Complainants characterize as harassment; and

(e) That the Board assess civil penalties against Mr. Santoro and/or Cavalier Realty Corp.

PRELIMINARY MATTERS

3. As a preliminary matter, the Board rules that it is without jurisdiction to award civil penalties or to address the other issues raised by Complainants concerning Mr. Santoro's alleged "harassment." RSA 205-A: 27, I. (Supp. 1995). That statute limits the Board's jurisdiction to matters involving specified park rule provisions, RSA 205-A:2 (1994), security deposit violations, RSA 205-A:7 (1994), and mandatory purchase requirements, RSA 205-A:8 (1994). Because issues relating to the personal relations between the Broussards and Mr. Santoro are not addressed by the rule provisions at issue in RSA 205-A:2, or the other statutory provisions establishing its jurisdiction, the Board rules that it is without jurisdiction to address these aspects of the Broussards' Complaint.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. The Board notes that significant aspects of the issues raised by the Broussards in their Complaint have in fact been dealt with by the Board in its Order in Ferguson v. Cavalier Realty Corp., Docket nos. 006-, 007- and 012-96 (the "Ferguson decision"), which is being issued concurrently with this Order; and in Broussard v. Cavalier Realty, Docket No. 004-95, previously decided by this Board and involving the same parties ("Broussard I"). Therefore, the Board will limit its findings of fact in this matter to those necessary to support its decision herein.

Relevant Rules And Provisions

5. Cavalier Realty has promulgated a set of rules and regulations, dated October 1, 1993, which the Broussards deny ever receiving, but which the Board presumes govern the conduct of the parties in this matter.

6. Included with the park rules and physically attached to them as a cover page was a schedule of fees and rental payments, with the proviso that "Each of the above rental fees are subject to a discount of $20.00 if the rent is received at the park office by the 3d." (emphasis in the original).

7. Section XI.B of the Rules provides that "Management reserves the right to do any work that it deems necessary on any lot when convenient to do it. Lots will be left in good condition upon completion."

Notices and Addenda

8. In addition to the formal Rules discussed above, Cavalier has also promulgated a vast number of informal, often multi-page notices to tenants, usually styled as "notices to tenants" or "general notice to all tenants," which purport to establish new policies and rules for park residents regarding such matters as occupancy limitations (Letter to tenants, 10/13/94), shrubbery maintenance (Id.), pet control (4/26/95); control of children and placement of play areas (undated); and, of particular

relevance to this matter, a notice that rental deductions for timely payment of rent and a senior citizen discount established by the rental sheet attached to the 1993 rules would be subject to forfeit for violation of the park's maintenance and aesthetic standards after inspection by management. (5/10/95).

Out Of Date, Inconsistent and Illegal Rules

9. In addition to the rules quoted above, the Board notes a number of inconsistent, potentially illegal or out of date rules, provisions and charges established by the Rules or rate sheet. These include:

(a) Charges for pets in excess of those allowed by statute. Compare Rate Sheet, "Animals" to RSA 205-A:2, VIII(c);

(b) Charges for guests of less than thirty days duration in violation of statutory ban. Compare RSA 205-A:2, VIII,(b),(a) (no charge prior to thirty days; $10.00/month thereafter)with Park Rule VII, B. ($30.00 charge for extra persons for any month or part thereof; See also, Rent Sheet, "Additional Charges," ($50.00/month assessed for extra occupants who reside without permission; $10.00/month for extra residents with permission).

10. In addition, Cavalier Estates has issued Notices To Tenants *rescinding* rules or policies previously promulgated. See, Tenant Notice, 3/13/96 (rescinding previously announced ban on evening dog walking in response to a decision of this Board; and rescinding illegal penalties on overnight guests of less than thirty days).

11. Respondent has testified that several of the Rules included in the formal Park rules are out of date and not enforced. However, it is not clear from the testimony in this matter that management has ever made any effort to distinguish for tenants which of its rules are real and which are illusory.

12. As may be apparent from the above discussion, the Rules of Cavalier Estates are, in the Board's estimation, unnecessarily complex, are not presently contained in anything like a coherent and readable format. Moreover, the Board finds that management's "Notices" to tenants tend to be prolix, confusing, and filled with unnecessary invective and cannot reasonably be found to constitute a valid method of communicating rules or rule changes to the tenants at the Park. Specifically, the Board finds that Cavalier Realty cannot reasonably maintain that it has provided to Mr. and Mrs. Broussard or other tenants a full written copy of the rules of the park by providing them with admittedly out of date formal rules and a mass of confusing, contradictory notices which purport to establish new rules or policies on an ad hoc basis. RSA 205-A:2, X.

13. The Board further finds that, to the extent the "Notices" may involve rule changes, there is no showing that management has ever adhered to the statutory requirement of ninety day notice prior to establishing such rules as the policy of the park. See, RSA 205-A: XI.

14. The Board notes that Respondent has both testified and submitted an extensive letter from counsel setting forth its intentions to promulgate a single set of coherent rules. Unfortunately, Respondent made the same representation to this Board in a prior hearing in January and, though counsel's letter shows evidence of significant effort and some progress toward this end by Respondent, the present state of the rules at Cavalier Estates remains both unchanged and unacceptable and in clear violation of the order of this Board in Broussard I.

15. THEREFORE, the Board finds that Respondent is in continuing violation of RSA 205-A:2, XI until such time as it shall promulgate a single set of coherent, up-to-date rules for the park.

SPECIFIC ISSUES

16. The most pressing issue between the Broussards and management arises from management's entry onto the Broussards' lot for the purpose of trimming their hedges.

17. The Board finds that, on June 25, 1996, Respondent Santoro's brothers, acting as independent contractors at the direction of the Respondent, entered the Broussards' leased lot for the purpose of cutting their hedges. Respondent has made no showing that it sought or received the prior consent of the Broussards to make such entry. Rather, Mr. Santoro testified that, having made uncontested entry onto the Broussards' lot for the purpose of tree trimming the previous autumn, he did not believe that any notice or consent was required to send workers onto the Broussards' lot for hedge trimming.

18. The Board finds that the Broussards objected to both the entry and the hedge trimming and that a confrontation ensued between the Broussards and Mr. Santoro's brothers.

19. The Board makes no finding as to who, if anyone, was "at fault" with respect to the ensuing confrontation. Rather, the Board notes that, under the reasoning adopted in its order in Ferguson, Respondent's asserted right to freely enter tenants' lots at its own convenience and without reasonable notice and prior consent is unreasonable.

20. Specifically, the Board rules that Park Rule Section XI.B, which provides that "Management reserves the right to do any work that it deems necessary on any lot when convenient to do it...." is unreasonable and unenforceable to the extent that it fails to establish any criteria beyond management's convenience for such entry.

21. Here, as in Ferguson, the Board declines to follow the Complainants' implicit argument that a leased lot within a manufactured housing park is a "premises" within the meaning of RSA 540-A: 1, III (Supp. 1995) and RSA 540-A:3, IV (Supp. 1995), subject to the rule that landlords may not

generally enter those premises without prior consent. In the Board's view, the requirements of RSA 540-A:3, IV (Supp. 1995) are appropriate to rental housing, such as an apartment, where the limits of the rental space are clearly delineated and subject to closure by door or walls. Such a hard and fast statutory rule is not, in the Board's view, equally appropriate to a manufactured housing lot, in which occasional entry for maintenance, inspection, landscaping, or simple access to the tenant's front door, may be a necessary and accepted part of the landlord-tenant relationship.

22. Nevertheless, the Board does find real merit in the Complainant's argument that, as lessees for value of their lot, they are entitled to a reasonable measure of protection from intrusive entry onto his lot by management. The problem here is that Park Rule Section XI.B, which provides that "Management reserves the right to do any work that it deems necessary on any lot when convenient to do it." essentially establishes the free right of management to enter onto tenant's lots whenever convenient and for whatever reason.

23. Moreover, in this case, the Board has examined photographic evidence of the state of the bushes after management's "trimming" which at least suggests that the mode of entry and the conduct of management's "contractors" was, at the least, sufficiently provocative and intrusive as to compromise the Complainant's right to quietly enjoy the benefits of their rental agreement.

24. At a minimum, the Board finds that Park Rule Section XI.B is unreasonable and unenforceable to the extent that it fails to establish any criteria beyond management's convenience for such entry; and that, in this case, management's entry onto the Complainant's lot was not preceded by even a

minimal form of prior notice and was, therefore, unreasonable conduct pursuant to an unreasonable rule. [2]

25. THEREFORE, the Board rules that Section XI.B of the Park Rules is unreasonable and unenforceable and that the Broussards were not acting inappropriately in contesting the right of management's agents to enter their lot and engage in uninvited and unannounced trimming of bushes.

C. *Denial of Rent Reduction*.

26. Finally, the Broussards question whether Respondent may (i) alter the conditions of granting rent reductions from those stated in the initial rate sheet attached to the park rules by a "notice to tenants" dated 5/10/95; and (ii) whether the denial of their deduction based on the new criteria was reasonable and enforceable.

27. The Board finds that a provision in the rate sheet establishes a $20.00 deduction from rental payments for timely payment of rent. See, *Rate Sheet, "Monthly Rental Charges*."

28. The Board further finds that the Broussards were accorded a $10.00 monthly "senior citizen discount" from their rental, but that the record in this matter does not demonstrate the origin of that discount.

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[2] On the limited facts before it, the Board does not purport to rule on what may or may not constitute a reasonable right to entry by management onto a leased lot in a manufactured housing park. Clearly, the Board acknowledges that some level of general permission to enter for periodic inspections, scheduled maintenance, or simple access to the tenant's front door may, under appropriate circumstances, be deemed reasonable by the Board. Rather the Board only rules that a park rule establishing a general right of management to enter a leased lot "when convenient" is unreasonable.

Similarly, the Board makes no finding as to whether the Broussards or any other tenant may reasonably refuse consent to periodic, scheduled or requested entry by Respondent, except to note that, as above, the Board may deem various forms of occasional routine entry onto leased lots in a manufactured housing park reasonable and would view peaceful action by landlords for violation or refusals to cooperate with such reasonable provisions as presumptively appropriate.

29. The Board further finds that, by a "General Notice To All Tenants" dated May 10, 1995, Respondent announced a change in policy regarding rent reductions, under which the rent reduction would be further conditioned on compliance with the park's maintenance and aesthetic standards.

30. The Board further finds that by notice dated April 11, 1996, Respondent notified all tenants, including the Broussards, of its semi-annual inspection policy, and that rental deductions could be forfeited by tenants whose homes or lots did not conform to the rules and standards of the park.

31. The Board further finds that, by a notice provided on or about June 20, 1996, Cavalier Realty informed the Broussards that they would lose their right to deduct $20.00 from their rent beginning July 1, 1996, and would also lose their "senior citizen discount" for specified rules and standards violations.

32. As an initial matter, the Board notes that it has no jurisdiction over issues relating to rent or rent increases. RSA 205-A:27, II (Supp. 1995). Notwithstanding that statutory ban, the Board rules that it has jurisdiction to address issues relating to rules and rule enforcement. RSA 205-A:27, I (Supp. 1995).

33. Here, as in Ferguson, the Board views it as inappropriate and unreasonable per se to establish a system of financial penalties, whether couched as direct penalties or as denial of rent reductions, for rules violations without establishing within the park rules the existence of, and criteria for such penalties. To do otherwise -- particularly by a notice format which does not purport to be controlled by the statutory requirement of a sixty day notice for rule changes, See *Letter, Cavalier Realty to Broussards*, 7/2/96 -- exposes tenants to the threat of arbitrary enforcement and imposition of penalties which is directly contrary to the basic requirements of RSA 205-A:2 (1989 and Supp. 1995).

34. The Board further rules that neither the May 10, 1995 "General Notice to All Tenants," the April 11, 1996 notice of inspection, nor the June 20, 1996 notice of loss of rental reduction can cure the fundamental problem that no validly promulgated rule provides tenants at Cavalier Estates with any clear notice of the precise nature, conditions and criteria for financial penalties which may be incurred for violation of the park rules.

35. THEREFORE, the Board rules that Respondent may not subject Mr. and Mrs. Broussard to any financial penalty based on alleged rule violations which is not clearly established in a rule promulgated in accordance with RSA 205-A:2 and that the Broussards are entitled to reimbursement for any such penalty imposed by park management between July 1, 1996 and the date of this ruling.

ORDER

WHEREFORE, the Board makes the following Order:

A. Within no less than 60 days of the date of this Order, Respondent shall promulgate to all tenants at Lord Cavalier Estates a comprehensive, up-to-date set of rules for the Park.

B. Respondent shall amend Section XI.B of the present rules to establish reasonable criteria for entry onto leased premises consistent with this Order; and shall otherwise conform the Park rules with applicable law.

C. Respondent shall include in newly promulgated rules a statement of all financial or other penalties, including the loss of rent reductions, which may be assessed against tenants for violation of any park rule.

D. Respondent is enjoined from announcing or imposing new penalties, including the loss of rent reductions, which may be assessed against tenants for violation of any park rule except by amendment of park rules in conformity with RSA 205-A.

E. Respondent is enjoined from imposing any financial penalty on the Broussards as set forth in a letter dated July 2, 1995 (misprint for 1996) and is ordered to reimburse them any amount collected as penalty, including any amount paid as additional (or non-deductible) rent on or after July 1, 1996.

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
Stephen J. Baker
Leon Calawa, Jr.
Rosalie F. Hanson
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Florence E. Quast
Eric Rodgers

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 Cavalier Realty Corp., (Lord Cavalier Estates) Edward A. Santoro.

Dated:_____ _____
Anna Mae Mosley Twigg, Clerk
Board of Manufactured Housing

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BOARD MEMBERS CONCURRENCE

Charles and Gladys Broussard v. Cavalier Realty Corporation
(Lord Cavalier Estates) (Edward A. Santoro)
Docket No. 008-96 **September 24, 1996**

CASE **DATE**

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STEPHEN J. BAKER

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REP. LEON CALAWA JR.

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ROSALIE F. HANSON

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KENNETH R. NIELSEN, ESQ.

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JIMMIE D. PURSELLEY

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FLORENCE QUAST

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ERIC RODGERS

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