THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Paul and Marilyn Boucher	)	
	)	Docket No. 014-96
v.	)	
Stephen Hynes as trustee for Holiday	)	
Acres Joint Venture Trust, D/B/A	)	
Holiday Acres Mobile Home Park	)	

Hearing held on September 25, 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. Paul and Marilyn Boucher ("Complainants") are, or were at all times relevant to this matter, lawful tenants of the Holiday Acres MHP, a manufactured housing community located in Allenstown, New Hampshire.

2. Holiday Acres MHP ("the park") is a manufactured housing community located in Allenstown, New Hampshire. Holiday Acres Joint Venture Trust ("the Trust"), is the owner and operator of Holiday Acres MHP. Stephen A. Hynes is the trustee of the Trust. For purposes of clarity, Mr. Hynes, the Trust and the park shall be treated in this Order as a unified entity and shall be identified as "Respondent." [1]

[1] Consistent with the amendment to the pleadings addressed in paragraph 6 below, this unified treatment should not be construed to apply to or bind Mr. Hynes in any capacity other than as trustee of the Holiday Acres Joint Venture Trust.

ISSUES PRESENTED

3. Complainants seek a determination by this Board with respect to the following issues:

A. That Respondent may not require them to remove two signs posted inside the front window of their manufactured housing unit, one of which identifies Complainant Marilyn Boucher as the "Rocky Road Tenants Association Treasurer," and the second of which identifies Ms. Boucher as a Notary Public.

B. That Respondent may not require them to remove a six-foot high stockade fence from their leased property.

PRELIMINARY MATTERS
(**Motion To Dismiss)**

4. As a preliminary matter, Respondent seeks to dismiss the Complaint on four grounds. These are:

A. That Complainants' original Complaint named Stephen Hynes as Respondent without reference to the Trust;

B. That Complainants' original Complaint named Marcia Heath, park manager, as Respondent despite the fact that she is not the owner of the Park.

C. That Complainants failed to provide Respondent with a written notice of the basis for their Complaint in purported violation of N.H. Admin. R. Man 201.14; and

D. That Complainants' claim that Respondent's park rules limiting the use and placement of signage on lots or within units violates the First Amendment of the United States Constitution is beyond the jurisdiction of the Board.

Mr. Hynes

5. First, The Board notes finds that Complainant's listing of Mr. Hynes as Respondent without reference to the Trust is directly attributable to Mr. Hynes' repeated correspondence with the Complainants and other residents under his own name and signature without reference to the existence of the Trust and would therefore not be grounds for dismissal.

6. Nevertheless, by agreement at the hearing, the parties have stipulated to amendment of the pleadings to name Mr. Hynes as trustee of the Trust as the sole Respondent for purposes of this hearing.

7. Therefore, the Board DENIES Respondent's Motion to dismiss on this basis and ALLOWS the stipulated Motion of both parties to amend the pleadings in a manner consistent with the caption of this Order.

B. Ms. Heath

8. With respect to Ms. Heath, the Board finds that she is not the owner of the Park and therefore is not properly a party to this matter. Therefore, Respondent's motion To dismiss is GRANTED with respect to Ms. Heath in her personal capacity.[2].

C. Failure To Provide Written Notice of the Basis of Complaint

9. Respondent argues that Complainants failed to provide Respondent with written notice of the basis of their complaint prior to filing their Complaint with the Board in purported violation of Board Rule NH. Admin. R. 201.14(a).

10. The Board notes that the stated purpose of NH Admin. R. 201.14(a) is to ensure that park owners have notice of, and an opportunity to address, tenants' concerns before those concerns become the subject of a formal complaint to this Board.

11. The Board rules that compliance with N.H. Admin. R. 201.14(a) is not a jurisdictional requirement for hearing before this Board; and that dismissal of a complaint for failure to fulfill the requirement would only be appropriate where Respondent can demonstrate that it has suffered prejudice from any alleged lack of notice.

12. Here, Complainants have certified that they made the required notice on Respondent, but were not able to provide the Board with evidence of such compliance. However, the record demonstrates that park management has communicated its demands to the Complainants that their signage and fence be removed from their leased property; and has engaged in oral discussions with the Complainants regarding these demands

13. Moreover, On August 8, 1996, Respondent's counsel sent a document styled "DEMAND FOR RENT & Notice of Impending Eviction for non-payment of rent and failure to comply with Park rules" (the Impending Eviction Notice") to the Complainants demanding removal of their signs and notifying them that their fence was in disrepair and over 4 ft high and asserting an arrearage of $25.00 based on these alleged violations of park rules.

14. It seems, therefore, at the least disingenuous for Respondent, having asserted a right to evict Complainants based on the presence of allegedly non-conforming signage and fencing, should now complain that he has been prejudiced by his failure to receive a formal notice from Complainants to the effect that they did not wish to be evicted.

15. Therefore, the Board rules that Respondent has not shown that it is in any way prejudiced by Complainants' alleged failure to provide Respondent with formal written notice of its intent to seek adjudication of issues before filing a Complaint with this Board.

16. Therefore, Respondent's motion to dismiss with respect to N.H. Admin. R. 202.14(a) is DENIED.

Constitutional Claims

[2] Notwithstanding this ruling, the Board notes that, as an employee and agent of the Respondent, Ms. Heath should be considered bound by all Orders of this Board as they pertain to the past or future conduct of the Respondent

17. For the reasons set out in paragraphs 12 through 14 of Respondent's Motion to Dismiss, the Board rules that it is without jurisdiction to directly adjudicate the issue of whether Respondent's signage rule violates the First Amendment of the United States Constitution.

18. Therefore, Respondent's Motion To Dismiss is GRANTED with respect to Complainants' claims arising under the United States Constitution.

SUBSTANTIVE ISSUES[3]

Findings of Fact

General Facts

19. Complainants purchased their home from prior management in 1984.

20. A purchase and Sale Agreement between Paul Boucher and Marilyn Blake (now Boucher) dated December 14, 1984 recites that the Complainants purchased their property with fencing already in place.

21. Complainants assert that the fencing referred to in the 1984 purchase and sale agreement is the same stockade fence currently in place in their yard, and that it was, at the time of sale, constructed to a height of approximately six feet.

22. There is no dispute that, under rules promulgated by prior management and applicable to Complainants at the time they purchased their home (the "Rancourt Rules"), commercial and political signs were prohibited without approval of the park management. Specifically, section 23 of the 1984 rules provided:

> "Tenants are forbidden from placing any commercial or

[3] In view of the numbers of issues presented, the Board will present findings of fact and law and any resulting Order in connection with each issue presented, rather than as separately captioned findings.

political signs on the premises without written approval from management. Management shall have the authority to remove such signs."

23. Complainants maintain two signs, constructed of adherent individual letters, in the front window of their manufactured housing unit. The first reads, " Rocky Road Tenants' Assn. Treasurer." The second reads "Notary Public." These two signs have been in place at least since 1989.

24. On or about June 15, 1989, Complainants were notified by prior management that their signage was in violation of park rules. *Respondent's Exhibit no. 5* (the "1989 notice") It is unclear whether the signs were removed in response to that notice.

25. Claude Rancourt's bankruptcy and the repossession of the park then intervened. It appears to be undisputed that, at the time Respondent purchased the park from Mr. Rancourt's bankruptcy estate, Complainants' signs, having either been removed and restored or having never been removed after the 1989 notice, were in place in Complainants' window.

26. In early 1995, Respondent promulgated a comprehensive new set of rules governing the park.

27. In June 1995, Respondent, through its management, sent Complainants a notice that they would not qualify for a $25.00 rent reduction due to the following alleged violations of park rules:

(a) "Fences over 4 ft."

(b) "Rock[sic] Road sign, notary sign, we want monty[sic] must be removed."

28. Then, on August 8, 1996 , Respondent's counsel sent Complainants the Impending Eviction Notice described in paragraph 18 above, again asserting that the condition and height of a fence and the presence of signage in Complainants' window violated park rules.

29. The Board finds that Ms. Boucher does perform Notary Public services at her home, as indicated by her window sign and charges a nominal sum of $1.00 to $2.00 for such services. Accordingly, the Board concludes that the Notary Public sign -in Complainant's window is a commercial sign.

30. The Board further finds that the "Rocky Road Tenants Association Treasurer" sign merely identifies Ms. Boucher's position in a tenants' association, and is not a commercial sign as that term is commonly understood.

31. The Board further finds that the "Rocky Road Tenants Association Treasurer" sign is not a political sign as that term is commonly understood.

32. The Board notes that no "We want Monty" sign is currently depicted as existing in Complainants' window; and that Respondent has introduced no evidence regarding this alleged sign.

Conclusions of Law

A. Signage

33. With respect to Complainant's signage, the fundamental problem faced by the Respondent is that the 1995 rules, under which Respondent purports to have denied Complainants a rental reduction and to assert a right to evict, simply do not incorporate the general ban on commercial and political signs recited in the Rancourt rules.

34. Rather, Respondent contends that Complainants' signage violates Section 6(j) of the 1995 rules, which read as follows:

> "Chapter 481, House Bill #253 allows the park to restrict the nature, size and number of "For Sale" signs posted on or in homes, and not on or in lot spaces, as follows:
>
> l. No more than two signs are to be placed on or in mobile homes
>
> 2. No larger than 216 square inches or 12" x 18" in area

> 3. No more print on surface of sign other than the words "For Sale" along with the name, address and telephone number of the seller or seller's agent or representative is to be displayed by a resident, and only in or on the home.

35. Unfortunately, the plain language of the quoted rule appears to limit its scope to the kind and number of "For Sale" signs permissible in connection with the sale of a manufactured housing unit. There is simply no mention of the larger issue of whether tenants may maintain other signage on their lots in the 1995 rules.

36. Therefore, the Board rules that the 1995 rules do not provide a basis for tenants to conclude that signage is subject to a general ban in the park. Particularly in view of management's attempt to use such a ban as the basis for a so-called "notice of impending eviction," and a loss of rental reduction in this case, the Board rules that respondent may not assert the Complainants are in violation of a rule which respondent has not clearly and effectively promulgated.

37. Alternatively, Respondent suggests that it may ban the signs as violative of the Rancourt rules. (See, *Respondent's Exhibit no. 5).* This argument, however, requires the Board to conclude that the 1995 rules are intended to incorporate, rather than succeed the Rancourt rules. Here again, there is no indication in the 1995 rules themselves that this is or was the case.

38. As a result, the Board is unable to conclude that any signage in Complainants' window is currently in violation of any validly promulgated rule currently governing conduct or lot standards in the park.

39. Moreover, the Board finds that, even were this issue controlled by the Rancourt rules, that ban reaches only "commercial" or "political" signs and so should not, in any case be construed to ban a sign identifying a park resident as a member or officer of a tenants association.

Fencing

40. As an initial matter, the Board finds that Complainants in fact purchased their home from prior management with a six foot high stockade fence in place on their lot in 1984.

41. The Board finds that this fact constitutes clear permission from prior ownership for Complainants to maintain their fence at that height, notwithstanding any later promulgated park rule to the contrary.

42. Moreover, as with the signage issue above, the 1995 rules promulgated by Respondent contain no language declaring existing fences of more than four feet in height to be in violation of standards.

43. Rather, Rule 5(k) of the 1995 rules states:

> "Fences are allowed with the approval of the park. They must be painted or stained and kept in good condition. Any fence not authorized by management and not meeting park standards will be immediately removed."

44. A May 1, 1996 letter from Mr. Hynes to park residents does declare that:

> "The maximum height of any new fence will be four feet. Existing fences in excess of this height may be allowed if they meet the park criteria with respect to the quality of the construction, condition of the paint, etc."

Respondent's Exhibit no. 6 ("May 1 Notification").

45. As an initial matter, the Board questions whether the May 1 Notification constitutes a valid change to the 1995 rules to incorporate height standards for park fencing. Even assuming that it does, however, the Board notes that, with respect to Complainants' fence, any such rule change, and the subsequent "notice of impending eviction" based on that purported rule change would have the effect of requiring Complainants to remove personal property from their lots which they had previously received permission to maintain. See supra, paragraph 30.

46. But, under RSA 205-A:2, VIII(d), Respondent may not do so unless the rule and attempts to enforce it are necessary to protect the health and safety of other residents in the park.

47. Respondent argues that, in August 1996, the Complainants' fence was in sufficient disrepair that it threatened to collapse, posing a health and safety hazard to residents and children in the adjoining day care center.

48. In support of its position, Respondent has submitted photographs which show the fence to be poorly anchored in some places, with unevenly connected sections, some broken palings and a noticeable inward sway. In addition, at least one photograph shows the present state of staining of the fence to be uneven. See generally, *Respondent's exhibit no. 6(a).*

49. The Board finds that the evidence submitted by the Respondent does demonstrate that the Complainants' stockade fence is or was in sufficient disrepair as to pose a potential safety hazard to children or tenants in the adjoining lot which would justify a demand that it be repaired or removed. However, because Complainants' had prior management's permission to maintain the existing fence at a six foot height, current management may not require Complainants' to modify the height of the fence, if it may be otherwise repaired and restained to reasonable standards.

ORDER

THEREFORE, the Board enters the following Order:

A. Respondent may not require Complainants to remove the signage at issue from their window; and may not assess any financial penalty on Complainants for any alleged violation of park rules based on the presence of such signage;

B. Respondent may not require Complainants to replace their existing six-foot high stockade fence with a fence four feet in height; but

C. Respondent may require Complainants to repair or replace their existing fence to conform to reasonable and objective construction standards.

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 THIS _____ DAY OF JANUARY, 1997

BOARD OF MANUFACTURED HOUSING

By: _____

Leon Calawa, Jr., Acting Chairman

Members participating in this action:
Beverly A. Gage
Leon Calawa Jr.
Rosalie F. Hanson
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Florence E. Quast
Eric Rodgers
Edward A. Santoro

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Paul and Marilyn Boucher and Denis Robinson, Esq., counsel for Stephen Hynes as trustee for Holiday Acres Joint Venture Trust, D/B/A Holiday Acres Mobile Home Park.

Dated:_____ _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

014-96.doc

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Paul and Marilyn Boucher	)	
	)	Docket No. 014-96
v.	)	
Stephen Hynes as trustee for Holiday	)	
Acres Joint Venture Trust, D/B/A	)	
Holiday Acres Mobile Home Park	)	

Hearing held on September 25, 1996, at Concord, New Hampshire.

ORDER ON RESPONDENT'S
REQUESTS FOR FINDINGS AND RULINGS

The Board of Manufactured Housing ("the Board") makes the following order with respect to Respondents Request For Findings and Rulings:

1. Granted.
2. Granted.
3. Denied, insofar as there was no evidence presented to demonstrate that Complainants specifically agreed to all aspects of the 1995 rules.
4. Granted, if modified to incorporate paragraph 32 of the Board's findings of fact and conclusions of law and order ("the Order").
5. Denied to the extent that the requested finding presupposes that the May 1 Notification constitutes a valid amendment of the 1995 rules.
6. Granted.
7. Granted.

8. Granted.

9. Granted if modified to read as paragraph 38 of the Order.

10. Granted if modified to read as paragraph 37 and 38 of the Order.

11. Granted if modified to read as paragraph 37 and 38 of the Order.

12. Denied.

13. Denied.

14. Granted.

15. Denied

16. Denied insofar as Respondent introduced no evidence regarding this sign.

17. Granted.

18. Granted.

19. Denied.

20. Denied.

21. Granted.

22. Granted with respect to a commercial notary public sign. Denied as to "political" signs as respondent has failed to introduce evidence establishing this fact.

23. Granted.

24. Granted if modified to incorporate paragraph 22 of the Order.

25. Granted.

26. Denied.

27. Granted, subject to paragraphs 9 through 16 of the Order.

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 THIS _____ DAY OF JANUARY, 1997

BOARD OF MANUFACTURED HOUSING

By: _____

Leon Calawa, Jr., Acting Chairman

Members participating in this action:

Beverly A. Gage
Leon Calawa Jr.
Rosalie F. Hanson
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Florence E. Quast
Eric Rodgers
Edward A. Santoro

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Paul and Marilyn Boucher and Denis Robinson, Esq., counsel for Stephen Hynes as trustee for Holiday Acres Joint Venture Trust, D/B/A Holiday Acres Mobile Home Park.

Dated:_____ _____

Anna Mae Twigg, Clerk