

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

James and Alison Hameline)	
)	Docket No. 018-96
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. James and Alison Hameline (“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's on-site manager was not reasonably available to respond to a sewerage back-up problem which damaged Complainant's manufactured housing unit between July 19-23, 1996 in violation of RSA 2, X(a);
 - B. That two sheds located on Complainant's lot are (a) not in violation of any park rule and/or (b) have been approved as conforming by management; and
 - C. That Respondent's August 8, 1996 Demand for Rent and Notice of Impending Eviction constitute harassment of the Complainants.

PRELIMINARY MATTERS (Motion To Dismiss)

4. As a preliminary matter, Respondent seeks to dismiss the Complaint on two 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.
5. First, The Board notes finds that Complainant's listing of Mr. Hynes as Respondent without reference to the Trust is directly attributable 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. In this case, the record demonstrates that Respondent, or its manager, was wholly aware of the Complainants' concern over management's alleged failure to respond to their sewer problem, and their consequent damage claim, since at least July of 1996; and that Complainants communicated that concern to management in writing by letter dated August 2, 1996.
12. In their August 2, 1996 letter, Complainants announced their intent to deduct a total of \$63.83 in claimed damages associated with the sewer problem from their August rent.
13. On August 8, 1996, Respondent's counsel sent a notice of eviction to the Complainants demanding removal of their sheds and asserting an arrearage of \$25.00 based on the presence of the sheds on their lot.

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.

14. There is no dispute that Complainants, having received a notice from counsel that were subject to eviction due to the presence of the sheds on their lot, did not provide Respondent with a formal written notice that they disputed the basis of the notice of eviction before filing a Complaint with this Board.
15. Nevertheless, it seems, at the least, disingenuous for Respondent, having asserted a right to evict Complainants based on the presence of allegedly non-conforming sheds, should now complain that it has been prejudiced by any failure to receive a formal notice from Complainants to the effect that they did not wish to be evicted.
16. In light of the above, the Board rules that Complainants have in fact complied with N.H. Admin R. 201.14(a) with respect to their complaint about management's response to their sewer problem.
17. In addition and alternatively, 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.
18. On the basis of the record before it, the Board rules that Respondent has not shown that it is in any prejudiced by Complainant's failure to dispute its notice of impending eviction in writing before filing a Complaint with this Board.
19. Therefore, Respondent's motion to dismiss with respect to N.H. Admin. R. 202.14(a) is DENIED.

SUBSTANTIVE ISSUES³

Findings of Fact

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.

A. Sewerage Problem and Management Response

21. The Board finds, on the basis of Complainant's testimony, that on the morning of Thursday, July 18, 1996, Complainants became aware of a problem with their water and sewerage system, which was causing sewerage to back up into their mobile home unit.
22. Complainants placed a telephone call to park management at or about 7:00 A.M. on July 18, leaving a message regarding their problem. Ms. Heath's testimony corroborated that such a call was received, but Ms. Heath's recollection was that the message left was inspecific and referred only to a water problem.
23. Ms Heath testified that she attempted to return the Complainants' phone call, but, upon reaching an answering machine, left no message.
24. Complainants claim to have called a second time that afternoon, again receiving no response. Ms. Heath denied receiving a call at that time.
25. Complainants claim to have called Ms. Heath a third time on the morning of July 19, 1996. Again, Ms. Heath was unavailable and Mr. Hameline left another message. Ms. Heath testified that this message was delivered in an angry tone, laced with offensive expletives, an allegation denied by Complainants. In any event, Ms. Heath testified that she was upset by the tone of Mr. Hameline's message and delayed returning it until late that afternoon.
26. In the interim, Complainants called Mr. Hynes directly in British Columbia. Possibly as a result of this call, Ms. Heath returned Complainants' call, and was informed in detail about the nature of the problem.
27. There is no dispute that park management then sent an employee to inspect Complainant's piping and sewerage system early on the morning of Saturday, July 20, 1996.

28. In the interim, Complainants sought the services of Bergeron Plumbing and Heating to inspect their sewer line. This service occurred on July 19, 1996 at a cost to the Complainants of \$35.00.
29. There is some dispute as to the nature and extent of work performed by the park employee on the 20th. However, on Sunday, the 21st, water again backed up into Complainant's home, filling both toilets, leaking through floor boards at the base of the toilets and leaking from joints in the unit's main sewer pipe.
30. On Monday, July 22, a crew was dispatched by management to excavate and replace damaged sewer pipes servicing Complainants' home. The work was completed and the condition remedied on Tuesday, July 23, 1996.
31. Following this matter, Complainants notified park management by letter dated August 2, 1996, that they were asserting a deduction from their August rent of \$63.83, consisting of an asserted \$9.61 per day for three day's loss of water usage and \$35.00 for the costs of hiring a plumber on July 19.

B. Sheds.

32. There is no dispute that park management sent a notice to all residents on June 28, 1996,⁴ announcing a fifty dollar land rent increase. Under the terms of the letter:

“One half of that increase will be waived for those residents who are complying with the park rules on or before July 1. For those who are not, the full increase will stand. Subsequent compliance with the rules will result in the waiver of half of the rent increase.”

33. In connection with, or shortly after the promulgation of that notice, park management sent to the Complainants an undated notice, addressed to “Jim” stating:

⁴ The Board notes, without ruling, that the June 28, 1996 date of the notice announcing a rental increase on July 1, 1996 appears on its face to violate RSA 205-A: 6, which requires a sixty day notice for rent increases. Because that issue is generally beyond the Board's jurisdiction, the Board took no evidence as to whether prior notices of the projected rent increase were in fact promulgated by management.

“You are in compliance with the park rules and you will be waived the \$25.00. As of July 1, 1996, the rent will be 298.00. Thank you for your cooperation during our construction and upgrading.”

34. Included in this notice was a check off list of potential rules violations which would result in loss of the \$25.00 rental waiver. Conspicuous on this list was an entry reading: “Sheds -- unpainted or in poor shape.” This entry was not checked off on the notice sent to Complainants.
35. There appears to be no dispute that the Complainants paid their July rent in timely fashion and in the specified amount of \$298.00.
36. Notwithstanding this history, Respondent’s counsel sent to Complainants a letter dated August 8, 1996, styled “DEMAND FOR RENT & Notice of Impending Eviction for non-payment of rent an failure to comply with park rules [sic].”
37. That letter recited that Complainants were in arrears with respect to their lot rent by \$25.00 and that their sheds were in violation of park rules and must be removed.
38. Ms. Heath testified that referenced demand for rent -- in essence a rescission of the Complainant’s previously granted waiver -- and the demand for removal of sheds occurred because Mr. Hynes had personally inspected the Complainant’s property at some time after the June 28 rental increase notice and the delivery of the notice to Complainants by management stating that they were in compliance and not subject to the full rental increase.
39. Again, according to Ms. Heath, Mr. Hynes decided that the Complainant’s sheds were unpainted and in poor repair and therefore authorized the August 8, 1996 notice of non-compliance and rent arrearage to be sent to the Complainants.

Rulings of Law

A. Sewerage Problems and Management Response

40. With respect to the sewerage issue and management's response thereto, the Board finds that a park manager must be "reasonably available in person, by means of telephone, or by telephone recording device checked at least twice daily to receive reports of the need for emergency repairs within the park."
41. The Board further finds that Complainants experienced a water and sewerage backup problem beginning on Thursday, July 19, and immediately notified management by telephone answering machine of the existence of a problem.
42. Notwithstanding that fact, more than forty eight hours elapsed before management responded to the problem in any fashion. During that period, Complainants placed at least three and possibly as many as five calls to management, including one to Mr. Hynes in British Columbia.
43. Moreover, when management finally did dispatch an employee to inspect and perform interim repairs on the Complainant's system, they did so on a Saturday, virtually ensuring that the problem, if unremedied, would continue through a weekend.
44. The Board finds that Ms. Heath's return of Complainant's first phone call was ineffective as a response because she failed to leave any message identifying herself or providing information about how she could be contacted.
45. The Board further finds that management neglected to return at least one other phone call from Complainants and delayed returning a phone call on the 19th

because Ms. Heath was offended by Mr. Hameline's alleged use of obscene language.

46. While the Board obviously does not condone the use of foul language in any context, it is constrained to observe that management's failure to even respond to a complaint of sewerage backup within a 24 hour period may well strain the civility of a tenant. The Board further finds, that no matter how provocative the language Mr. Hameline may have used in leaving a message on Ms. Heath's answering machine, his alleged conduct still does not excuse the manager's failure to respond to a series of phone calls asserting a sewerage and water emergency for some thirty six hours.
47. Therefore, the Board finds that management failed to be reasonably available to receive the report of an emergency condition affecting Complainant's unit from 7:00 A.M. on July 18, 1996 until after 5:00 PM. on July 19, 1996; and that management's failure to receive and respond to that complaint caused the problem to go unremedied until Tuesday July 23, 1996.
48. Management's conduct in this regard is in violation of RSA 205-A:2.
49. The Board further finds that Complainants are entitled to compensation for the full period of their loss of water and sewerage service, as well as to compensation for moneys spent on plumbing services occasioned by management's failure to respond to their complaint in the total claimed amount of \$63.83.

B. Sheds

50. The Board finds that, on or about June 28, 1996, park management, acting as agent for the Respondent, informed Complainants that they were in full compliance with

park rules; that their sheds were in conformity with park rules; and that they were entitled to a \$25.00 rent reduction for such compliance.

51. The Board further finds that Complainants paid their rent as demanded in both July 1996, and paid rental in August 1996, subject to a claimed deduction of \$63.83, attributable to the July sewerage issue, which deduction was not objected to by management or the Respondent.
52. In view of this history, the Board finds that Respondent, through its on-site management, has acquiesced in the presence and the condition of sheds on Complainant's lot; and, to the extent that the sheds are in violation of any rule of the park, that Respondent has granted Complainants permission to maintain their sheds on their lots in their present condition.
53. Accordingly, the Board finds that the August 8, 1996 Demand for Rent, etc. constitutes and impermissible and unreasonable attempt to retroactively rescind permission to maintain personal property on Complainant's lot in violation of RSA 205-A: 2, VIII (d).
54. The Board further finds Respondent's attempt to declare the Complainants in arrears for rent, when Complainants had previously paid the rent imposed on them by management to be preposterous and legally indefensible.
55. Moreover, the Board notes that Respondent is unable to point to any specific rule of the park which Complainant's sheds may be fairly said to violate. In this regard, the Board notes that Park Rule 6.(l) provides that "Sheds no larger than 144 square feet are allowed, towards the back of the home, with the permission of management."
56. There is no evidence that the sheds in question exceed the size limit, individually or together.
57. There is no requirement in the rule that the sheds be painted.

58. Finally, although there is no indication that, following the bankruptcy of the prior owner and the intervening period of bank ownership, Complainants received explicit permission to erect and maintain their sheds from any management. However, the Board finds that current management, by certifying the Complainants as in compliance with all park rules, including those involving sheds, have in fact granted such permission.

59. Thus there is no basis whatsoever, for management to now claim that Complainant's sheds are in violation of any park rule; or to declare Complainant's subject to eviction for retroactive failure to pay a penalty based on that alleged violation.

ORDER

THEREFORE, the Board ORDERS as follows:

- A. Respondent shall compensate Complainants in the amount of \$63.83 for damages associated with respondent's violation of RSA 205-A:2, X((a); and
- B. Respondent is enjoined from requiring Complainants from removing either of their sheds from their lot or imposing any financial penalty on them with respect to the current existence, appearance or condition of those sheds.

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 James and Alison Hameline 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

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

James and Alison Hameline)
) Docket No. 018-96
 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. Granted.
4. Granted, if modified to reflect that Respondent's manager has testified and counsel represented that the "Park was in disrepair and required significant investment to maintain and improve the same. The Board notes that no independent evidence of such investment was offered by Respondent.
5. Granted in part and modified to note that no evidence, beyond general testimony of Ms. Heath and representations of counsel, of the cost of any construction or upgrade being

conducted by management, or of the projected duration of the project, was introduced.

Therefore denied as to the phrases “multi-million dollar.” and “two year.”

6. Granted, if modified to incorporate paragraphs 21 through 24 of the Board’s Findings of Fact , Conclusions of Law and Order in this matter (“the Order”).
7. Denied.
8. Granted if modified to incorporate paragraph 23 of the Order.
9. Granted, if modified to incorporate paragraphs 25 and 26 of the Order.
10. Granted.
11. Denied insofar as the actions of the Park employee are characterized as having “fixed the problem.”
12. Granted.
13. Granted.
14. Denied.

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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
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Rosalie F. Hanson
Kenneth R. Nielsen, Esq.
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Florence E. Quast
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Edward A. Santoro

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to James and Alison Hameline 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 MEMBERS CONCURRENCE

Docket 018-96, James and Alison Hameline v. Stephen Hynes as trustee for Holiday Acres Joint Venture Trust, D/B/A/ Holiday Acres Mobile Home Park

September 25, 1996

CASE	DATE
_____ BEVERLY A. GAGE.	
_____ ROSALIE F. HANSON	
_____ KENNETH R. NIELSEN, ESQ.	
_____ JIMMIE D. PURSELLEY	
_____ FLORENCE E. QUAST	
_____ ERIC RODGERS	
_____ EDWARD A. SANTORO	

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