

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Allan Cole)
) Docket No. 005-97
 v.)
Green Meadows Mobile Home Park)
James Grappone, President)

Hearing held on November 18, 1997, 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. Allan Cole (“Complainant”) is, or was at all times relevant to this matter, a lawful tenant of Green Meadows Mobile Home Park, a manufactured housing community located in Concord, New Hampshire.
2. Green Meadows MHP (“the park”) is a manufactured housing community located in Concord, New Hampshire. James Grappone, 24 Boanza Drive, Concord, NH 03303 are the owners and operators of the park. For convenience, Mr. Grappone and the park will be referred to as a unified entity by the term “Respondent.”

ISSUES PRESENTED

3. Complainant seek a determination by this Board with respect to the following issue:
4. Whether park management may reasonably withhold permission for the sale of his manufactured housing unit on the basis of RSA 205-A:2, II and III?

FINDINGS OF FACT

5. The facts in this matter are essentially undisputed. Mr. Cole, a recognized and lawful tenant of the park, has for some time rented his unit while maintaining his residence elsewhere.
6. Mr. Grappone claims that he has, from time to time, received complaints from tenants of Mr. Cole's unit regarding conditions within the unit, including leakage from the ceiling and windows, and the consequent presence of mold. within the living area of the unit.
7. As evidence of the conditions at issue, Mr. Grappone presented a statement dated 6/27/97 from a physicians practice, Concord Obstetrics and Gynecology, to the effect that Mr. Cole's most recent tenant was pregnant and suffering from chronic sinus problems associated with "mildew and mold contributing to poor air quality."
8. Mr. Cole acknowledges that his unit has, in the past, experienced some leakage and mold. However, he presented the Board with a statement dated May 13 , 1997 from the Health Officer for the City of Concord noting that all health or sanitary issues posed by the unit have been satisfactorily addressed.
9. In or about August, 1997, Mr. Cole sought to sell his unit, and notified Mr. Grappone that he had a purchaser.
10. Mr. Grappone approved the purchaser, but notified Mr. Cole that he would require removal of the unit on the grounds that it was unsanitary and did not otherwise conform with the rules of the park.
11. At hearing, Mr. Grappone testified that his decision to require removal of the unit was based on his prior understanding of the existence of leakage and a mold condition in Mr. Cole's unit, as well as his viewing of a segment on the television program "20/20" regarding the potential danger of airborne mold spores to newborn infants.

12. He further testified that he did not dispute the substance of the Concord health officer's assessment of current conditions within the unit and has not physically examined or inspected the interior of the unit since some months before the date of the health officer's assessment.

13. Mr. Grappone acknowledged that, except for the issue of mold, the unit conforms with all applicable rules and aesthetic conditions of the park.

RULINGS OF LAW

14. This matter is controlled by RSA 205-A:2, III, which provided in relevant part that no manufactured housing park owner may:

Require manufactured housing at the time of sale or otherwise, which is safe, sanitary, and in conformance with the aesthetic standards of the park, if any, or of general applicability contained in the rules, to be removed from the park...The park owner or operator shall have the burden of showing that manufactured housing is unsafe, unsanitary, or fails to meet the aesthetic standards of the park.

15. Here, the Respondent has failed to meet its burden of showing that Mr. Cole's unit is currently unsafe or unsanitary. Rather, Respondent's entire position is based on an inconclusive physician's statement, and reference to media reports. He has not inspected the unit at or about the time of the projected sale and so cannot testify that any unsafe or unsanitary condition exists in the unit.

16. Mr. Cole on the other hand offers an assessment by the health officer of the City of Concord to the effect that there is no current unsafe or unsanitary condition associated with the unit.

17. In view of this evidence, the Board finds that Respondent has established no reasonable basis to require removal of Mr. Cole's manufactured housing unit upon sale thereof and further finds that

any attempt by respondent to so require in connection with the present or any future sale is on the basis of the evidence presented in this matter is and shall be deemed unreasonable.

ORDER

Therefore the Board ORDERS that Respondent shall not unreasonably interfere with the orderly sale of Mr. Cole’s manufactured housing unit and shall not require the unit to be removed from the park unless Respondent can demonstrate in good faith and on the basis of objective evidence that the unit is unsafe or unsanitary.¹

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: _____
Kenneth R. Nielsen, Esq., Chairman

Members participating in this action:

¹ Without limiting the scope of any allowable evidence on this point, the Board notes that the “objective evidence” required to establish a park owner’s right to require removal of a manufactured housing unit should ordinarily consist -- at a minimum -- of testimonial, documentary and/or photographic evidence establishing the *current* condition of the unit. Moreover, in view of the significant costs and inconvenience associated with any order to remove a manufactured housing unit from a park, a park owner may wish to secure an independent evaluation of a unit’s condition by a town health officer or similar authority in order to meet the burden of proof established by the statute.

Stephen J. Baker
Richard R. Greenwood
Rep. Warren Henderson
Rep. Robert J. Letourneau
Kenneth R. Nielsen, Esq.
Linda J. Rogers
Jimmie D. Purselley
Florence E. Quast

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Allan Cole, P.O. Box 4146, Concord, NH 03302 and to James Grappone, President, Green Meadows Mobile Home Park, 24 Boanza Dr., Concord, NH 03303.

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

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