

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Karen D. Hale,)
Complainant) Docket No. 006-98
v.)
Stephen Hynes as trustee for Holiday)
Acres Joint Venture Trust, D/B/A)
Holiday Acres Mobile Home Park,)
Respondents)

Hearing held on September 14, 1998, 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. Karen D. Hale (“Complainant”) is, or was 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) Whether Respondent is unreasonably requiring her to remove or modify her existing 6-foot stockade fence in violation of RSA 205-A:2, VIII(d).

JURISDICTIONAL STATEMENT

4. As a preliminary matter, the Board notes that the issues presented to the Board arise in the context of a Notice to Quit issued by park management to Complainant dated July 10, 1998. The Board acknowledges that it has no jurisdiction to over actions for eviction. RSA 205-A:27, II. However, the Board is broadly empowered to hear and adjudicate disputes regarding park rules, with specific jurisdiction over issues enumerated in RSA 205-A:2. *See* RSA 205-A: 27, I. The Board rules that it is not divested of this jurisdiction by virtue of the fact that Respondent may have framed its objections to Complainant's alleged conduct in the context of a notice to quit.²

Findings of Fact

5. In this case, park management seeks to require Complainant to make repairs to her existing 6 foot stockade fence in a manner which will conform to the park's general requirement that fences be no more than four feet in height. Park Rule 6(k).
6. Karen D. Hale purchased her manufactured housing unit from to Alphonse and Shirley Cann by sales agreement date April 27, 1997. At that time, the lot was surrounded by a 6 foot high

² The Board notes that this is not the first time that Respondent has appeared before the Board after having issued a notice to quit to a tenant. As an initial matter, the Board would clearly have jurisdiction over this matter had it arisen solely in the context of violations notices sent by management to Ms. Hale on April 24 and June 22, 1988. Were the Board to now refrain from exercising its jurisdiction because Respondent has escalated its response to the situation by issuing a notice to quit based on the same conduct complained of in the notices of violation would, in effect, permit Respondent to fully evade this Board's jurisdiction by the simple expedient of invoking the eviction process for any alleged rules violation. The Board does not accept the proposition that its jurisdiction may be so easily circumscribed.

stockade fence. The fence is specifically described as “property included” in the purchase and sale agreement.

7. Park management approved the sale of the manufactured housing unit, and entered into a lease agreement with Ms. Hale in June of 1997 on the basis of the sale as described in the purchase and sale agreement.
8. The record in this case does not demonstrate that, at the time it approved the sale and entered into a lease with Ms. Hale, park management informed Ms. Hale of its position that any modification of the fence must be done in a manner that achieved conformity with the lesser height requirement recited in Park Rule 6(k).
9. In or about April 1998, Ms. Hale undertook repairs and renovation of the existing fence on her leased property, but purchase, erection and painting of at least two eight to twelve foot long sections of prefabricated fencing. The fencing she erected was chosen to match the six foot height of the existing fence.
10. Respondent notified Ms. Hale by notice of violations dated April 24 and June 22, 1998 that management considered the fence as repaired to violate Park Rule 6(k). A notice to Quit based on the alleged violation was issued to Ms. Hale on July 10, 1998.

CONCLUSIONS OF LAW

11. The issues presented by this case are simple. Park Rule 6(k) mandates that all fences built in the park be approved by management and that no fence may exceed four feet in height.
12. Respondent justifies the rule both on aesthetic grounds and as a safety measure. According to park management, the uniform height requirement is intended to create consistent and attractive sightlines throughout the park. In addition, management notes that a six foot stockade fence could be used

to shield a tenant's action in violation of rules from observation by management; or any obscure dangerous conditions or activities from general view.

13. The Board is not prepared to declare the general purpose behind the rule as irrational, or the rule itself unreasonable.
14. However, in this case, the Board finds that management's approval of the transfer of the property with the six foot fence included as a listed item in the purchase and sale constitutes an extension of permission to Complainant to purchase and maintain the fence as constructed.
15. Thus, this matter is controlled by RSA 205-A:2, VIII(d). As such, Respondent may not enforce a rule which requires Ms. hale to dispose of the fence as constructed, unless enforcement of the rule is necessary to protect the health and safety of other tenants.
16. The Board finds that Respondent has not demonstrated that the fence as purchase by Ms. Hale, or as partially reconstructed by her poses any threat to the health and safety of any person.
17. Accordingly, the Board rules that the fence is "grandfathered" at its current height, and that Respondent may not require the Complainant to incrementally replace its sections with section of four feet in height.³

ORDER

WHEREFORE, the Board hereby enters the following ORDER:

³ Respondent argues that, under the Board's precedent decisions, it is barred by RSA 205-A, VIII(d) from requiring removal of the fence at the time of sale. According to Respondent, the Board's current ruling barring it from requiring Ms. Hale from bringing the fence into conformity with Rule 6(k) through incremental repair effectively deprives it of any legally enforceable method of ever securing conformity of the fence to the rule. The Board believes that this argument looks too narrowly at Respondent's options. For example, the Board has never ruled that RSA 205-A, VIII(d) forbids park management from informing a purchaser of "grandfathered" nonconforming personal property at the time of sale that it may require the property to be brought into conformity as a consequence of maintenance or repair. Similarly, if Ms. Hale chooses to replace the fence in it's entirety, park management may presumably insist on the construction of a fence which conforms to current park rules. In addition, nothing in any law prevents park

A. Respondent is hereby enjoined from requiring Complainant to install replacement fencing of less than six feet in height;

B. Respondent is further enjoined from taking any legal action against Complainant based on Respondent's contention that the fence on her leased property, or any portion thereof, violates Park Rule 6(k).

RULINGS ON RESPONDENT'S REQUESTS FOR FINDINGS AND RULINGS

The Board makes the following rulings on Respondent's Requests for Findings of Fact and Rulings of Law:

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Denied. The Board rules that evidence regarding the precise length of the fence sections replaced by Complainant was contradictory and inconclusive. The Board further notes that, in view of its ruling, the precise length of the sections replaced by Ms. Hale is not material to the Board's decision or ruling.
9. Granted.

management from providing its tenants with financial or other incentives to bring "grandfathered" non-conforming property into conformity with applicable rules.

10. Granted.
11. Granted.
12. Granted.
13. Denied for the reasons recited in the Board's Ruling and Order.
14. Denied with respect to the specific facts presented on the record of this case.
15. Granted. *See* discussion at fn. 3 of the Board's Ruling and Order.

ORDERED, this ___ day of _____, 1998
BOARD OF MANUFACTURED HOUSING

By: _____
Kenneth R. Nielsen, Esq., Chairman

Members participating in this action:

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

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Karen D. Hale 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

BOARD MEMBERS CONCURRENCE

Docket 006-98, Karen D. Hale v. Stephen Hynes as trustee for Holiday Acres Joint Venture Trust, D/B/A Holiday Acres Mobile Home Park.

RICHARD R. GREENWOOD

HON. WARREN HENDERSON

HON. ROBERT J. LETOURNEAU

KENNETH R. NIELSEN, ESQ.

JIMMIE D. PURSELLEY

FLORENCE E. QUAST

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