

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Barry and Terri Parker,)	
Complainants)	Docket No. 008-98
v.)	
Lyman and Faye Hammond)	
D/B/A Hammond Village)	
Mobile Home Park,)	
Respondents)	

Hearing held on December 7, 1998 at Concord, New Hampshire.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
ON MOTION FOR SUMMARY JUDGMENT**

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. Barry and Terri Parker (“Complainants”) were at all times relevant to this matter, lawful tenants of the Hammond Village MHP, a manufactured housing community located in Raymond, New Hampshire.
2. Hammond Village MHP (“the park”) is a manufactured housing community located in Raymond, New Hampshire. Lyman and Faye Hammond are the owners and operators of Hammond Village MHP. For purposes of clarity, Mr. and Mrs. Hammond and the park shall be treated in this Order as a unified entity and shall be identified as “Respondents.”

ISSUES PRESENTED

3. This matter arises as a result of the Complainants' contention that the Respondents have unreasonably withheld permission to sell their manufactured housing unit to buyers, a pair of elderly women, on the grounds that the women owned a small dog. In their complaint, the Parkers allege that the Respondents' conduct in this matter amounts to a violation of RSA 205-A:2, II, which forbids park owners from interfering with the sale of a tenant's manufactured housing unit by unreasonably withholding approval of prospective purchasers as tenants.
4. Complainants also argue that, to the extent the Respondents' objection to the proposed purchasers of their unit centered on the purchasers' pet, the Respondents have also violated RSA 205-A:2, VIII (c), which forbids the imposition of charges for pets; and RSA 205-A:2, VIII (d), which forbids owners from requiring a tenant to sell or otherwise dispose of personal property which the tenant previously had permission to own or possess.
5. Complainants also raised an issue of whether Respondents were charging or attempting to charge tenants other than themselves for the repair or maintenance of underground systems in violation of RSA 205-A:2, IX.
6. A prehearing conference was held before Chairman and designated hearing officer Kenneth Nielsen on November 12, 1998.¹ At that hearing, Chairman Nielsen ruled that Complainants' claims under RSA 205-A:2, VIII (c), RSA 205-A:2, VIII (d) and RSA 205-A:2, IX failed to state any cause of action² and so by prehearing order dated November 24, 1998, set the following issue for resolution:

¹ Mr. and Mrs. Parker, Mr. and Mrs. Lyman and counsel for the Respondents attended the conference.

² The Board approves and adopts the ruling of Chairman Nielsen with respect to these claims.

Whether Respondents has unreasonably withheld permission for the sale of Complainants' manufactured housing unit through inconsistent enforcement of park rules, including in particular, rule XIV.a.1; and whether such action violates RSA 205-A:2, II.

7. Respondents filed a Response Form which was styled, in part, as a motion for summary judgment.

Respondents' Response and Motion For Summary Judgment ("Summary Judgment Motion").

Respondents have also submitted a Request For Findings Of Fact And Rulings of Law ("Request for Findings"). In each pleading, Respondents advance the same basic argument: that their disapproval of the Complainants' potential purchasers was directly based on an existing and legal park rule forbidding tenants to own or keep dogs in the park. As such, the Respondents argue, their conduct was wholly reasonable.

FINDINGS OF FACT

8. Complainants have been tenants of the park for one and one half years.
9. There is no dispute that, at the beginning of their tenancy, Complainants received and reviewed the park rules.
10. At all times relevant to this matter, park rule XIV expressly forbade tenants to keep pets, and dogs in particular.
11. On or about August 19, 1998, Complainants entered into a purchase and sale agreement for the sale of their manufactured housing unit. The potential purchasers were two elderly women.
12. Complainants notified Respondents of their potential sale and sought Respondents approval of the purchasers as tenants. They also notified Respondents that the potential purchasers owned a small dog and sought a waiver of the park rules to bring the dog with them.

13. Respondents approved the purchasers as potential tenants but informed Complainants and the purchasers that they would not grant a waiver of the rule forbidding dogs. They have maintained this position despite requests for reconsideration by Complainants, the potential purchasers, and by Michael Verani, the real estate agent involved in the sale.
14. As a result of the Respondents' position, Complainants' sale of their home fell through. They have since sold the manufactured housing unit for less value than they could have realized through the original sale.
15. Complainants presented evidence that Respondents have allowed other residents of the park to own or keep dogs. They point in particular to two unidentified residents who maintain dogs -- including one which they maintain is a recent acquisition and so, not subject to any "grandfathering" rule.
16. Respondents claim that they are unaware of the fact that other tenants may own dogs, but do not consider that fact as dispositive of their right to refuse entry to tenants with dogs.

RULINGS OF LAW

17. This matter is easily disposed of. RSA 205-A:2, VIII clearly permits a manufactured housing park owner to forbid the keeping of pets, and in particular dogs, within a manufactured housing park. Accordingly, the Board cannot find that park rule XIV is unreasonable as a matter of law.
18. In this case, such a rule was in place at the beginning of Complainants' tenancy. There is no dispute that they were aware of the rule at the time they sought to sell their home.
19. Rather, their complaint is that Respondents unreasonably withheld a waiver of the Rule in light of the fact that other tenants do own dogs.

20. For the purposes of this decision, the Board accepts Complainants' contention that at least two tenants in the park have been permitted to own or maintain dogs.
21. Under some circumstances, it may be that an otherwise legal and reasonable rule is rendered unreasonable in application by particular circumstances, including situations in which a rule is inconsistently applied or applied in an unfair or discriminatory manner.
22. Unfortunately, Complainants have presented no evidence that there is such inconsistent or discriminatory application of rules regarding dogs in this park. The Board cannot conclude from the bare fact that two tenants are alleged to own dogs in the park that these exceptions or waivers are not based on statutory "grandfathering" or other special circumstances.
23. Therefore, the Board declines to find that the Respondents have acted unreasonably in seeking to enforce a legal rule against dogs in this instance.

RULINGS ON REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW

1. Granted.
2. No response required.
3. No response required.
4. No response required.
5. Granted in light of and to the extent of the Order of this Board.

ORDER

THEREFORE, the Board ORDERS that the complaint be and is hereby DISMISSED.

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.

ORDERED, this ____ day of _____, 1999
BOARD OF MANUFACTURED HOUSING

Kenneth R. Nielsen, Esq., Chairman

Members participating in this action:

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid to Barry and Terri Parker, Lyman and Faye Hammond and Jorel V. Booker, Esq., counsel for Lyman and Faye Hammond.

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

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