

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Rita A. Hoy, )  
Complainant ) Docket No. 012-98  
v. )  
Kachadorian Mobile Home Park, Inc., )  
Respondent )

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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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. Rita A. Hoy (“Complainant”) was at all times relevant to this matter a lawful tenant of the Kachadorian Mobile Home Park, a manufactured housing community located in Salem, New Hampshire.
2. Kachadorian Mobile Home Park (“the park”) is a manufactured housing community located in Salem, New Hampshire. Kachadorian Mobile Home Park, Inc., a New Hampshire corporation, is the owner and operator of the park. Doreen O’Clare is president and Joyce V. Babaian is treasurer of the corporation. For purposes of clarity, Ms. O’Clare and Ms. Babaian, the corporation and the park shall be treated in this Order as a unified entity and shall be identified as “Respondent.”

## **ISSUES PRESENTED**

3. Complainant seeks resolution of the following issue:

Whether Respondent has unreasonably sought to require her to remove from her lot a non-mobile addition attachment to her manufactured housing unit in connection with replacement of the unit in violation of RSA 205-A:2, VIII (d).

## **FINDINGS OF FACT**

4. Ms. Hoy purchased her manufactured housing unit from a prior resident and entered into a ground lease of her lot with the corporation in or about 1990.
5. At the time of her purchase, the unit was connected to a non-mobile addition.
6. Rule 5.E of the park rules states that :

“Any NON MOBILE HOME type additions or carports must be removed before unit can be resold on the lot.”
7. At the time of purchase, Complainant sought from Respondent and received a waiver of this requirement. The waiver, however, was never memorialized in writing.
8. A conflict has now arisen as to the precise terms and duration of the waiver granted by Respondent to Complainant. Ms. O’Clare testified that she informed Ms. Hoy at the time of her purchase of the unit from the prior resident that she could keep the non-mobile addition on the lot, but that she would be required to remove it if she sold the unit or if she replaced it with another unit. Ms. Hoy, on the other hand, testified to her understanding of the waiver as meaning that she was free to keep the addition unless she sold the unit.
9. Ms. Hoy now seeks to replace her unit, but not to sell it to another prospective resident. Respondent argues that she must remove the addition in connection with this transaction.

## **CONCLUSIONS OF LAW**

10. The Board is faced with the question of whether Respondent's insistence that Complainant remove her addition in connection with replacement of her manufactured housing unit is reasonable. Respondent advances three rationales for her position.
11. First, Respondent argues that a new manufactured housing unit will have larger dimensions than the old unit to be replaced; and that this may compromise Respondent's access to Complainant's lot, including, in particular, access to a septic field, the exact placement and dimensions of which are not known.
12. Second, Respondent relies on its characterization of the limited scope of the waiver from park rule 5.E granted to Complainant at the time she purchased her home as justifying the requirement that the addition be removed in connection with the projected replacement of the unit.
13. Third, Respondent argues that Rule 5.E governs this transaction, in that Ms. Hoy is, in fact, selling her manufactured housing unit, by trading it for value to a dealership in connection with her purchase of a new housing unit. Thus, Respondent contends, Ms. Hoy is obligated by the language of the rule to remove her addition in connection with any replacement transaction.
14. In support of this position, Respondent testified and submitted a supporting affidavit by Glen Gidley, the owner/operator of Salem Manufactured Homes, that the park has regularly required manufactured housing owners to remove non-mobile additions upon replacement of their homes on-site.
15. The Board is not persuaded by Respondent's argument regarding the dimensions of the proposed replacement housing unit. Presumably, Respondent has the authority and

capacity to regulate placement of the projected unit on the lot so as to alleviate any problem of access to septic fields, water pipes or electrical wiring posed by the new unit's dimensions. However, any impediment to access presented by the non-mobile addition already exists and is not going to be exacerbated by the additional width of a new housing unit.

16. Therefore, the Board rejects any argument that the addition must be removed for any health or safety reason, or for reasons related to convenient or effective maintenance or repair of systems maintained by the Respondent as operator of the park.

17. In the absence of any clear practical justification for enforcement of Rule 5.E in this case, the Board looks to whether the Respondent has a clear legal right to insist on removal of the addition under the park rules; and whether exercise of that right is reasonable under the circumstances presented.

18. Here, the Respondent's argument that replacement of a manufactured housing unit is tantamount to sale of the unit, thus triggering Rule 5.E, is somewhat persuasive and is supported by long practice, as set forth in Mr. Gidley's affidavit.

19. At the same time, the Board notes that the phrase "sale" in Rule 5.E may most fairly be read to describe an actual sale of a manufactured housing unit by a resident to a new resident. To construe that phrase, as Respondent argues, to embrace replacement of a manufactured housing unit on site by a single owner may be technically accurate, but is not necessarily a reading which a reasonable resident would expect without further information.

20. Moreover, the analysis in this case is complicated by the unwritten waiver of Rule 5.E granted by the park to the Complainant regarding her structure at the time she purchased

her housing unit. Complainant testified that she relied on her understanding of the waiver as unlimited in scope in purchasing the home. On the record before it, the Board finds this reliance reasonable and is not willing to overturn it in the absence of unambiguous language in the park rules or a memorialized agreement to the contrary.

21. Here, the Board finds that Rule 5.E's language is sufficiently ambiguous as to raise a reasonable question regarding its applicability to the situation at hand.

22. In addition, Respondent failed to memorialize the terms of the waiver in writing. For that reason, the Board is unwilling to adopt a narrow construction of the waiver which would adversely affect Complainant some eight years after the waiver was granted.

Therefore, the Board rules that, on the facts presented, application of Rule 5.E by the park to require Complainant to remove her non-mobile addition upon replacement of her home is unreasonable.

**ORDER**

THEREFORE, the Board hereby Orders Respondent to cease any attempt to require Complainant to remove her non-mobile addition in connection with the projected replacement of her home.

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 E. Quast  
Linda J. Rogers

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Rita A. Hoy and Doreen O'Clare and Joyce V. Babaian, Kachadorian Mobile Home Park, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Anna Mae Twigg, Clerk  
Board of Manufactured Housing

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