

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Ellen Walker and Arna Thibeault)	
Complainants)	
)	Docket no. 005-95
v.)	(on remand from Superior Court)
Theresa Desfosses d/b/a)	
Hillcrest Estates MHP)	

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. Ellen Walker was at all times relevant to this matter, a lawful tenant of the Hillcrest Estates MHP, a manufactured housing community located in Portsmouth, New Hampshire.
2. Arna Thibeault was at all times relevant to this matter, a lawful tenant of the Hillcrest Estates MHP, a manufactured housing community located in Portsmouth, New Hampshire.
3. Hillcrest Estates MHP (“the park”) is a manufactured housing community located in Portsmouth, New Hampshire.
4. Theresa Desfosses is the owner and operator of Hillcrest Estates MHP. For purposes of clarity, Ms. Desfosses and the park shall be treated in this Order as a unified entity and shall be identified as “Respondent.”

5. Philip Desfosses is Theresa Desfosses' brother. In addition to serving as counsel for Ms. Desfosses in this matter, Attorney Desfosses also lives in a non-manufactured home at the park and serves as manager for the park.

ISSUES PRESENTED

6. In this matter, Complainants seek a determination with respect to the following issues:
 - a) Whether Respondent has charged or attempted to charge Complainants Walker and Thibeault for an upgrade to the electrical system at the park in violation of RSA 205-A:2, IX; and
 - b) Whether Respondent has failed to provide Complainants Walker and Thibeault with the name, address and telephone number of a manager or agent who resides within 10 miles of the park and otherwise conforms to the requirements of RSA 205-A:2, X.

PROCEDURAL HISTORY

7. This matter originally came before the Board for hearing on January 19, 1996. On April 26, 1996, the Board rendered a decision in which it found, inter alia, for the complainants with respect to both items listed in paragraph 6 above. A Motion for Rehearing having been denied and Appeal to the Superior Court timely taken, the Respondent and the Board stipulated on August 27, 1998 that the case should be remanded to the Board for de novo hearing. A prehearing conference was held on December 7, 1998 for the purpose of narrowing issues, and this matter was scheduled to go forward for evidence and testimony with respect to the two issues listed above.

FINDINGS OF FACT AND RULINGS OF LAW

8. At hearing, all parties stipulated to the facts as found at the original hearing of this matter. Notwithstanding said stipulation, the Board will briefly recite the facts which it deems relevant to

its findings, rulings and Order herein. To the extent that there is any inconsistency between facts recited in this Order and facts recited in the 1996 Order, this Order shall control.

A. Claim Under RSA 205-A:2, IX

9. Complainant's first substantive claim involves Respondent's assertion that residents are or should be responsible for the costs of installing an upgraded electrical wiring system which runs from their external connection box to their homes by underground conduit.
10. The parties agree that the electrical system servicing the park is owned by the park; and that maintenance of the system -- at least to the external connection box -- has traditionally been understood by all parties to be the responsibility of the Respondent.
11. The parties further agree that, until 1995, in the older section of the park in which Ms. Walker and Ms. Thibeault reside, connection boxes were placed relatively close to Complainants' units and electrical wires running between the connection box and the Complainants' units were aboveground.
12. At all times relevant to this matter, Hillcrest Estates Rules and Regulations Section IV(C) ("Responsibility For Repairs") stated that the "community is responsible only to the fuse box directly below the meter. All electrical cables from your home to this fuse box directly below the meter is (sic) your responsibility."
13. In or about 1995, Respondent undertook to upgrade the electrical system servicing the area in which Complainants reside. In connection with this upgrade, Respondent buried the main electrical wiring, repositioned connection boxes on poles situated at a distance of between 20 and 28 feet from the Complainants' homes, and installed the connection wiring between the fuse box and the homes in underground conduits.

14. Thus, the effect of the upgrade with respect to the Complainants' homes was to change an aboveground system with wiring running a short distance from a connection box to the residents' units to an underground system in which the underground link between the connection box and the unit extends for a distance of more than twenty feet.¹
15. The work involved in modifying the connection between the connection box and the Complainants' homes includes installation of service breakers at the connection pole, excavation and burial of plastic conduits under the unit owner's lots, and running wires through the conduits to the meter box at the outside of the Complainants' homes.
16. In the case of Ms. Walker, the Board accepted evidence that the cost of the work listed above was \$320.00. *See, David Kramer Electric, LLC, QUOTATION, Complainant Exhibit C.*²
17. RSA 205-A:2, IX forbids a park owner from charging or attempting to charge tenants "for repair or maintenance to any underground system, such as oil tanks, or water, electrical or septic systems, for causes not due to the negligence of the tenant or transfer or attempt to transfer to a current tenant responsibility for such repair or maintenance to the tenant by gift or otherwise of all or part of any such underground system."
18. The question thus posed is whether, by converting the electrical system to an underground configuration, Respondent has created an "underground system" subject to RSA 205-A:2, IX, such that the park may not charge Complainants for its repair or maintenance.

¹ There was considerable disagreement between Ms. Walker and Respondent over whether the placement of the connection boxes at a distance from the home was instigated by Public Service of New Hampshire or by the Respondent. The Board finds that resolution of this issue is not necessary to the rationale of its decision. and so makes no finding with respect to this issue.

² Prior to the hearing, Respondent and Ms. Walker agreed to have the work in question performed for safety reasons. Respondent absorbed the cost of the work, subject to the decision of this Board with respect to this matter.

19. The Board answers this initial question affirmatively. The Board finds that RSA 205-A:2, IX, is a statute designed for the protection of tenants and unit owners. Such protection is needed because underground systems are generally beyond the control of tenants, and because their repair and maintenance can be both complex and expensive.
20. Accordingly, the Board finds that the statute's purpose is best served by broadly construing its scope to include any system which, like the reconfigured electrical system in the park, is substantially positioned underground. The Board further reasons that the plain language of the statute must apply to at least those portions of any such system that do in fact run under the ground.
21. Here, Respondent is attempting to assign to tenants the costs of upgrading the electrical connection between a repositioned connection box and their units. These costs relate directly to the placement of the wiring underground, and are increased both by the placement of the connection poles at a distance from the homes and by the very fact that the wiring now runs underground.
22. The Board believes that it would be contrary to the purpose of the statute to suggest that conversion of an existing above-ground electrical system to an underground system falls outside the scope of the statute. To the contrary, such action constitutes repair or maintenance to a system, which is, by virtue of the repair or maintenance, unquestionably an underground system.
23. Respondent may argue, however, that its park rules establish that the tenant's responsibility for costs associated with the electrical system include the portion of the system which runs between the connection box and the home. *Hillcrest Estates Rules and Regulations, Section IV(C)*

24. The Board accepts that this rule may have reasonably apportioned costs associated with the park's electrical system as an above-ground installation -- that is, prior to the 1995 upgrade of the electrical system.
25. However, the rule cannot override the plain language of the statute when the system is converted to an underground configuration. Rather, the system now comes directly within the scope of RSA 205-A:2, IX, proscription against charging tenants for repairs to underground systems. Accordingly, to the extent that the park rule is now inconsistent with the statute, the statute controls.
26. Accordingly, the Board finds that, on the facts presented, Respondent is attempting to charge tenants for the cost of repair or maintenance to an underground system. Such an attempt violates RSA 205-A:2, IX.

B. Claim Under RSA 205-A:2, X

27. Ms. Walker's further claim arises under RSA 205-A:2, X. That statute prohibits park owners from failing to provide each tenant with the name, address and telephone number of a manager or agent who resides within ten miles of the park if the park owner does not reside within 25 miles of the park.
28. There is no dispute that the park owner, Ms. Desfosses, resides in Maine, more than 25 miles away from the park itself.
29. At the same time, there was extensive testimony to the effect that Philip Desfosses, her brother and agent, has for years resided in close proximity to the park, and currently has taken up residence in a family home within the park.

30. In addition, Mr. Desfosses testified that he is typically available through his law office in Portsmouth.
31. Ms. Walker testified, on the other hand, that she has had difficulty reaching Mr. Desfosses on short notice. Although there is an answering machine at his home, Ms. Walker testified that messages left there occasionally go unanswered for 24 to 48 hours. She also testified that she has had interactions with the staff at Mr. Desfosses' law office which indicates that the staff is not well versed in, or receptive to receiving complaints regarding the park at the law office. Mr. Desfosses disputes that calls to his home go unreturned. He admits, however, that his office staff may on occasion be less than fully versed in their assigned role of receiving manufactured housing park complaints in addition to their ordinary law office duties.
32. The Board finds that there is sufficient dispute with regard to this matter that it need not make any definitive finding of violation by the park. However, the Board does find persuasive Ms. Walker's testimony that Mr. Desfosses' office staff is not always prepared for or capable of responding to manufactured housing park complaints in a manner consistent with RSA 205-A:2, X.
33. For that reason, the Board suggests that Mr. Desfosses takes steps to insure that, to the extent his office is designated as a point of contact for manufactured housing park complaints, his staff be made fully aware of this role and trained to respond appropriately to calls from residents.

ORDER

WHEREFORE, the Board issues the following Order:

A. The park shall bear the cost of all repair and maintenance to the park's electrical system with respect to the Complainants' lots, specifically including any underground wiring running from a connection box to the Complainant's meter box.

B. Ms. Walker is and shall be under no obligation to reimburse the park for the sum of \$320 for installation of underground wiring between her connection box and her unit.

C. The park is enjoined from asserting any right to payment with respect to said \$320 or from assessing that cost to her in the form of rent or other fee.

D. Ms. Walker is and shall be responsible for any and all costs associated with the extension of wiring from or connection between her meter box and the interior of her home.