

CORRECTED COPY

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Jason Brown and Valerie Lucier)	
Complainants)	
)	
)	
v.)	Docket No. 002-00
)	
)	
George Hast and Sherryland Park, Inc.)	
Respondent)	

Hearing held on June 19, 2000 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. Sherryland Park MHB (“Sherryland Park” or “the park”) is a manufactured housing community located in Tilton, NH. Sherryland Park, Inc. is the owner and operator of Sherryland Park, and George Hast is owner and sole shareholder of Sherryland Park, Inc. For purposes of clarity, the park and its current management shall be referred to in unitary fashion as “Respondent.”
2. Jason Brown and Valerie Lucier were and are at all times relevant to this matter, lawful residents of the park. However, for record purposes, Mr. Brown is the listed owner of the manufactured housing unit in which they reside. He is also the signatory and party-in –interest of the ground lease for their home from the Respondent.

ISSUE PRESENTED

Complainants seek a determination by this Board of the following issues:

- a. Whether the Respondent may charge them for repairs to a septic system on a lot adjacent to theirs on the basis of Respondent's contention that damage to that system was caused by Complainants' negligence? RSA 205-A:2, IX;.
- b. Whether the amount which Respondent has assessed against Complainants for repairs to the adjacent septic system is reasonable? RSA 205-A:2, IX.
- c. Whether the Respondent has failed to disclose to Complainants, in writing and a reasonable time prior to their entering into a rental agreement, all terms and conditions of their tenancy, including rental, utility, entrance and service charges? RSA 205-A:VII. And
- d. Whether the Respondent is reasonably available in person, by means of telephone, or by telephone recording device checked at least twice daily, to receive reports of the need for emergency repairs in the park? RSA 205-A:2, X (a).
- e. Whether Respondent failed to provide them with a written copy of park rules? RSA 205-A: 2, XI.

PRELIMINARY RULING

Respondent's Motion To Strike Conditional Default And to Allow Late Answer

3. This matter was originally filed by Complainants on April 17, 2000. The Complaint was duly served on Respondent, through Mr. Hast, by certified mail.
4. Mr. Hast failed to respond in any way to the Complaint and an Order of Conditional Default was entered by the Board on May 8, 2000.
5. On or about June 14, 2000, Mr. Hast, through counsel filed a motion to strike conditional default and to allow late answer; and filed with that pleading its response to the Complaint.

6. In his Motion, Mr. Hast suggests that his failure to respond to the Complaint or to otherwise adhere to the rules of this Board was based on his “good faith” belief “that the complaint was made to harass him due to other legitimate decisions which he made as park manager.” *Respondent’s Motion* par. 1.
7. In testimony before the Board, Mr. Hast elaborated on this statement by admitting that, when he received the Complaint, he simply noted that it had been filed by Mr. Brown and promptly tossed it into a drawer, where it languished until the Board issued its default order.
8. The Board rejects Mr. Hast’s self-serving contention that his actions were taken in good faith or with any reasonable justification.
9. Rather, the Board finds that Mr. Hast deliberately chose to ignore the Board and state law, which establish clearly the obligation of a park owner to respond to all complaints in a timely fashion. This obligation does not, of course, pertain only to those complaints which park management deems worthy of response.
10. Notwithstanding his unjustified conduct at the outset of this matter, it does appear that Mr. Hast belatedly chose to retain counsel and that his counsel has taken appropriate steps to bring his client into compliance with the law and administrative regulations which govern appearances before this Board. Through counsel, Respondent did file a response to the complaint sufficiently prior to the hearing as to minimize potential prejudice to the Complainants. *See Respondent’s Motion*, par. 4.
11. In the view of the Board, Mr. Hast’s decision to willfully ignore the Complaint and the Board’s clearly delineated rules would support a default judgment in this matter. Nevertheless, in view of Counsel’s efforts to ameliorate his client’s failure to adhere

to state law and the Board's rules, and in the absence of demonstrable prejudice to the Complainants, the Board finds that it is appropriate to strike the default judgement and to permit Respondent to advance its defense in this matter.¹

FINDINGS OF FACT

12. Mr. Brown and Ms. Lucier moved into the park on or about August 8, 1999, through purchase of a manufactured home from a third-party vendor, and transportation of that home to the park by the vendor.
13. Mr. Brown and Ms. Lucier's home was installed on lot 35.
14. The septic field for Lot 35 is linked with fields servicing Lots 31 and 33 through common piping and a common distribution box.
15. Initially, Complainants arranged with Respondent to have all utility hookups and skirting installed by Mr. Hast for a fee.
16. Almost immediately however, Mr. Hast and Mr. Brown came into conflict. Although the Board did not entertain testimony as to the substance of the conflict, all parties agreed that Mr. Brown terminated any employment or contractual relationship with Mr. Hast with respect to installation of his manufactured home; Mr. Hast repeatedly, though without specificity or corroboration, referred to Mr. Brown's attitude as "threatening."
17. Whatever the reality of the conflict between Mr. Brown and Mr. Hast, the parties are in agreement that Mr. Hast was instructed to cease all work on installation of Mr. Brown and Ms. Lucier's manufactured home; and that he did so.

¹ Notwithstanding this ruling, Mr. Hast should take note that the Board will be unlikely to permit him similar latitude in the future. He is cautioned therefore to adhere strictly to the procedural requirements and timetables set out in the Board's rules in any future appearance before the Board pursuant to RSA 205-A.

18. As an apparent result of the termination of Mr. Hast's involvement in the installation of Brown's motor home, one specific aspect of the installation was not completed. Weather-wrapping of the exterior water pipes connecting the interior plumbing of the Complainants' home to the park's underground water system did not occur at the time the home was installed.
19. Respondent does not contest Complainant's contention that no park rules were provided to complainants when they first moved into the park.
20. In fact, Respondent, under order of this Board in a prior unrelated case, did not provide Complainants with park rules until approximately May 20, 2000, when Respondent promulgated rules to all park residents.
21. In or about February 2000, the pumping apparatus servicing Respondent's water system experienced a failure, which resulted in loss of water flow to several homes, including that of the Complainants.
22. As a consequence of this incident, Complainants' exterior pipes froze. According to Mr. Hast, no other tenant experienced such freezing. This fact made Mr. Hast aware that the water pipes connecting to the Brown/Lucier home had not been insulated.
23. Mr. Hast concluded from this evidence that, at various times during the winter, Complainants had been running water in their home in order to avoid freezing of standing water in their access pipes.
24. On or about March 2, 2000, the septic field servicing lot 31 backed up. Mr. Hast responded to this incident by dispatching an employee to assist him in servicing the leach field. This process was complicated by the fact that Mr. Hast does not possess plans for all septic fields located in the park. Accordingly, Mr. Hast and his

employees spent approximately seven hours in determining the exact location of the leach field servicing lot 31 and in finding the precise location of any blockage.²

25. Mr. Hast testified that he determined the cause of the failure of the lot 31 septic field to be the presence of excessive water in the system, which had frozen into several inches of standing ice.

26. Mr. Hast concluded from this discovery that the Complainants were continuing to run water in their home to avoid freezing of water in their uninsulated pipes.

27. On or about March 14, 2000, Mr. Hast made an ill-advised attempt to verify his suspicions by causing the water to Complainants' home to be turned off overnight without notice.

28. Complainants responded to this action by seeking and obtaining a court order enjoining Mr. Hast from further interruption of water service to their home.

29. Following this incident Complainants secured a test of their system by the Town of Tilton's health officer. The officer reported that, with all water utilities and faucets turned off, the Complainant's system showed inherent leakage of about 80 drops per minute.

30. On March 22, 2000, Mr. Hast sent a notice to the Complainants and to the residents of Lot 31 instructing them not to use their water utilities, such as dishwasher and laundry, because they had, in Mr. Hast's' opinion, subjected their system to misuse.

² The Board intends no criticism of Respondent based on its lack of knowledge of the location and dimensions of the leach field. The Board notes that it is not uncommon for owners of older parks, such as Sherryland, in which septic fields were installed more than twenty years ago prior to today's extensive regulatory scheme for installation of such systems, to be without comprehensive plans of all septic field locations.

31. Mr. Hast suggested to Complainants that they connect their water utilities to a dry well on their land. However, he has admitted in testimony that such usage is illegal under current Department of Environmental Services regulations.
32. On March 30, 2000, Respondent sent a bill to the Complainants for repairs to the Lot 31 septic field in the aggregate amount of \$2043.75. Included in this bill were three pumpings of the system by a commercial service on March 3, 6 and 8, 2000 at a billed cost of \$180.00 per service for a total pumping cost of \$540.00 and the cost of enzymes associated with that service of \$18.75.
33. The remaining costs asserted in the bill constitute a series of charges for work allegedly done by Mr. Hast and an assistant at a constant rate of \$55.00/hr. for each man. Mr. Hast provided no documentation to verify the reality of these charges. However, the charges included such items as 11 hours of labor costs attributed to Mr. Hast and a “second man” in locating the lot 31 septic field, an hour of Mr. Hast’s time spent in illegally shutting off Complainants’ water on March 13, 2000; and two hours spent checking the Complainants’ tank with the town health officer in the wake of his illegal shut-off of the water system.
34. Complainants admit that, in the wake of the initial freezing of their pipes in February, they did run water in their home for approximately three days, by opening their sink taps slightly. According to Complainants this was necessary to avoid further pipe freezing until they were able to have their pipes taped by a plumber. This occurred approximately three days after the freezing incident in February.

35. Complainants presented the Board with evidence in the form of a plumber's bill dated January (sic) 18, 2000, which indicates that service for frozen pipes occurred in or about February 2000.³
36. Complainants deny Mr. Hast's contention that they have habitually run water in their pipes.
37. However, in testimony, Mr. Brown alluded to the fact that, when he was younger and living at his parents' home, his family did run water from their faucets on cold nights to prevent pipe freezing.
38. Finally, Complainants testified that Mr. Hast is unavailable and unresponsive to them with respect to emergency conditions, and further fails to respond to any other matter raised by them. They point, in particular, to his refusal to acknowledge their water shut off on March 13, 2000, which in turn necessitated their emergency application for relief to district court.
39. Mr. Hast contends that he is in compliance with all applicable law controlling his emergency response availability, because he has an answering machine which he monitors for calls three times a day.
40. However, he admits that he screens calls to his emergency response line, and chooses not to respond to Mr. Brown because he believes that Mr. Brown is harassing him.

³ Although the bill is dated January 18, 2000, the Board finds that the initial frozen pipe incident occurred in February 2000, as recalled by Mr. Hast and Mr. Brown. The bill appears to be dated in error as to the month.

Rulings of Law

RSA 205-A: 2, XI

41. Complainants' contention that Respondent failed to provide them with park rules at the inception of their tenancy is sustained on the evidence before the Board that no copy of the park rules was provided to them until approximately May 20, 2000, when Mr. Hast finally complied with prior orders of this Board to promulgate rules.

42. However, in view of fact that Respondent has complied with the Board's order with regard to its rules, the Board views this issue as moot and will take no action with respect to it.

RSA 205-A:VII

43. For the reasons stated in paragraph 41, Complainants' contention that Respondent has failed to disclose to Complainants, in writing and a reasonable time prior to their entering into a rental agreement, all terms and conditions of their tenancy, including rental, utility, entrance and service charges in violation of RSA 205-A:VII, is also sustained.

44. However, in view of fact that Respondent has complied with the Board's order with regard to its rules, the Board views this issue as moot and will take no action with respect to it.

RSA 205-A:2, IX

45. Complainants contend that Mr. Hast's charge to them of more than \$2,000 in repair costs for the Lot 31 septic system is both illegal on its face and unreasonable in amount. RSA 205-A:2, IX.

46. Under RSA 205-A:2, IX, park owners are forbidden to charge “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[.]”
47. Here, Mr. Hast contends that Complainants were negligent in that they allowed excessive amounts of water to run into the Lot 31 septic field in order to keep their uninsulated pipes from freezing during the winter months. It is Mr. Hast’s contention that this practice led directly to the freezing of water in the septic field, and the field’s consequent blockage and overflow.
48. The Board finds that Mr. Hast has not demonstrated the validity of his contention that Complainants have engaged in habitual running of water in their home in an effort to avoid freezing pipes.
49. However, the Board is persuaded by the fact that the Complainants’ entry pipe did in fact freeze when water flow to their home was interrupted in February, 2000, and by Mr. Brown’s admission that he was aware that running water could compensate for a lack of insulation on exterior water pipes.
50. Based, in part, on it’s view of the credibility of the parties, the Board find that, more likely than not, Complainants may well have been aware that their pipes were not well insulated prior to mid February, and chose to run water on occasions in order to avoid freezing problems which could be caused by standing water in an uninsulated pipe.
51. The Board finds that this practice, more likely than not, contributed to the problems with the Lot 31 septic field in March. Therefore, the Board finds that Complainants were negligent with respect to the operation of their septic system so that

Respondent's assertion of charges for repair of this septic system based on that negligence was not, in and of itself, unreasonable or a violation of law. RSA 205-A:2, IX.

52. The Board's finding that the charge asserted by Respondent against the Complainants for repairs to the Lot 31 septic system is not inherently illegal under RSA 205-A:2, IX does not terminate the Board's authority over this matter. Under RSA 205-A:27, I, the Board has broad powers to "hear and determine matters involving manufactured housing park rules, specifically RSA 205-A:2, RSA 205-A:7, and RSA 205-A:8."
53. Accordingly, the Board is empowered to review the reasonableness and legal propriety of the specific charges asserted by Respondent against Complainants for their alleged negligence. RSA 205-A:27, I.
54. Here, the Board finds that the charges assessed by Respondents against the Complainants, as set out in the submitted bill, are unreasonable, unnecessarily punitive and, critically, assert a claim for payment for matters which are no proximately related to Complainants' negligence.
55. Specifically, there is no justification for charging the Complainants for time spent by Mr. Hast, or any other employee, in attempting to locate the affected septic field.
56. Similarly, Mr. Hast' attempt to charge the Complainants for his illegal shut off of their water is preposterous and clearly does not constitute compensable charges related to the repair of the Lot 31 septic field.
57. There is also no clear correlation between the charge asserted for Mr. Hart's voluntary participation in the town's inspection of the Complainants' water system and the actual repairs to the Lot 31 septic system itself.

58. The Board further finds that Respondent has provided no documentation or corroboration to establish that any of the claimed checks and self-pumping of the system listed as occurring on March 6, 9, 13, 14, 15 or 16, ever actually occurred, or, if they occurred, extended for the time periods claimed, or were necessary to the repair of the system; similarly, there is no evidence that all services attributed to a commercial pumping service occurred, or were necessary to the repair of the system.
59. Accordingly, the Board finds that none of the asserted charges can be reasonably asserted by the park with respect to the repair of the Lot 31 septic system.
60. Therefore, the Board disallows as unreasonable all charges, asserted by the Respondent against the Complainants based on repairs to the Lot 31 septic system.

RSA 205-A:2, X (a)

61. Finally, Complainants contend that Respondent does not have in place an adequate or reasonable system for responding to emergencies or other tenant issues.
62. The Board finds that Respondent appears to be in technical compliance with the statute, in that it does have an answering machine which is consulted periodically by Mr. Hast. The Board has no reason to disbelieve Mr. Hast's statement that he checks that answering machine at least three times daily.
63. However, Mr. Hast's further testimony indicates that he screens such calls and responds only to those that he deems worthy of response. In particular, he chooses not to respond to telephone calls from Mr. Brown or Ms. Lucier because he believes that they are trying to harass him.

64. The Board finds this statement to be consistent with Mr. Hast's conduct regarding Mr. Brown and Ms. Lucier's complaint to this Board, which he ignored for several weeks before bothering to submit a reply. *See* above, paragraphs 3 - 11.
65. The Board further finds that Mr. Hast's demeanor before the Board, which was combative and marred by gratuitous slurs regarding Complainants' marital status, and otherwise displayed a level of anger inappropriate to the nature of the proceeding, supports the Board's view that Mr. Hast's temperament and conduct is not conducive to reliable use by his tenants of his emergency telephone service.
66. The Board finds that Mr. Hast's willful refusal to respond to complaints from tenants which he does not deem worthy of his attention, is inherently unreasonable.
67. Accordingly, the Board finds that, as operated and with respect to Mr. Brown and Ms. Lucier, Sherryland Park's emergency response system does not make park management reasonably available to its tenants and is therefore in violation of RSA 205-A:2, X (a).

Order

WHEREFORE, the Board issues the following order:

1. The Respondent is ordered to establish an emergency response system under which management is reasonably available to all tenants. RSA 205-A:2, X (a).
2. Respondent is ordered to respond to any and all requests for emergency service by Mr. Brown and/or Ms. Lucier within no less than 24 hours of being placed, delivered or communicated to him, orally or in writing by Mr. Brown or Ms. Lucier. RSA 205-A: 2, X (a).

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:

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

CERTIFICATION OF SERVICE – CORRECTED COPY

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Jason Brown & Valerie Lucier, 35 Sherryland Park, Tilton, NH 03276, George Hast, Sherryland Park, Inc., School St., Tilton, NH 03276 and Joseph Dubiansky, Esq., 8 Raymond Rd., Deerfield, NH 03037

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Docket 002-00 Jason Brown & Valerie Lucier v. George Hast (Sherryland Park)

STEPHEN J. BAKER

RICHARD R. GREENWOOD

HON. ROBERT J. LETOURNEAU

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