

THE STATE OF NEW HAMPSHIRE  
BOARD OF MANUFACTURED HOUSING

Rachel Comeau	)	
Complainant	)	
	)	
v.	)	Docket No. 007-00
	)	
Greenville Estates Cooperative, Inc.	)	
Respondent	)	

Hearing held on October 2, 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.

**I. Parties**

1. Rachel Comeau (“Complainant”) is and was at all times relevant to this matter, a lawful tenant of the Greenville Estates Tenants Cooperative, a cooperative manufactured housing community located in Greenville, New Hampshire.
2. Greenville Estates Tenants Cooperative (“the park”) is a manufactured housing community located in Greenville, New Hampshire.
3. Greenville Estates Tenants Cooperative, Inc. (the Co-op”) is a cooperative association the members of which own all ground lots in the park. The Co-op, through a membership council and appointed officers, manages the business of, and otherwise operates the park. For purposes of clarity, the park and the Co-op shall be treated in this Order as a unified entity and shall be identified as “Respondent

## **II. Issue Presented**

4. Complainant seeks a determination by this Board of the following issue:

Whether Park Rule 1(d), which imposes on tenants all legal fees relating to the tenant's manufactured housing unit is unreasonable and in violation of RSA 205-A:2 as applied to assess legal fees against her for costs associated with unsuccessful eviction actions against her

## **III. Motion To Dismiss**

5. Initially Respondent seeks to dismiss the Complaint on the grounds that the Board lacks jurisdiction to hear and determine the issue presented because (i) the issue of attorney's fees is not specifically listed under RSA 205-A:2 as among the issues subjected to the Board's specific jurisdiction; and (ii) to the extent that the attorney's fees at issue are related to an eviction action, on the ground that the Board is without jurisdiction over evictions. RSA 205-A:27, II.(Supp. 2000).

### **A. General Authority of Board**

6. 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.

7. Respondent correctly points out that no specific provision of RSA 205-A:2, 7 or 8 deals directly with the issue presented in this case – i.e. the propriety of asserting legal fees attendant on an unsuccessful eviction action.

8. However, as argued by Complainant, the broad language of RSA 205-A:2, XI does provide that all tenants are entitled to notice from park owners regarding their rights as tenants. That mandated notice includes the statement: "The Law Requires All Rules of This Park To Be Reasonable." The Notice section of RSA 205-A:2, X further provides

that “You May Also Be Evicted For Not Following The Rules of The Park, But Only If The Rules Are Reasonable....”

9. The question posed therefore, is whether the broad statement establishing that the law requires manufactured housing park rules to be reasonable, although nominally placed in a mandatory notification section of the statute, nevertheless confers on the Board authority to review the reasonableness of park rules which are not otherwise specifically addressed in RSA 205-A:2, 7 and 8.

10. In construing the Board’s jurisdiction, the Board notes that it was created as a forum for resolution of disputes between manufactured housing park tenants and management, and to serve as an alternative to eviction actions and Superior Court actions under RSA 358-A (Consumer protection Act), which provides both park management and tenants the benefits of an expeditious, relatively low-cost adjudicatory hearing before a specialized board with experience and knowledge of the realities of life in manufactured housing parks.

11. The Board also takes judicial notice of the fact that manufactured housing communities in New Hampshire often serve low-income individuals, for whom the costs and complexities of Court actions may be prohibitive and serve as a disincentive to assertion of their rights in a legal forum.

12. For these reasons, the Board believes that it is bound to construe its jurisdiction reasonably broadly, within the terms of its statutory authority to hear and determine disputes between tenants and manufactured housing park management, and specifically, the reasonableness of park rules.

13. In this context, the Board views the language of RSA 205-A:2, XI, as more than merely exhortatory, but rather as restating and establishing within a statutory context the elementary principle that rules governing the conduct of life in a manufactured housing park must be reasonable to be enforceable.

14. Therefore, to the extent that the Board is empowered to hear and determine disputes involving manufactured housing park rules, it is inherently empowered to determine whether such rules, as enacted or applied, are reasonable; and to the extent that this principle is set forth in general terms within the body of RSA 205-A:2, XI, the Board's jurisdiction under RSA 205-A:27, I is broad enough to support an inquiry into the reasonableness of the rule at issue here.

15. Respondent's further argument – that the “reasonableness” language of RSA 205-A:2, XI only incorporates the independent legal requirement of RSA 205-A:4, V, that conditions eviction for rules violations on the reasonableness of rules does not persuade the Board for two reasons.

16. First, as a matter of statutory construction, RSA 205-A:2, XI contains two separate recitations of the principle that park rules must be reasonable. The second of these two references explicitly incorporates the RSA 205-A:4, V standard that tenants may only be evicted for violation of reasonable rules. However, the statute also contains the broader statement that “The Law Requires All Rules of This Park To Be Reasonable.”

17. This first statement of the principle that all park rules must be reasonable is not, on its face, limited to eviction actions or to the standard for such actions under RSA 205-A:4, V.

18. Under standard canons of statutory construction, the Board should not presume that separate and distinct statutory language is merely surplusage. Accordingly, the Board views the first, broad statement that park rules must be reasonable as establishing a general principle of law by which the Board must be guided in hearing and determining disputes involving rules. RSA 205-A:27, I (Supp. 2000).

19. Moreover, as a matter of public policy, it is inconsistent to assert that, if a rule is unreasonable in the context of an eviction action, it is otherwise enforceable against tenants, and cannot be challenged before this Board.

20. Therefore, the Board rules that it has jurisdiction to hear and determine the matter before it on the basis of its general authority under RSA 205-A:27, I, under the standard restated and established by RSA 205-A:2, XI, that rules in manufactured housing parks must be reasonable to be enforceable.

**B. RSA 205-A:27, II**

21. Respondent's second ground for dismissal is based on the contention that RSA 205-A:27, II deprives the board of jurisdiction over evictions. Respondent argues that, because the legal fees at issue in the Complaint arose in large part in the context of one or more eviction actions, this Board has no authority to enter any order regarding those fees.

22. This argument does not take account of the specific and narrow language of RSA 205-A:27, II, which limits the Board's jurisdiction only "over evictions."

23. . By contrast, the same section of the statute limits the Board's jurisdiction over "any issues relative to rent or rental increases." RSA 205-A:27, II (Supp. 2000), thus effectively barring from examining any issue relating to the calculation or establishment of rents within a park.

24. The statute's limitation on the Board's authority over evictions is not so broadly drawn; it extends merely to "evictions" without any broadening, "issues relating to" language. The clear implication is that the drafters intended to establish that the Board does not have concurrent jurisdiction with the district court over eviction actions under RSA 540, but did not intend to divest the Board of authority over "all issues" in a manufactured housing park dispute merely because the dispute could also be the subject of, or was related to, an eviction action.

25. Accordingly, the fact that the legal fees at issue in the Complaint arose in part as a result of an eviction action by the park against the Complainant does not turn the matter before this Board into an "eviction" action beyond its jurisdiction under 205-A:27, II.

26. The eviction actions discussed in this case were properly within the jurisdiction of the District Court and, indeed, were resolved in that forum. Nevertheless, the reasonableness of a park rule requiring payment of all legal fees pertaining to a unit and generated in an eviction action, notwithstanding the outcome of the action, is properly within the jurisdiction of the Board pursuant to RSA 205-A:27.

#### **IV. Findings of Fact**

27. This matter involves the application by park management of Section 1(d) of the park rules to Complainant.

28. Section 1(d) of the rules reads: "The owner of the Mobile home will be responsible for all Attorney fees pertaining to that residence." (emphasis added)

29. From the record in this matter, it appears that Complainant and the park have been involved in an ongoing series of disputes dating back to at least 1997.

30. The park has assessed legal fees against the Complainants at various times in the course of these disputes

31. The fees asserted against Complainants include attorney's fees for work performed on behalf of the Co-op by the firm of Hamblett & Kerrigan.<sup>1</sup> Also included were court costs associated with one or more legal actions filed against the Complainant. *See, Invoice, dated February 3, 2000, Complainant's Exhibit 6.*

32. At all times relevant to this matter, the park adopted the practice of accepting rental payments from the Complainant, but applying some or all of the rental payments first to the retirement of outstanding claims for legal fees, and then to rent. *Testimony of Rachel Comeau, Testimony of David Baldinelli.*

33. No provision of the park rules permit or authorize the park to apply rental payments first to attorney's fees and second to current or outstanding rental charges.

34. Or other necessarily, the result of this accounting practice has been to place Complainant's rental account in chronic deficit, while failing to retire the amount of claimed legal fees due and owing.

35. In September 1999, the park, through counsel served a Notice To Quit on the Complainant, asserting as the grounds for eviction Complainant's failure to pay all legal fees assessed against her.

36. In December 1999, the park voted to terminate Complainant's membership in the co-op, and, pursuant to park rules, to refund the Co-op's \$1,000.00 membership fee to her and to increase her monthly rental from the member amount of \$235.00 to the non-member rate of \$360.00. *Letter dated December 10, 1999, Complainant's Exhibit 7.*

37. In an action apparently entered into the co-ops books on or about February 25, 2000, the park applied the \$1,000.00 refund to Complainant's outstanding credit balance with the Co-op, thereby retiring all amounts claimed as due and owing from

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<sup>1</sup> There is no contention in this case that such fees were inappropriately or excessively billed

Complainant to the park. *Invoice*, Complainant's Exhibit 2., *Letter dated March 29, 2000*, Complainant's Exhibit 8.

38. As a result of this development, the park withdrew its claim and the Jaffrey-Peterborough District Court dismissed the park's pending eviction action against the Complainant by order dated February 11, 2000. *Order*, Complainant's Exhibit 9. The Court's Order stated: "Case dismissed – landlord has accepted rental payments after demand and intends to rely on RSA 540:9." *Id.*<sup>2</sup>

39. On March 6, 2000, , the park served another notice to quit on the Complainant, relying on RSA 540:9 and alleging that Complainant had failed to make timely payment of rent and utility arrearages and to pay liquidated damages six times during calendar year 1999. *Notice To Quit*, Complainant's Exhibit 2.

40. On May 19, 2000, the park served a further notice to quit on the Complainant, alleging a contemporaneous failure to pay rent.

41. On June 2, 2000, the park served yet another notice to quit on the Complainant, this time alleging failure to pay utility fees in the amount of \$289.40.

42. Eviction actions based on the March 6 and May 19 notices to quit matter went to what appears to have been a consolidated hearing on or about August 15, 2000. At hearing Complainant apparently raised as a counterclaim her contention that Rule 1(d) of the park's rules and the park's policy with respect to assessment of attorney's fees was illegal.

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<sup>2</sup> RSA 540:9 provides that no eviction action may proceed if the tenant cures a claimed arrearage in rental or other payments, but permits eviction if a tenant fails to make timely rental or other payments 3 times in a calendar year.



43. After hearing, the Court dismissed the park's application for a writ of possession under the March 15, 2000 notice to quit, and also disposed of Complainant's counterclaim with respect to Rule 1(d) as follows:

As of 3/15/00, when the notice to quit was served on the tenants, their statement of account showed a credit balance of \$28.00, which precluded their eviction for non-payment of any amounts. The writ is therefore dismissed, and no award is made. The Court denies the tenant's counterclaim, as it does not find Park Rule 1(d) in violation of RSA 205-A:2, XI, if applied in a reasonable manner.

*Order, Respondent's Exhibit 1*

44. The Court also dismissed the parks application for writ of possession under the May 19, 2000 notice to quit as follows:

As of 5/19/00, when the demand and notice to quit were served on the tenants, they were current in their payment of rent (without regard to legal fees which were not alleged as a basis for eviction). Consequently, the writ is dismissed, and no award of rent or costs is made.

*Order, Respondent's Exhibit 2*

45. A further hearing was held by the Jaffrey-Peterborough District Court on August 29, 2000 with respect to with respect to the June 2, 2000 notice to quit. After hearing, the Court awarded the park a writ of possession based on Complainant's failure to pay a utility charge of \$289.40, but stayed the writ until November 30, 2000. *Order, Complainant's Exhibit 1 and Respondent's Exhibit 3.*

46. On August 29, 2000, the park sent a letter to Complainant waiving late fees, asserting a demand for payment of rent in the amount of \$360.00 by September 5<sup>th</sup>, and containing the statement: "Also, legal fees that have been accruing for the last few months will be forthcoming from our Attorneys [sic] office. These too will need to be paid upon receipt of invoice, within 10 days." *Letter dated August 29, 2000, Complainant's Exhibit 10.*

47. The record in this matter indicates that \$1,451.00 in legal fees accrued between 8/30/99 and 8/01/00 .are currently asserted by the park against the Complainant. *Invoice*, Complainant's Exhibits 2 through 6.

48. Apparently included within these charges are amounts relating to an apparent eviction hearing <sup>3</sup>in Jaffrey-Peterborough District Court on September 21, 1999, and charges relating to a small claims court action in or about November, 1999. *Invoice*, Complainant's Exhibit 6.

49. No specific charge has currently been asserted against Complainant with respect to the two court hearings in Jaffrey-Peterborough District Court on August 15 and 29, 2000. Counsel for the park has represented that, although the park continues to assert a legal right to impose such charges, she has not been authorized by park management to attempt to collect such charges from the Complainant due, in part, to concerns that collection of such charges may prove unfeasible after Complainant has vacated the park. *Statement of Counsel in colloquy with Board Chairman.*

#### **IV. Rulings of Law**

50. It is generally the rule in New Hampshire that parties are not entitled to recovery of legal fees unless such an award is specifically provided for by statute, or is agreed to by parties to a contract or other agreement.

51. Here, Respondent relies on Rule 1(d) to assert a general right to attorney's fees from Complainant for any action taken by counsel with respect to her manufactured housing unit. In essence, Respondent takes the position that it is entitled to fees any time it turns to its attorney to deal with Complainant, whether or not that resort to counsel

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<sup>3</sup> The Record is unclear as to whether these specific charges were retired in connection with the February application of Complainant's membership fees to her outstanding accounts.

occurs in the context of a court or administrative action; and without regard to the outcome of any such action.

52. In other words, Respondent asserts that it is entitled to attorney's fees (and associated court costs) from Complainant with respect to any action taken against Complainant, whether the park wins or loses the underlying action.

53. By the same reasoning, Respondent would be entitled to assert a claim for attorney's fees for representation before this Board in this matter, without regard to the substantive ruling issued by the Board.

54. Thus, under the Park's interpretation of Rule 1(b), it could, as it has on at least three occasions, bring Complainant to Court on an eviction action, lose or otherwise have its action dismissed, and then charge Complainant for the costs of bringing the action.

55. Under the Park's interpretation of Rule 1(b), the Complainant could similarly be charged attorney's fees for *successfully* asserting her rights in a Complaint before this Board.

56. This Board is unaware of any statutory or case law authority for the proposition that a party may impose an enforceable claim for attorney's fees on the *prevailing* party in a court or administrative action.

57. The reason for this dearth of authority is self-evident. Such a rule, if upheld, would effectively preclude citizens from vigorously asserting legal rights, or contesting claims against them, because their liability for fees would rise in direct proportion to the vigor of their assertion or defense.

58. Accordingly, the Board rules that any rule which imposes legal fees on prevailing defendants or on successful litigants would be, as a general matter, against the public

policy of enabling citizens to assert their rights freely through access to the Courts and other tribunals of the state.

59. Respondent's argue that the inclusion of Rule 1(b) in the park rules, essentially insulates them against this reasoning by incorporating the provision into a "contract" or agreement among the members of the cooperative.

60. This argument fails to persuade the Board for two reasons.

61. First, the Board does not accept the proposition that a provision in park rules which, in essence compromises or causes waiver of a tenant's fundamental right of access to judicial process can be fairly characterized as a freely and knowingly agreed upon contract. See, RSA 205-A: 10.

62. Moreover, while the argument that Rule 1(b) has contractual force might have some merit with respect to co-op members, the Complainant stands in a different position after the termination of her membership. Since December 1999, Complainant has been merely a tenant of the co-op, subject to a non-member rental rate \$125.00 in excess of the member rate, and without any status to seek a change in the wording or the interpretation of the rules of the park.

63. Thus, at least after the termination of Complainant's membership rights, the park rules, and in particular Park Rule 1(d) more closely resemble a contract of adhesion than a contract freely entered into by Co-op members.

64. Contracts of adhesion are, of course, subject to greater scrutiny by judicial or administrative bodies than are freely negotiated contracts between parties of equivalent bargaining power., and are not generally enforceable in defeasance of fundamental rights or clear public policy.

65. For this reason, the Board rules that Rule 1(d) of the Greenville Estates Park Rules, as interpreted by the park to permit assertion and recovery of legal fees from prevailing parties in actions involving manufactured housing units, is unreasonable and unenforceable.

66. A rule that asserts that all legal fees may be assessed against a unit, regardless of the outcome of a legal action, is overbroad and therefore unreasonable.

67. The Board notes that this conclusion is neither precluded by, nor inconsonant with the 8/15/00 ruling of the District Court, which held only that Rule 1(d) was not unreasonable if applied reasonably. *Order*, Complainant's Exhibit 1. The Board is not required, in the context of this case, to decide whether the whether the rule, if applied solely to situations in which the park asserts fees upon prevailing in a legal action against a tenant is reasonable. At issue here, is the park's assertion -- and the potential assertion going forward -- of claims for legal fees based on unsuccessful eviction action against the Complainant. It is this interpretation, which the Board specifically finds to be unreasonable as written and unenforceable as applied.

68. The Board further finds that, under the circumstances of this case, Rule 1(d) is unreasonable and unenforceable against Complainant as a contract of adhesion in defeasance of Complainant's fundamental right of access to the Courts, and of the public policy of preserving and protecting such right of access.

69. The Board further finds that, to the extent Complainant has paid legal fees to the park associated with actions in which the park did not receive judgement, whether in cash, or through application of her rental payments or her membership fee to legal fees, she is entitled to recovery of any such sum; and may also have been assessed late fees or

other penalties as a consequence of the park's practice of crediting some or all of Complainant's rental payments to legal fees.

70. However, the Board further finds that the record in this matter does not clearly establish the total amount actually paid by the Complainant to the park for legal fees declared impermissible by this Order, particularly in view of the testimony that some or all of the moneys paid by Complainant to the park as rent but instead applied by the park to outstanding legal fees, may have been re-applied to a claimed rental deficiency by the Jaffrey-Peterborough District Court in connection with its 8/15/00 ruling.

71. Therefore, the Board will defer this ruling with respect to specification of any restitution amount, pending submission by the parties and further hearing if requested pursuant to Paragraph D of the Order below.

#### **RULINGS ON COMPLAINANT'S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW**

The Board rules as follows on Complainant's Requests For Findings of Fact and Rulings of Law<sup>4</sup>:

Granted: Findings of Fact Nos. 1, 2 (as consistent with Board's Order), 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19..

Rulings of Law Nos.1, 2 (consistent with Board's Order), 3 (consistent with Board's Order), 4 (consistent with Board's Order), 5 (consistent with Board's Order), 6, 7(consistent with Board's Order), 8 (consistent with Board's Court's Order), 9, 10 (consistent with Board's Order) , 11 (consistent with Court's Order), 12 (Consistent with Court's Order).

Denied: Findings of Fact Nos. 4, 16

#### **V. ORDER**

In view of the above findings and rulings, the Board issues the following Orders:

- (a) The park is hereby enjoined from enforcing or attempting to enforce Rule 1(d) of the Rules of the Park to assert claims against

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<sup>4</sup> If and to the extent that there is any inconsistency between the Board's rulings on the submitted requests for findings and its own findings as set forth in this Order, the Board's specific findings shall control.

the Complainant for attorney's fees or costs associated with any legal or administrative action between Complainant and the park which did not result in a judgement or decision in favor of the park.

- (b) The park is hereby enjoined from enforcing or attempting to enforce Rule 1(d) of the Rules of the Park to assert any claim against the Complainant for attorney's fees or costs associated with this action.
- (c) The park is hereby enjoined from enforcing or attempting to enforce Rule 1(d) of the Rules of the Park to assert any claim for attorney's fees or costs associated with the August 29, 2000 hearing in the matter of Greenville Estates Co-operative v. Edgar Comeau and Rachel Comeau, docket no. 00-LT-058.
- (d) Within ten (10) days of the issuance of this Order, each party may submit to the Board and serve upon the other party a statement itemizing (i) all amounts paid by the Complainant to the park for legal fees declared impermissible by this Order, including amounts paid in cash; amounts of rental payments credited to legal fees and any amount of Complainant's membership fee refund credited to such legal fees; and (ii) any portion of such payments that may have been re-credited to rent in connection with the 8/15 hearing before the Jaffrey-Peterborough District Court. Each party may respond to said submission within ten (10) days after receipt thereof; and either party may request a further hearing before this Board with respect to the accounting submitted pursuant to this paragraph of the Order.
- (e) This Order shall not be considered final until modified or confirmed by Order issued in consideration of the submissions or after further hearing called for in paragraph (d) of this Order.

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**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Kenneth R. Nielsen, Esq., Chairman

**Members participating in this action:**

Stephen J. Baker  
Richard R. Greenwood  
Rep. Warren Henderson  
Rep. Robert J. Letourneau  
Kenneth R. Nielsen, Esq.  
Jimmie D. Purselley  
Florence E. Quast  
Linda J. Rogers  
Sherrie Babich-Strang

**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Rachel Comeau, 132 Hillcrest Dr., Greenville, NH 03048, Heather Schulze, Esq., NH Legal Assistance, 1361 Elm St., Suite 307, Manchester, NH 03101-1323, Sheliah M. Kaufold, Esq., Hamblett & Kerrigan 146 Main St., Nashua, NH 03060-2744 and Greenville Estates Tenants Coop. Inc., 41 Old Ashby Rd., Greenville, NH 03048.

Dated: \_\_\_\_\_

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Anna Mae Twigg, Clerk  
Board of Manufactured Housing



BOARD MEMBERS CONCURRENCE

Docket 007-00 Rachel Comeau v. Greenville Estates Cooperative, Inc.

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STEPHEN J. BAKER

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RICHARD R. GREENWOOD

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HON. WARREN HENDERSON

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HON. ROBERT J. LETOURNEAU

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KENNETH R. NIELSEN, ESQ.

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JIMMIE D. PURSELLEY

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SHERIE BABICH-STRANG

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