THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Jason Brown and Valerie Lucier David and Diana Howe Complainants	)	
v.	)	Consolidated Docket Nos. .009-00, 010-00
George Hast and Sherryland Park, Inc. Respondent	)	

Hearing held on December 4, 2000 at Concord, New Hampshire.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER[1]

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. David and Diane Howe were and are at all times relevant to this matter, lawful residents of the park.

[1] These matters were consolidated for hearing by agreement of all parties on December 4, 2000. *See Record.* Although it was contemplated that the Board would issue separate opinions in these matters, the identity of fact and issue, and the uniformity of the Board's findings and conclusions with respect to the issues presented in the Complaints have caused the Board to issue this unified order with respect to the consolidated cases.

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

3. **ISSUES PRESENTED**

4. Complainants seek a determination with respect to the following issues:

A. Whether park management is attempting to impose a charge of $40.00 per month on the Complainants for possession of pets in violation of RSA205-A:2, VIII.(c.)?

B. Whether park management has demanded that they rid themselves of pet dogs for which they have prior permission to own and possess in violation of RSA 205-A:2, VIII (d)?

C. Whether park management is unreasonably restricting their use of common areas within the park by forbidding them to use park roadways to walk their pet dogs in violation of the general principle that park rules must be reasonable and reasonably administered, as set forth in RSA 205-A:2, XI?

D. Whether park management has unreasonably and unfairly declared the Complainants ineligible for an "incentive" discount from monthly rental payments in violation of the general principle that park rules must be reasonable and reasonably administered, as set forth in RSA 205-A:2, XI?

E. Whether park management's' July 28, 2000 delivery of notices to quit to the Complainants, which were purportedly based on a proposed change in use of a section of the park and issued pursuant to RSA 205-A:4, VI, in fact constitutes an unjustified attempt to require removal of the Complainants' manufactured housing units in violation of RSA 205-A:2, III and 205-A:2, VIII (d)?

MOTION TO DISMISS

5. As an initial matter, Respondent has moved to dismiss the Complaints insofar as they raise issues involving the park's denial of an incentive rental discount to the Complainants. Respondent argues that, under RSA 205-A:27, II, the Board is divested of any jurisdiction "relative to rent or rental increases."
6. At hearing, the Board deferred ruling on the Motion on the ground that the issue presented required some measure of factual inquiry into the nature of the charge being assessed against the Complainants. As such, the Board will treat the Respondent's Motion to Dismiss as a Motion For Summary Judgement and/or as a Motion For Judgement based on facts adduced at hearing.
7. In either case, for the reasons set forth more fully in the body of this Order, the Board finds that it has jurisdiction to hear and determine the issues presented by Complainants with respect to the park's denial of their incentive discount and so denies the Respondent's Motion .

FINDINGS OF FACT

A. Prior History

8. As a further preliminary matter, the Board is constrained to note and to find that these actions are inextricably connected to two matters adjudicated between these Complainants and Respondent in June of this year: *Brown and Lucier v. Sherryland Park et al.*, no. 002-00 (June 19, 2000) and Howe *v. Sherryland Park; et al*. No. 003-00 (June 19, 2000). evictions
9. In *Brown*, this Board adjudicated a claim by Mr. Brown and Ms. Lucier that Sherryland Park was improperly assessing them for repairs to their in-ground septic

system in violation of RSA 205-A:2, IX.[2] After hearing, the Board ruled that the park was within its rights under RSA 205-A:2, IX to assess a charge for repairs to the system against the Complainants because the Complainants had negligently allowed water to run in their water system for a period of time in order to prevent standing water in certain exposed exterior pipes connected to their home from freezing, and that this practice may have contributed to an overflow condition in their in-ground septic system.

10. However, the Board also ruled that the charges asserted by the park against the Complainants were excessive, apparently punitive, and unsupported by credible evidence. Accordingly, the Board ruled that the park should be enjoined against attempting to collect the asserted charges from the Complainants.

11. In *Howe*, the Board heard Complainant's claim that the park had failed to address an alleged unsanitary or unhealthful condition involving a septic field in their yard. However, after hearing, the Board *dismissed* the Howe's Complaint on the ground that it raised a health and safety issue beyond the jurisdiction of the Board and more properly presented to the superior court by petition under an expedited process pursuant to RSA 205-A:15 through 20.

12. The Board announced its orders in the *Howe* and *Brown* matters in public session at the conclusion of the hearings on June 19, 2000. The Board's dismissal order in

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1. [2] The Board also adjudicated a claim by Mr. Brown and Ms. Lucier that Park President, Mr. Hast, was not reasonably available to them with respect to emergency repair requests in violation of RSA 205-A:2, X(a).; and determined that, although the park had an answering machine available for such calls in conformity with the statute, Mr. Hast admittedly chose to ignore the Complainants' phone calls because he did not deem them worthy of response. The Board found that Mr. Hast's "willful refusal" to respond to complaints from tenants which he does not deem worthy of his attention was inherently unreasonable and that 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).

Howe was issued on August 14, 2000; and the Board's written decision in *Brown* was issued in both matters on September 22, 2000.[3]

B. Current Developments

13. On July 28, 2000, -- just over a month after the Board had announced its decisions in the *Brown* and *Lucier* matters in open session – park management caused three separate notices to be sent to the household of each Complainant:

14. First, the Complainants were sent a notice that, effective October 1, 2000, they would no longer be eligible for a $40.00 incentive monthly rental discount granted under section XX of the Sherryland 2000 Park Rules. In each case, no specific reason was stated for denial of the incentive. Rather each notice simply recited that "[t]he Sherryland, Inc. Board of Directors feels the $40.00 incentive is not working with you and with the change in the State Statutes we will charge the full amount of the rent." *Exhibits to Howe and Brown Complaints.*

15. Second, each Complainant received an identically worded "final notice of your violation of rules pertaining to animals at your residence" *Exhibits to Howe and Brown Complaints*. These notices cited to Section V.A:4 of the 1985 rules and regulations of Sherryland for the proposition that "no dog shall be allowed outside the mobile home unless it is with a pet owner and is on a leash."

16. The violation notice did not list any specific conduct by either Complainant, which was alleged to violate the cited rule. Rather the violation notice appears based on the following statement:

> "Dogs shall be allowed to relieve themselves **ONLY** on their owners' lot. Because you and no one else can tell when a dog may urinate or defecate, this is

[3]Both the *Brown* and *Howe* Orders have been entered as orders of the Superior Court pursuant to RSA 205-A:28, III (Supp. 2000).

the **ONLY** area of the Park that your dog is allowed. You shall use a leash to put the dog in a vehicle to go and come from the Community. (emphases in the original).

17. The violation notice further provided:

> Farther more: Section V.A; 3 of the 8/21/2000 rules and regulations of Sherryland, Inc. States [sic] no dogs or cats shall be allowed on any part of the community, Please refer the above paragraph. [sic].

18. Finally, and most disturbingly, each of the Complainants, as well as two other tenants living on their roadway were also served with identically worded notices to quit, purportedly under the authority of RSA 205-A:4, VI, which provision permits "condemnation or change of use" of a manufactured housing park as a permissible reason for eviction.

19. Notwithstanding its purported basis under RSA 205-A:4, VI, the Notice to Quit does not recite any specific fact which indicates that the park or any portion of it is under a condemnation order issued by any competent authority; nor does the order, on its face recite any specific change of use contemplated for the park or any area within the park.

20. Rather, the Notice contains the following explanatory statement:

> The Sherryland, Inc. Board of Directors reviewed the tapes of the Complaint hearing before the State of NH Board of Manufactured Housing of 6/19/00.
>
> What we heard on the tapes may or may not be our belief that there may or may not be a health problem. We will not take a chance on your health.
>
> Therefore the Sherryland, Inc. Board of Directors have decided to discontinue using the Manufactured Housing Sites as rental sites to others, the subdivision which was filed at the registry of Deeds in Belknap County, Book 146 Pagers 67& 68. The Manufactured House Site you rent from us is included in said subdivision.

21. Although the Notice itself fails to specify a condemnation event or change of use, Mr. Hast, in testimony, stated various reasons for issuing the Notice. In summary, Mr. Hast testified at various times during the hearing that he was issuing the Notice To Quit because;

    (a) Mr. Brown and Ms. Lucier had abused their septic field (which incident was, in part, the subject of the prior hearing), *Hearing Record*;

    (b) Ms. Howe claimed to have suffered adverse health effects from conditions in her septic field, which conditions Mr. Hast did not believe existe*d, id;*

    (c) in order to build a house for himself on the vacated land, which he was not afraid to do, because there was no septic problem in the Howe's yard; i*d*.

    (d) in order to store heavy machinery on the vacated land. *id.*.

22. In addition, in colloquy with Board counsel, Mr. Hast also testified that, in view statement made by the Howes in the prior hearing, he had decided simply "to close it" As a result, Mr. Hast stated, "I'll get rid of the problem."

23. Finally, Mr. Hast also stated that, with respect to any proposed new use of the land which comprises the rental lots of the Complainants and two other tenants, he "might change his mind."

RULINGS OF LAW

A. Issues regarding Pets

24. In their Complaint, Complainants questioned whether the park's decision to deny them the benefit of the incentive rental discount provided to all tenants under Section XX of the Sherryland rules was related to their ownership of pet animals; and, if so, contended that the denial constituted an illegal charge for pet ownership under RSA 205-A:8(c.).

25. At hearing Respondent testified that the denial of the incentive discount to Complainants was unrelated to their pet ownership and specified other reasons for the park's decision to deny Complainants the benefit of the incentive. *Hearing Record.*

26. In view of this testimony, the Board finds that there is no present controversy between the parties with respect to the issue presented at paragraph 4.a of this Order. Therefore the Board will make no finding or order with respect to that issue.

27. Respondent's citation in its Notice of Violation to the Complainants to the provision in the 8/1/2000 Sherryland rules which forbids residents to own pets was construed by Complainants as, potentially, a demand by park ownership that they rid themselves of pet animals which they had prior permission to own. RSA 205-A:VIII(d).

28. At hearing, Mr. Hast clarified that the Notice of Violation was not intended to, nor does he presently demand that Complainants rid themselves of their pet animals.

29. In view of this testimony, the Board finds that there is no present controversy between the parties with respect to the issue presented at paragraph 4.b of this Order. Therefore the Board will make no finding or order with respect to that issue.

30. However, the Board understands the demand contained in the Notice of Violation that Complainants use a vehicle to transport their animals on

common community roadways as, implicitly forbidding the Complainants to walk their animals on those common roadways.

31. The Board can find no basis in either the 1985 or the 2000 rules for such a requirement.

32. Thus, the 1985 rules provide that only that:

> No dog shall be allowed to be outside the mobile home unless it is with the pet owner and is on a leash. Dogs shall be allowed to relieve themselves only on their owner's lot or in designated park areas. Owners are responsible for cleaning up messes caused by their dogs.

SHERRYLAND PARK RULES AND REGULATIONS, June 1, 1985 (1985 RULES) sec. V.A.4, at p. 12.

33. The 2000 Sherryland Park Rules provide that "all current residents may keep their existing pets, in conformity with section V of the rules. *SHERRYLAND PARK RULES AND REGULATIONS* , August 1, 2000 (2000 RULES), sec. V.1, at p. 12. However, the 2000 Rules also provide that "No dogs or cats shall be allowed on any part of the community." *2000 RULES*, sec. V.3, at p. 12.

34. As an initial matter, it is unclear whether the language at section V.3 of the 2000 Rules is intended to ban new ownership of pets within the park; or as a ban of existing pets from common areas. At various times during the hearing, Mr. Hast characterized his intent, if not the specific language of the rules, as embodying both goals.

35. In testimony, Mr. Hast referred to some "four million" lawsuits in the United States during some unspecified period of time regarding dog bites and recited a story about a tenant of a park who received an award for a dog bite to the face.

36. From this testimony, the Board understands Mr. Hast to be concerned about the possibility of liability arising from incidents involving tenants' dogs in the park.

37. However, Mr. Hast offered no testimony other than a general characterization of the breed of one of the animals in question to demonstrate that the animals owned by Mr. Brown and Ms. Lucier or by the Howe's (or indeed, by any tenant in the park) pose any threat to any person; are ever allowed to roam free without leash or control; or to otherwise justify his general concerns regarding liability.

38. Moreover, tenants of a manufactured housing park are entitled to some minimal level of clarity in promulgated rules before those rules may be used by management as the source of a conduct violation.

39. The Board finds that section V.b. of the 2000 Rules does not, by its own terms, clearly establish that all tenants, including Complainants are barred from ever walking their pet animals on the common roadways of the park.

40. In the absence of a clearly controlling provision in the 2000 Rules, the Board views the rights of tenants with respect to the conduct of their pets as controlled in part by the 1985 rules provisions which clearly permitted tenants to allow animals outside their homes under leash and control; and, imposed on tenants the reasonable requirement that they clean up after their animals. 1985 RULES sec. V.A.4, at p. 12.

41. The Board does not view the additional comments in 1985 Rule Section V. ("Dogs shall be allowed to relieve themselves only on their owner's lot or in

designated park areas") as establishing, incidentally, a ban on walking pet animals under control and/or on leash. Rather, the statement, viewed rationally, is consistent with the obligation imposed by the same section that pet owners clean up after their animals. *Id.*

42. Thus, the Board cannot find any basis in either the 1985 or 2000 rules for management's position that the Complainants are banned by existing rules from walking their dogs under leash on common roadways.

43. Therefore, the Board finds that management is without authority or justification in attempting to ban the Complainants from walking their dogs on common roadways, provided the Complainants at all times keep their dogs under control, on leash and that that they further police after their animals if the animals soil common areas or lots of other tenants.

44. Moreover, the Board finds that, even were the 2000 Rules amenable to the interpretation asserted by park management, that interpretation would be unreasonable under the circumstances presented in this case, and with respect to these Complainants.

45. In this connection, the Board accepts Mr. Hast's stated intention to ban future ownership of animals in the park, but to "grandfather" permission regarding ownership of existing animals. 2000 RULES, sec. V.1, at p. 12.

46. Here, both Complainants own animals which are specifically grandfathered under SectionV.1.

47. Both Complainants acquired their animals in the context of the 1985 rules which allowed tenants to walk animals on common roadways under leash, and required tenants to clean up after their animals.

48. There is no basis in the record before this Board to conclude that either Complainant is in violation of the 1985 rules as construed.

49. The Board rules that it would be unreasonable to impose a no-walking requirement on tenants who had acquired animals, permitted under park rules, in the expectation that they would be permitted the general ability to walk their animals on common roadways, subject to the reasonable duty to control and police after their animals.

50. Moreover, testimony in this matter indicates that, although at least one other tenant in the park presently owns a dog, park management has made no effort to communicate to that tenant his position that dog-walking is a forbidden activity in Sherryland Park.

51. On the basis of the record before this Board, the only tenants against whom this rule is presently being enforced, appear to be the Complainants.

52. As a general rule, this Board views any park rule as unreasonable if selectively enforced against particular tenants, without specific justification for the selective enforcement, or for waiver of the rule with respect to other tenants.

53. In this case, the circumstances surrounding the Notice of Violation – including the prior actions before this Board, the identical language used in the Notices, and the delivery of the Notices with two other identically worded -- and, as

found below, equally specious-- notifications from Management – one of which purports to deny Complainants (and no other park tenant) the benefit of an incentive rental deductions; and the other of which was a Notice to quit – indicate with disturbing precision that the essential motivation of park management in issuing the Notices of Violation was retaliatory for Complainants' prior appearances before this Board.

54. Under New Hampshire law, retaliation against tenants by landlords for pursuing legal rights is illegal and contrary to established public policy. *See generally*, RSA 540-13-a (retaliation as affirmative defense to eviction actions). As such, retaliation is not a justifiable reason for selective enforcement of a housing park rule.

55. Therefore, the Board finds that any attempt by park management to curtail the right of the Complainants to walk their dogs on common roadways, provided the Complainants at all times keep their dogs under control and on leash and that that they further police after their animals if the animals soil common areas or lots of other tenants is inherently unreasonable.

B. Incentive Rental Deductions

54. The Board finds that it has authority under RSA 205-A:27, I to hear and determine the issues raised by Complainants regarding the park's decision to deny them the benefit of an incentive rental deduction established by Section XX of the 2000 Rules.

55. The Board further finds that it is not divested of such authority and jurisdiction by RSA 205-A:27, II which provides that the Board has no jurisdiction "over any issues relative to rent or rental increases."

56. Respondent's contention that the Board is without jurisdiction in this matter is based on its' characterization of its July 28, 2000 notice to the Complainants as an announcement of a $40.00 increase in their monthly rental payment. *Hearing Record*. However, this characterization is contradicted by Respondent's own conduct and testimony.

57. Most importantly, the Board finds that the actual rental payment established by the park for all tenants is $298.00 per month. This rental amount was established properly and in accordance with RSA 205-A: 6 by the park's February 28, 2000 notice to <u>all</u> tenants. *Hearing Record, Testimony of Mr. Hast*.

58. Indeed, Mr. Hast testified that he considers the rent in Sherryland to be $298.00/ month. *Id.* By contrast, he characterized the incentive allowance established by Section XX of the 2000 Rules as something other than a rental adjustment. As he characterized the incentive, "it's my money, that I allow [qualifying tenants] to hold back." *Id*.

59. In fact, the incentive allowance is designed as a method of securing certain conduct by tenants which the park deems desirable.

60. Under Section XX of the 2000 Rules, tenants qualify for a $40.00/ month allowance against their rental payment "[i]f your check is in the Sherryland Post Box on or before the first of the month, there is no balance or funds due

Sherryland, Inc. and no other part of the any contract you have with the Corporation has been fractured [sic]…." 2000 RULES, Sec. XX."

61. In this context, the July 28, 2000 Notices sent to the Complainants do not purport to change their rent; and certainly do not purport to alter the rental structure of all park residents.

62. Rather, the Notices simply state that the "$40.00 incentive is not working with you and with the change in State Statutes we will charge the full amount of the rent."

63. Thus the Notices do not establish a change in rent to the Complainants or any other park resident and in fact are not concerned with rent at all, but rather with the Complainant's conduct in connection with Section XX of the 2000 rules. Accordingly, the Board is not divested of jurisdiction to assess the reasonableness of Respondent's promulgation and application of Section XX of the 2000 Rules. RSA 205-A:27, I.(Supp. 2000).

64. In this context, the Board finds that Respondent's application of Section XX, particularly with respect to the Complaints is arbitrary, standardless and retaliatory, and therefore completely unreasonable.

65. Thus, the Board finds that Mr. Hast was unable to establish any reasonable grounds for denying the incentive allowance to either Complainant.

66. With respect to Mr. Howe, Mr. Hast offered as justification the fact that Mr. Howe delivered his February payment to the park in the form of certified mail, and that Mr. Hast did not pick up that mail for several days after the delivery and then allowed the rental check to "fall out" among other papers delivered

in the same package and so did not record it for another unspecified amount of days. *Hearing record, Testimony of Hast.* On the basis of this history, Mr. Hast asserted a $65.00 late charge against Mr. Howe under the provisions of the 1985 Rules.

67. Mr. Hast now cites both the alleged lateness of the February payment and Mr. Howe's continuing refusal to pay the $65.00 "late fee" as reasons to deny the incentive allowance.

68. These "reasons" – which were not specified in the July 28, 2000 Notice – are patently specious. Stated simply, Mr. Hast's ostensible justification for denial of the incentive would penalize Mr. And Mrs. Howe because Mr. Hast himself delayed picking up and processing their timely rental payment. This is plainly unreasonable.

69. In addition, although the issue is not plainly before the Board on the basis of the pleadings, the Board also notes that the park's assertion of the $65.00 "late fee" as a basis for its July 28, 2000 notice to Mr. And Mrs. Howe puts in issue the question of whether the "late fee" is itself an appropriate charge. Because the Board finds that the Howe February payment was timely, the Board rules that the park may not assert or assess a late fee against them based on the park's own slow handling of the payment.

70. The situation with Mr. Brown is similar and leads to similar conclusions. Thus, Mr. Hast's asserted reason for denying the incentive allowance to the Howes centered on Mr. Hast's testimony that Mr. Brown drives 30 miles an hour on park roads which are posted at 10 miles per hour.

71. In particular, Mr. Hast testified to one incident -- which occurred in or around March, 2000 --, when he claimed to have followed Mr. Brown in his car for the purpose of timing his speed. *Hearing Record, Testimony of Hast.* Mr. Hast claimed that there were one or more corroborating witnesses to this event; however no such witnesses were presented.

72. Mr. Hast appears to view this alleged conduct by Mr. Brown as constituting a "fracture" of some unspecified contract between Mr. Brown and the park. However, the Board finds that, even if Mr. Hast's allegations are assumed to be true, there is no clear basis in Section XX, as actually written, to deny Mr. Brown and Ms. Lucier their incentive.

73. In addition, Mr. Hast repeatedly cited his perception that Mr. Brown had sworn at him as a further justification for denying him the incentive. *Hearing Record, Testimony of Hast*. In colloquy with the Board Chairman, Mr. Hast was asked whether a tenant, such as Mr. Brown, who conforms to all three criteria stated in Rule XX, but who swears at Mr. Hast in the course of a dispute should be denied the incentive. Mr. Hast answered "yes," and elaborated, "Do you think I'm going to let someone keep my money and swear at me?"

74. The Board notes that Mr. Hast provided no corroborating testimony to establish his contention that Mr. Brown has occasionally used obscene language in disputes with Mr. Hast.

75. Nevertheless, even assuming this to be true, the Board rules that it is unreasonable to deny any tenant the benefit of an incentive allowance

established by park rules on the basis of unspecified conduct beyond the scope of the criteria specifically established in the rule.

76. Mr. Hast's own testimony indicated that his criteria for granting the Section XX incentive allowance is largely subjective and not bound by the criteria stated in the Rule.

77. In essence, the Board finds that Mr. Hast treats the incentive allowance established by Section XX as his personal, and subjective, gift to his tenants. The incentive provision is unreasonable if applied in so subjective a manner.

78. Moreover, the record in this matter also justifies the conclusion that Mr. Hast's asserted reasons for denying the incentive to Mr. Brown and Ms. Lucier and to the Howes are purely pretextual; and that the actual reason for the denial is retaliatory.

79. This conclusion is supported by the fact that the conduct offered by Mr. Hast as justification for his denial Notice to the Complainants occurred in each case months before the Notice was delivered. In Mr. Howe's case, the issue was a February "late" payment; and in Mr. Brown's case, a supposed speeding incident which occurred in March.

80. The Board concludes that if Mr. Hast were truly concerned with the conduct of the Complainants which he testified, under oath, were the basis of his July 28, 2000 Notices, he could have specified that conduct in the Notices; and certainly could have taken action regarding the conduct prior to July 28.

81. It is inescapable that Mr. Hast took no action regarding the issues he now professes to be concerned until both of these tenants appeared before this

Board in June, 2000. Within a month thereafter, Mr. Hast served on both of them these Notices, as well as identically worded Notices of Violation regarding their pets; and, as discussed below, Notices to Quit the Park.

82. There is no other reasonable conclusion to draw from this record but that Mr. Hast is engaged in a campaign of retaliation against these Complainants.

83. It is, of course, unreasonable and illegal to subject tenants to punitive sanctions under park rules in retaliation for their assertion of legal rights before this Board or any other lawful tribunal of the State of New Hampshire; and any attempt to do so is unlawful.

C. Notices To Quit[4]

84. The same reasoning set forth above applies with greater force to the Notices to Quit which were, like the other Notices at issue in this Order, sent in a single flurry on July 28, 2000.

85. The Notices to Quit purport to be based on RSA 205-A: 4, VI, which allow condemnation or a change in use of the park as permissible reasons for eviction.

86. However, there is no evidence that the park, or even the section of the park containing the lots of the Complainants and their two neighbors, is faced with condemnation by any competent authority.

87. Thus, Mr. Hast appears to assert an untrammeled right to simply evict Complainants and two other tenants based on his desire to change the use of their lots. *Hearing Record, Statement of Counsel*.

[4] For reasons set out fully in the matter of *Hale v. Hynes*, no. 96-006, the Board has jurisdiction to decide this matter, notwithstanding the park's issuance of a statutory notice to quit

88. Unfortunately, neither the Notices To Quit nor Mr. Hast's testimony before this Board supports his contention that a contemplated, legal change in use is the basis for the Notices To Quit.

89. In this context, the Board notes that under RSA 205-A:5, park owners are under a legal obligation to "specify in the notice required by [RSA 205-A:4] the reason for termination of any tenancy in [a] manufactured housing park."

90. Here, both Notices to Quit contain identical language citing testimony before this Board regarding the possible existence of a health and safety condition as the primary ground for eviction. *See, Notices To Quit*.

91. As an initial matter, the Board notes that this issue exists, if at all, only with respect to the Howe's claims in their prior proceeding (which were dismissed by this Board) regarding their septic field. Yet the Notices to Quit served on Mr. Brown and Ms. Lucier cite the same issue in the same language.

92. Thus, the Notices To Quit, by their own terms are based not on any independent change in use of the Complainant's lots, but solely on testimony presented to this Board in the prior hearings.

93. Mr. Hast's own testimony in this matter only reinforces the conclusion that these Notices To Quit are based on nothing more than the Complainants' appearances in the prior hearings.

94. Thus, when questioned regarding the basis for the Notice To Quit to Mr. Brown and another tenant, he began to recapitulate his claims against Mr. Brown and that tenant for allegedly flooding their shared septic field. *Hearing Record, Testimony of Hast.*

95. Moreover, Mr. Hast's asserted plans for a changed use of the Complainant's lots were inspecific, apparently undetermined, and subject to change (*Hearing Record, testimony of Hast* ("I might change my mind").

96. In light of this lack of specificity in testimony, the Board turns to the face of the Notices To Quit, which recite as the proposed changed use nothing more than the park's desire "to discontinue using the Manufactured Housing Sites as rental sites to others."

97. This is hardly a "change of use" which may reasonably support an eviction under RSA 205-A:4, VI, particularly when measured under the criteria for determining whether an asserted right to evict is retaliatory.

98. Under RSA 540: 13-a, retaliation by a landlord for a tenant's assertion of legal rights is an affirmative defense to any eviction action. Moreover, under RSA 540:13-b, retaliation is rebuttably presumed in any eviction action if instituted within 6 months of a legal decision regarding a tenant's complaint.

99. Here, the evidence before the Board overwhelmingly establishes that Mr. Hast's issuance of the Notices To Quit to these Complainants was part of a campaign of retaliation against them for or connected to the Complainants' prior appearances before this Board.[5]

100. And, as Respondent's counsel readily conceded, the right to evict is bounded by the law against retaliation. *Hearing Record, Statement of Counsel in Colloquy With Board Counsel.*

[5] The Board finds it both regrettable and appalling that Mr. Hast's retaliatory actions against these Complainants have now also embroiled two neighbors who have never appeared before the Board.

101. Here the Notices To Quit specifically cite the prior hearings as the basis for a proposed eviction; and are plainly part of a unified mailing of two other Notices determined by this Board to have been retaliatory.

102. Therefore, the Board finds that the Notices To Quit are not valid exercises of the park's right to assert legitimate changes in use of the park as grounds for evicting these Complainants.

103. In the absence of a valid exercise of rights under RSA 205-A:4, VI, the Board rules that the park's attempt to force the removal of the Complainant's manufactured homes is governed by RSA 205-A:2, III, which forbids park owners from:

> Requir[ing] manufactured housing at the time of sale or otherwise, which is safe, sanitary and in conformance with aesthetic standards, if any, of general applicability contained in the rules, to be removed from the park.. The park owner or operator shall have the burden of showing that the manufactured housing is unsafe, unsanitary or fails to meet the aesthetic standards of the park.

104. Stated simply, Sherryland Park fails to meet any of the criteria for requiring removal of the Complainant's homes. Indeed, the primary reason asserted for the proposed eviction in the Notice To Quit is that "what we heard on the tapes [of the prior hearing] may or may not be our belief that there may or may not be a health problem." This statement does not even begin to establish a valid reason for eviction or for a requirement that the Complainants move their homes.[6]

[6] The Board notes that the Howes submitted at hearing a Letter of Deficiency issued by the Town of Tilton Health Officer on November 16, 2000, which cited effluent back-up in the Howe's septic system. The letter constitutes evidence that the Howe's septic system is in need of repair, which the park may be required to undertake pursuant to RSA 205-A:2:15 through 17. However, it is not a condemnation order; nor, having been issued months after the Notices to Quit at issue, could it have been a factor in Mr. Hast's purported decision to close the section of the park.

105. The insubstantiality of the Respondent's stated reasons for issuing the Notices To Quit is further demonstrated by Mr. Hast's repeated statements to the Board that he does not believe any health condition exists with respect to the units from which he seeks to evict the Complainants and others. *Hearing Record, Testimony of Hast.*

106. Therefore, the Board rules that, though nominally clothed in a Notice To Quit, Respondent's attempt to require removal of the Complainants' manufactured housing units from their present rental sites is in clear and direct violation of RSA 205-A:2, III; and as such, cannot be allowed.

ORDER

Therefore, and in light of the above findings and Rulings, the Board issues the following ORDER:

A. Respondent is enjoined from attempting to impose any absolute ban on the Complainants' ability to walk their pet dogs on common roadways of the park. Respondent may require that Complainants maintain their animals under control and on leash, to police after their animals, and not to regularly permit their animals to soil common areas or lots belonging to other tenants;

B. Respondent is enjoined from denying Complainants the benefit of the incentive allowance established by Section XX of the 2000 Rules.

C. Respondent is enjoined from asserting a late fee against Mr. And Mrs. Howe based on their February 2000 rental payment to the

Park; and is further enjoined from taking any action to assess additional fees or to seek to evict Mr. And Mrs. Howe on the basis of such asserted late fee.

D. Respondent is enjoined from taking any action to require removal of the Complainants' manufactured housing units from the park, including without limitation, any action under the Notice To Quit served on them on July 28, 2000.

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
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 Jason Brown & Valerie Lucier, 35 Sherryland Park, Tilton, NH 03276, Davide & Diana Howe, 32 Sherryland Park, Tilton, NH 03276, George Hast, Sherryland Park, Inc., School St., Tilton, NH 03276, Edmund J. Waters, Jr., Esq., 210 Rumford, Concord, NH 03031, Elaine Baillargeon, Esq., 401 Gilford St., Suite 120, Gilford, NH 03249, and Linda M. Burns, Clerk, Franklin District Court, 7 Hancock Terrace, Franklin, NH 03235.

Dated:_____ _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Docket 009-00 Jason Brown & Valerie Lucier v. George Hast (Sherryland Park)
Docket 010-00 David & Diana Howe v. George Hast (Sherryland Park)

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STEPHEN J. BAKER

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HON. WARREN HENDERSON

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HON. ROBERT J. LETOURNEAU

_____
KENNETH R. NIELSEN, ESQ.

_____
JIMMIE D. PURSELLEY

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FLORENCE E. QUAST

_____
LINDA ROGERS

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SHERIE BABICH-STRANG

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