

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Frank J. & Denise T. Sacco)	
Complainants)	
)	
)	
v.)	Docket No. 017-01
)	
Paul Kiely Real Estate & Construction)	
(Hueber Trailer Park))	
Respondents)	

Hearing held on January 28, 2002 at Concord, New Hampshire.

DECISION AND ORDER

Before the Board of Manufactured Housing (“the Board”) is a complaint by Frank J. and Denise T. Sacco that Paul Kiely Real Estate & Construction (Hueber Trailer Park) has violated RSA 205-A:2, II, III, VII, IX and XI by attempting to charge for maintenance to any underground systems for causes not due to the negligence of the tenant, deny any resident the right to sell at a price of such resident’s own choosing or purchase to remove manufactured housing from the park. And finally, failed to provide each tenant with the current park rules and regulations.

BACKGROUND INFORMATION

The Saccos have complained about the park owner’s neglect of roadway and septic systems. The park owner, after complying with most requests to fix and repair failing systems have decided to issue a “Park Closure Notice” giving residents an **18 month notice of eviction**. There are only six (6) units affected by this eviction notice.

The notice was filed according to the laws of the State of New Hampshire. The park has been notified that as of January 15, 2003, the park will no longer exist.

The park owner finds that the park cannot financially afford to bring its systems up to code and that the costs are prohibitive.

FINDINGS OF FACT

Although there are several issues regarding failed systems, the owner has the right to decide with proper notice to close the seasonal trailer park and, ultimately, the Board of Manufactured Housing has no jurisdiction in this eviction matter. RSA 205-A:4, VI provides that a tenancy may be terminated by a park owner only for one or more of the following reasons, including condemnation or change of use of the manufactured housing park. RSA 205-A:27, II gives this board jurisdiction to hear and determine matters involving manufactured housing park rules specifically RSA 205-A:2, RSA 205-A:7 and RSA 205-A:8. The Board does not have jurisdiction therefore to consider issues included in RSA 205-A:4, and further, RSA 205-A:27 does not give this Board jurisdiction over evictions.

RULINGS OF LAW

RSA 205-A:2 Prohibition. No person who owns or operates a manufactured housing park shall:

205-A:2, II. Deny any resident of a manufactured housing park the right to sell at a price of such resident's own choosing said resident's manufactured housing within the park or require the resident or purchaser to remove the manufactured housing from the park on the basis of the sale thereof. A resident of a manufactured housing park may

place no more than 2 “for sale” signs on or in the manufactured housing for the purpose of selling the home. The park owner or operator may reserve the right to approve the purchaser of the manufactured housing as a tenant, but such approval may not be unreasonably withheld. The park owner or operator may require as a condition of said permission that the purchaser and the purchaser’s household meet the current rules of the park. In connection with the sale of a tenant’s manufactured housing, the park owner or operator shall not:

- (a) Make any rule or enter into a contract, which shall abrogate or limit the tenant’s right to place “for sale” signs on or in the tenant’s manufactured housing: provided, however, the park owner or operator may by rule or contract provision impose reasonable limitations as to size, quality, registration of such signs, requirements that the posting of such signs be pursuant to bona fide efforts to sell, and removal when the home is no longer being offered for sale. No such limitation as to size or quality shall restrict the use of a painted or printed sign which is 216 square inches or less in size and which contains no more than the words “for sale”, along with the name, address, and telephone number of the seller, or the name, address, and telephone number of the seller’s agent or representative;
- (b) Charge a commission or fee with respect to the price realized by the seller unless the park owner or operator has acted as an agent for the manufactured housing owner pursuant to a written contract;
- (c) Require the purchaser to provide the names of more than 3 references from whom the park owner or operator can seek information concerning the behavior and financial reliability of the purchaser; nor shall the purchaser be required to obtain a written report from any such reference;
- (d) For a period of 3 years after the implementation of a rule restricting occupancy, refuse to approve the on-site sale of manufactured housing to any person on the basis of age or family status unless such a restriction on occupancy was included in the rules or lease or rental agreement at the time the seller commenced tenancy in the park.

205-A:2, III. Require 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. For the purposes

hereof, manufactured housing shall be presumed to be safe if it is established that the manufactured housing was constructed to any nationally recognized building or construction code or standard. Failure to meet any such standard or code, in and of itself, shall raise no presumption that the manufactured housing is unsafe; nor may such failure be used as a reason for withholding approval of an on-site sale. The park owner or operator shall have the burden of showing that manufactured housing is unsafe, unsanitary or fails to meet the aesthetic standards of the park. No aesthetic standard shall be applied against manufactured housing if such standard relates to physical characteristics, such as size, original construction materials or color which cannot be changed without undue financial hardship to the tenant.

205-A:2, VII. Fail to disclose to each prospective tenant, in writing and a reasonable time prior to the entering into of any rental agreement, all terms and conditions of the tenancy, including rental, utility, entrance and service charges.

205-A;2, IX. Charge or attempt to charge a tenant 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.

205-A:2, XI. Fail to provide each tenant who resides in his park with a written copy of the rules of said manufactured housing park. Said rules shall set forth the terms and conditions of the tenancy and shall contain the following notice at the top of the first page printed in capital typewritten letters or in 10 point bold face print.

CONCLUSION AND DISCUSSION

The Board finds the following:

“The Board” has no jurisdiction for the reasons cited above.

Man 203.03 Motions for rehearing, reconsideration or clarification or other such post-hearing motions shall be filed within 30 days of the date of the Board's order or decision. Filing a rehearing motions shall be a prerequisite to appealing to the superior court in accordance with RSA 204-A:28, II.

SO ORDERED

BOARD OF MANUFACTURED HOUSING

By: _____
Kenneth R. Nielsen, Esq., Chairman

Members participating in this action:

Stephen J. Baker
Rep. Warren Henderson
Rep. Robert J. Letourneau
Sherrie Keith
George E. Maskiell
Kenneth R. Nielsen, Esq.
Linda J. Rogers
Florence E. Quast
Ashton E. Welch

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Frank J. & Denise T. Sacco, 3 Owl Dr., Sharon MA 02067, Paul Keily Real Estate, 65 Longridge Dr., Gilford, NH 03246 and Edmund S. Hibbard, Esq., Wescott, Millham & Dyer, P. O. Box 1700, Laconia, NH 03247-1700.

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Frank J. & Denise T. Sacco v. Paul Kiely Real Estate & Construction (Hueber Trailer Park), Docket No. 017-01

STEPHEN J. BAKER

REP. WARREN HENDERSON

REP. ROBERT J. LETOURNEAU

SHERRIE KEITH

GEORGE E. MASKIELL

KENNETH R. NIELSEN, ESQ.

FLORENCE QUAST

LINDA J. ROGERS

ASHTON E. WELCH

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