

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Brian W. McAdams)	
Complainant)	
)	
v.)	Docket No. 004-02
)	
Wagon Wheel Tenants Cooperative, Inc.)	
Respondent)	

Hearing held on December 2, 2002 at Concord, New Hampshire.

DECISION AND ORDER

Before the Board of Manufactured Housing (“the Board”) is a complaint by Brian W. McAdams that the Wagon Wheel Tenants Cooperative, Inc. has violated RSA 205-A:2, I, RSA 205-A:2 VII, RSA 205-A:2 VIII (c), RSA 205-A:2 VIII (d), and RSA 205-A:2 IX by charging and collecting a \$4,000 fee as a precondition of placing a manufactured home on a lot within the park owned by the Respondent.

After considering all the testimony and evidence presented to the Board, the Board issues the following order.

BACKGROUND INFORMATION

Complainant Brian McAdams testified that he paid \$4,000 to the Wagon Wheel Tenants Cooperative as a precondition to placing his manufactured home on a lot in the park. Both parties acknowledged payment of the \$4,000, although its justification and legality was disputed.

A Purchase and Sales Agreement between Northern Home Sales and Brian McAdams dated 1/14/98 was entered into evidence. This Agreement listed the \$4,000 payment as a cash down payment.

A letter from Wagon Wheel Tenants Cooperative, Inc. dated November 24, 1997 that was allegedly circulated in reference to the availability of the lot later rented by Mr. McAdams was entered into evidence. This letter references the \$4,000 fee, which is described as “ ... for the lot to recoup the cost of a new septic.”

The response of counsel for the Wagon Wheel Tenants Cooperative dated September 6, 2002 also acknowledged the \$4,000 payment from Mr. McAdams, which it described in part as follows: “Historically, park owners place their own home on an empty site and then sell the home. In this instance, the Respondent gave up its opportunity to place a home on an empty site and instead sold that opportunity to the Petitioner.” and further “The Respondent incurred two years of loss [sic] rent (\$7,320.00), the cost of removing the home from the site (\$2,000), and the cost of

installing a brand new septic system (\$6,000.00). If the Respondent had placed a new home on the site and sold it they could have recouped most, if not all, of their loss and/or cost. Instead, the Respondent sold to the Petitioner their opportunity to place a home for \$4,000.00.”

While the McAdams complaint raised several other issues, including restrictions on pets and fencing, the hearing centered on this \$4,000 payment.

Respondent asserted that the case should not be before the Board of Manufactured Housing as the 3-year statute of limitations for such cases had lapsed.

FINDINGS OF FACT

Respondent Wagon Wheel Tenants Cooperative Inc did in fact charge and collect \$4,000 from Complainant Brian McAdams as a precondition of Complainant’s placing a manufactured home on a site in the park.

In the hearing, counsel for Respondent asserted that the \$4,000 payment from Complainant was compensation for lost opportunity rather than reimbursement for septic system improvements.

RULINGS OF LAW

RSA 205-A:2 (I) Prohibition. No person who owns or operates a manufactured housing park shall: Require any person as a precondition to renting, leasing or otherwise occupying a space for manufactured housing in a manufactured housing park to pay an entrance or other fee in an amount greater than the equivalent of 3 months' rent for said space provided that in no event shall any fee of any kind be charged unless for services actually rendered.

CONCLUSION AND DISCUSSION

The Board finds the following:

Wagon Wheel Tenants Cooperative, Inc. did in fact charge and collect a \$4,000 from Brian McAdams as a precondition for leasing a space in its manufactured housing park. While several conflicting justifications for this \$4,000 fee were offered before and during the hearing, at no time did the Respondent document that the fee was related to “services actually rendered”.

The Board finds that the \$4,000 fee was illegally assessed and should be returned to Mr. McAdams.

The Board further finds that the objection raised by counsel for the Respondent that the complaint was not filed within the 3-year statute of limitations is without merit.

Neither the administrative rules of the Board of Manufactured Housing, nor RSA 205-A provides a statute of limitations for an action brought pursuant to RAS 205-A.

“Where no statutory time limitations apply to an administrative proceeding, whether an action is barred by time depends on the equitable doctrine of laches. Appeal of Naswa Motors Inn, Inc. 144 NH 89, 91 (1999). “The party asserting laches bears the burden of proving both that the delay was unreasonable and that prejudice resulted from the delay” Id at 92 quoting Appeal of Plantier 126 NH 500, 505 (1985).

Laches does not involve the mere passage of time, but rather is determined by all of the facts of the case, including the existence of harm occasioned by the delay. Appeal of Plantier at 505. The party asserting laches has the burden of proving that the 1) the delay was unreasonable and 2) that he was prejudiced by the delay.

Based on the evidence presented to the Board Wagon Wheel Tenants Cooperative has not met its burden. In fact the only evidence presented shows that when another lot became vacant shortly after Mr. McAdams paid his \$4,000 fee was leased to a relative on a Cooperative board member who was not charged a similar fee as Mr. McAdams.

RSA 508:4, I Personal Actions, provides as follows:

Except as otherwise provided by law, all personal actions, except for slander or libel, may be brought only within 3 years of the act or omission complained of, Except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its casual relationship to the act or omission complained of.

Based on the evidence presented to the Board at the hearing, the Board finds that Mr. McAdams did not know and could not have known about his cause of complaining against the Cooperative until he began the process of selling his manufactured home in 2002.

Therefore, the Board finds that the complaint was not barred by the 3-year statute of limitations.

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 Letourneau

George E. Maskiell

Sherrie Keith

Kenneth R. Nielsen, Esq.

Linda J. Rogers

Florence E. Quast - recused

Judy Williams

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, Certified Mail, postage prepaid, to Brian W. McAdams, 2 Stonehenge Rd. #32, Londonderry, NH 03053, Dolores Pino, Wagon Wheel Tenants Coop. Inc., 2 Stonehenge Rd. #9, Londonderry, NH 03053 and Donald Routhier, Esq., 217 High St., Somersworth, NH 03878-0671.

Dated: _____

Anna Mae Twigg, Clerk

Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Brian W. McAdams v. Wagon Wheel Tenants Cooperative Inc., Docket No. 004-02

STEPHEN J. BAKER

REP. WARREN HENDERSON

SHERRIE KEITH

REP. ROBERT LETOURNEAU

GEORGE E. MASKIELL

KENNETH R. NIELSEN, ESQ.

Recused

FLORENCE QUAST

LINDA J. ROGERS

JUDY WILLIAMS