

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURD HOUSING

Finnah M. Clemens and)	
William G. Clements, Sr.)	
Complainant)	
)	
v.)	Docket No 001-03
)	
Donald Toy (Barrington Estates))	
Respondent)	

Hearing held on April 28, 2003 at Concord, New Hampshire.

DECISION AND ORDER

Before the Board of Manufactured Housing (“the Board”) is a complaint by Finnah M. Clemens and William G. Clemens, Sr., that Donald Toy (Barrington Estates) has violated RSA 205-A:2 ,III, and VIII (d) by requiring Finnah M. Clemens and Williams G. Clemens, Sr., to remove their home from the park at the time of sale and that the park owner has required the Complainants to remove and antenna from the roof which they were given permission to install when the home was purchased from Toy’s Manufactured Housing, Inc., which has been on the home for more than 10 years, and through numerous park inspection. After considering all testimony and evidence presented to the Board, the Board issues the following order

BACKGROUND INFORMATION

On March 26, Finnah and William Clemens filled a written complaint and submitted the required fee to the Board. On April 28, 3003 a hearing was held at the Legislative Office Building in Room 201. The Clements moved from their property in November 2002 to Ohio. The property has been vacant since November and the Complainants were told by Mr. Toy, the owner of Barrington Estates, that the home had to be removed.

Issues are:

- 1) Respondent has required complainants' manufactured housing, which is safe, sanitary and in conformance with aesthetic standards, to be removed from the park at the time of sale in violation of RSA 205-A: III.
- 2) The Respondent has required the complainants to remove an antenna from the roof which they were given permission to install when the mobile home was purchased from Toy's. Manufactured Housing, Inc., which has been on the home for more than 10 years and through numerous park inspections in violation of RSA 205-A:2:VIII (d)

Rebutting statement by Respondent park owner:

- 1) Vinyl siding must be replaced with skirting and to include the entire deck area.
- 2) Deck must be brought to town of Barrington building code requirements to include hand railing.
- 3) Lot must be cleared of debris and trash.
- 4) Steel shed must be removed from the lot.
- 5) Siding is rotted on the lower portion of the home and must be re-sheathed and re-sided with vinyl siding as holes are visible in the sidewalls.
- 6) Floors on the interior of the home are buckled.
- 7) Ceilings in the home are in deplorable condition.
- 8) The original 1978 roof is leaking, shingles are buckling and must be replaced or repaired.
- 9) Mildew throughout the home.
- 10) Home is unoccupied, power was disconnected and left without protection from freezing. Park owner had to disconnect the water line from the park supply and insulate the water box to prevent damage to the park water lines.
- 11) Flooring is falling down as the insulation beneath the floors of the unit. This was observed from underneath the home.
- 12) Antenna detracts from general aesthetics of the park.

Atty. Donald Whittum, representing the Respondent, swore in Brian Jackson, foreman for the park owner for 25 years, who oversees the grounds maintenance. He presented

photos of the property's exterior and underneath the home taken in February, 2003. He stated that the home was not habitable and property does not conform to standards. The Clements are asking \$25,000 for the home. They testified that they had interested buyers and received six calls while in Ohio. They tried to resolve the issues by fixing the railing, shed and skirting. They also cleared the lot and removed the antenna.

FINDING OF FACT

The Clemens purchased the home August 4, 1990, from Respondent, Toy's Manufactured Housing Inc. for \$32,000. Respondent discounted the price of the home \$5, 000 if the Clemens made certain repairs to the home.

The Clemens testified that Mr. Troy, told them in November 2002 that they had to remove the home from the park.

In November, 2002 Doreen Miller, a real estate agent who works for Mr. Toy, valued the home at \$39,000.

The Clemens are paying for the cost of maintaining two homes for six months in the amount of \$8,452.00.

RULING OF LAW

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

III. Require manufactured housing at the time of sale or otherwise, which is safe sanitary and in conformance with aesthetic standards, if any of the general applicability contained in the rules, to be removed for the park, For the purpose here of, manufactured housing shall be presumed to be safe if it 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 standards 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.

III (d) Make or attempt to enforce any rule which: Requires a tenant to sell or otherwise dispose of any personal property, fixture, or pet which the tenant had prior permission from the park owner or former park owner to possess or use; provided, however, that such a rule may be made and enforced if it is necessary to protect the health and safety of other tenants in the park.

CONCLUSION AND DISCUSSION

The board finds the following:

- 1) The park owner should not enter the interior of the home without the owner's permission.
- 2) Is the unit unsafe, unsanitary and does it fail to meet aesthetic standards?
 - a) Siding: Mr. and Mrs. Clemens are to replace those areas of T1-11 siding which are in disrepair to match the remainder of the home.
 - b) Deck construction: The deck is of inferior construction. The Complainant is to remove the deck or bring it up to code.
 - c) Lot cleaning: The Complainant is to clean up the lot, which is estimated to be a small pick-up truckload.
 - d) Shed: The park owner moved the shed in. It is unreasonable now to require the tenant to remove it.
 - e) Textured 1-11 siding is rotted on the lower portion of the home and must be re-sheathed and re-sided, as holes are visible in the sidewalls to bring it up to aesthetic standards in the park..
 - f) Floors: interior of the home is not within the park owner's jurisdiction.
 - g) Ceilings: again, the interior of the home, is not within the park owner's jurisdiction.
 - h) Roof condition: This is a negotiable between a buyer and the seller, park owner is not liable for the condition of the roof.

- i) Mildew: the interior of the home is not within the park owner's jurisdiction.
- j) Water supply to the home regarding damaged pipes: The Complainant will address this issue when preparing to sell the home.
- k) Under flooring deterioration: Should be disclosed in the seller's disclosure statement is a real estate sale. This item is between a buyer and the seller, park owner is not liable for the this item.
- l) Antenna: The Complainant should remove the Ham radio antenna. The complainant was given special permission to install the antenna, which permission did not extend to new owners.
- m) Remaining issue of the quality of workmanship is disputed. Questions should be addresses by code enforcement.

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:

Kenneth R. Nielsen, Esq.

Florence E. Quast

Judy Williams

Thomas Salaitello

George Twigg, III – appointed by the governor for the purpose of fulfilling a quorum to hear a particular matter pending before the board.

REF: RSA 205-A:26,II: If the board does not have a quorum, the governor shall appoint an additional public member to hear the particular matter pending before the board.”

Both parties and council agreed to the appointment.

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Finnah M.& William G. Clements, Sr., 733 Sapp Rd. Ravenna, OH44266, Donald Toy, 15 Nashoba Dr., Rochester, NH 03867, Kay Oppenheimer, Esq., P.O. Box 467, Barrington, NH 03825 and Donald F. Whittum, Esq., Wensley, Wirth & Azarian, 40 Wakefield St., P.O. Box 1500, Rochester, NH 03866-1500

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

**Finnah M. Clemens & William G. Clemens, Sr. v. Donald Toy (Barrington Estates)
Docket No. 001-03**

KENNETH R. NIELSEN, ESQ.

FLORENCE QUAST

THOMAS SALATIELLO

GEORGE TWIGG, III

JUDY WILLIAMS

Order Clemens 001-03

(Clemens v. Toy) – 001-03 Board discussion on 8/22/03

Conclusion and Discussion

The board finds the following:

- 1) The park owner should not enter the interior of the home without the owner's permission.
- 2) Is the unit unsafe, unsanitary and does it fail to meet aesthetic standards?
 - a) Mr. & Mrs. Clemens to replace those areas of Texture 1-11 which are in disrepair to match the remainder of the home.
 - b) The deck is of inferior construction. The Complainant is to remove the deck or bring it up to code.
 - c) The Complainant is to clean up the lot which is estimated to be a small pick up truck load.
 - d) Shed: The park owner moved the shed in, it is unreasonable now to require the tenant to remove it.
 - e) ?
 - f) Floors and ceilings are the interior of the home is not within the park owner's jurisdiction.
 - g) Roof condition is negotiable between the buyer and seller. The park owner is not liable for the condition of the roof.
 - h) Mildew: ?
 - i) Water supply:
 - j) Under flooring deterioration: ?
 - k) Antenna: the current owner was given special permission but does not extend to future owners.
 - l) The remaining issue of the quality of the workmanship should be addressed by the building inspector/code enforcement officer.