THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Ms. Regina Snuffer	**)**	
"Complainant"	**)**	
	)	
v.	**)**	**Docket No. 004-03**
	)	
George Hast and Sherryland, Inc.	**)**	
"Respondent"	**)**	

Hearing held on November 14, 2003, at Concord, New Hampshire.

ORDER ON RESPONDENT'S MOTION TO RECONSIDER

The Board of Manufactured Housing ("the Board") makes the following order in the above-referenced matter.

Respondent, Sherryland, Inc. moved to have the decision of the Board dated October 2, 2003 reconsidered. Respondent advances the following arguments in its motion:

a. The Respondent and the Board are adversaries in litigation pending before the Merrimack County Superior Court challenging the jurisdiction of the Board to hear the underlying complaint by the Complainant and thus the Respondent did not receive a full, fair and impartial hearing before the Board.
b. The Board is biased because the Board decided this case while the jurisdictional challenge in Superior Court was pending.
c. The board incorrectly stated that Respondent requested a continuance on August 22, 2003.
d. The Board has no jurisdiction to hear claims pertaining to rent or rental increases.
e. The Board had no jurisdiction to invalidate the revocation of Park Rule XX.
f. The Board's actions violate separation of powers and impinge upon judicial power.
g. The Board's ruling impedes the Respondent's freedom to contract.

Regina Snuffer, Complainant, filed an Objection to Motion to Reconsider alleging that:

a. The standard for granting a Motion to Reconsider, (i.e., new evidence which was not available at the time of the hearing, or that the Board's decision was unreasonable or unlawful) has not been met by the Respondent. The Respondent who voluntarily elected not to participate in the September 29th hearing should be barred from now claiming that there might be new evidence. Secondly the Respondent's pattern of challenging the jurisdiction of the Board in Superior Court is being used in this case to prevent the Board from asserting its jurisdiction and is using the judicial process to frustrate the Complainant from having her complaint resolved.

b. The issues in this case do not have anything to do with rent or rental increases, but rather whether or not the Respondent followed its own Park rules and statutory requirements in sending notice of a rule change to all tenants in the Sherryland Park. The Board has jurisdiction over the reasonableness of rules and rule changes.

On consideration of, *inter alia*, Sherryland's Motion for Reconsider (Motion), Complainant Snuffer's Objection thereto and the record herein, the Board DENIES the Motion for reasons cited in its previous orders in this proceeding and for the following reasons:

1. The Motion sets forth no new evidence or argument that was not previously considered by the Board.

2. Regarding the argument in paragraph 5 of the Motion, Sherryland's bald assertion that it did not receive a full and fair hearing is unsupported by any credible factual or legal assertions. It was not heard on the merits because, rather than presenting its case, it chose not to participate in the hearing on the merits.

3. Sherryland's assertion that its challenge to the Board's jurisdiction ipso facto creates a biased Board lacks merit. Judicial and quasi-judicial bodies regularly have their jurisdiction challenged without raising the specter of prejudice to those who raise the jurisdictional challenges. Sherryland has cited no cases or law, and we know of none, that support its contention that the jurisdictional challenge per se disqualifies the Board from adjudicating the matter.

4. In paragraphs 9 et seq. of the motion Sherryland claims that it did not request a continuance of the August 22 hearing. The hearing record speaks

for itself. At the August 22 hearing,, the Board asked if the parties wanted to proceed with a bare quorum of the Board present or continue the proceeding until more members are present. Sherryland asked the matter be continued and Ms. Snuffer did not object. Our observations at the hearing indicated that Sherryland was quite eager to continue the case while Ms. Snuffer reluctantly agreed. Sherryland's assertion that it asked for a continuance out of concern for Ms. Snuffer does not conform to either the record or to our observations.

5. In paragraphs 12 et seq. of the motion, Sherryland argues that Rule XX involves rent and is therefore outside of the Board's jurisdiction pursuant to RSA 205-A:27, II. To the contrary, Rule XX does not involve rent and, even if it did, the matter at issue is not the rent to be charged, but whether Sherryland properly amended its rules. Sherryland did not have to include the incentive discount in the park rules but it chose to do so, placing the rule within the Board's jurisdiction as to the procedure for amending park rules. Furthermore, the Board and other judicial forums have determined that Sherryland's Rule XX is *not* relative to rent and is therefore outside the scope or RSA 205-A:27, II.

6. The Board has previously addressed the reasonableness of Sherryland's application of this same rule in prior proceedings involving these same parties**.** See Order dated May 30, 2001, Board docket nos. 001-01 and 002-01. Sherryland's appeal of this order to the Belknap County Superior Court, Docket 01-E-251, was dismissed as being moot and thus the Board's order is final on the issue of whether Rule XX relates to rent. In its order dismissing Sherryland's appeal as being moot, the Belknap Superior Court cited the fact that the Franklin District Court adjudicated the identical issue against Sherryland in Docket 00-LT-00226 by order dated May 1, 2002 (The $40 discount under Rule XX is "not rent at all" and Sherryland's actions against Ms. Snuffer, including denial of the Rule XX discount, "were retaliatory in nature and were not sufficient to warrant respondent's eviction"). This decision of the Franklin District Court was appealed to the Supreme Court in Case No. 2002-0420.[1]

The Board made similar findings against Sherryland, by order dated January 22, 2001, pertaining to a complaint filed by other tenants in cases 009-00 and 010-00, holding that Rule XX is not rent and that the discount was denied the complainants unreasonably and in unlawful retaliation. This finding was based in part on Mr. Hast's testimony that the Rule XX discount is not rent but an incentive to induce certain tenant behavior. In

[1] The Supreme Court decided Sherryland, Inc. v. Regina Snuffer on November 21, 2003 and affirmed the Franklin district Court decision.

this prior case, the Board found that "retaliation against tenants " 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. Although this order was vacated on appeal as part of a settlement agreement by the parties, it demonstrates consistent and fair treatment by the Board on this issue.

Furthermore, the Board's order in docket numbers 001-01 and 002-01 dated May 30, 2001 held that Rule XX is a discount to incent certain behavior by tenants and is not relative to rent. This order was upheld on appeal and Sherryland cannot raise the issue anew in this proceeding under the doctrines of res judicata and collateral estoppel.

7. The Board's order is well within the scope of powers lawfully delegated to it by the legislature. Sherryland's assertions that the order violates constitutional separation of powers provisions lacks merits for reasons, inter alia, addressed in *Hynes v. Hale.* Sherryland cites no law to support these bald assertions.

8. Sherryland's ability to contract with its tenants is intact provided that it follows the requisite procedures for amending its rules. As we have said from the commencement of this proceeding, Sherryland is free to charge whatever rent and provide whatever incentives it wants to provide its tenants, as long as it does so lawfully without unfair discrimination. Rather than pursue the issue in multiple forums, all Sherryland has to do to moot this case and change its "contracts" with its tenants is to provide *all* its tenants with the required ninety day notice of the rule change.

In addition to the above cited reasons, the Motion is denied for reasons cited in Ms. Snuffer's objection.

A decision of the Board may be appealed, by either party, by first applying for a rehearing with the Board within thirty (30) 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

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

Members participating in this action:

Rep. David H. Russell
Rep. Robert J. Letourneau
Kenneth R. Nielsen, Esq.
Linda J. Rogers
Florence E. Quast

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Regina Snuffer, George Hast and Charles Russell, Esquire, counsel for George Hast, Sherryland Park, Inc.

Dated:_____ _____
Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Regina Snuffer v. Sherryland, Inc. Docket No. 004-03

_____
REP. ROBERT J. LETOURNEAU

_____
KENNETH R. NIELSEN, ESQ.

_____
FLORENCE QUAST

_____
REP. DAVID H. RUSSELL

_____
LINDA J. ROGERS