

**THE STATE OF NEW HAMPSHIRE**  
**BOARD OF MANUFACTURED HOUSING**

<b>Arnold Grodman and Elena Katz</b>	)	
<b>“Complainants”</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 005-03</b>
	)	
<b>Cotton Farm MHP, LLC</b>	)	
<b>“Respondent”</b>	)	

**Hearing on held on December 8, 2003, at Concord, New Hampshire.**

**DECISION**

The Board of Manufactured Housing (“the Board”) makes the following orders in the above-referenced matter.

**PARTIES**

1. Cotton Farm MHB, LLC (“Cotton Farm” or “the park”) is a manufactured housing community containing about 142 units and located in Danville, NH. Cotton Farm MHB, LLC is the owner of the park and KDM Development Company is the Property Manager of the park. Kenneth Burnham is a member of the LLC that owns the park. For purposes of clarity, the park and its management shall be referred to in unitary fashion as “Respondent.”<sup>1</sup>
2. Arnold Grodman has lived in the park since about 1987 and is at all times relevant to this matter, a lawful resident of the park.
3. Elena Katz is also a resident in the park and has a power of attorney dated 10/5/90 over Arnold Grodman and appeared on behalf of Mr. Grodman.

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<sup>1</sup> This unified treatment should not be construed to apply to or bind Mr. Burnham in any capacity other than as the representative of Cotton Farms MHP, LLC.

## ISSUES PRESENTED

1. On 5/12/03 the Board received a complaint from Arnold Grodman and Elena Katz raising several violations of RSA 205-A, including the following (in relevant parts):

### **205-A:2 Prohibition.**

No person who owns or operates a manufactured housing park shall:

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 operators 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;

(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.

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.

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.

VIII. Make or attempt to enforce any rule which:

(c) Imposes a charge for pets, unless the park owner or operator establishes that services are rendered and expenses are actually incurred because of the existence of such pets; provided that the park owner or operator may make rules, which at the time of implementation, affect only new tenants and the addition of pets by current park residents, governing the number or type of pets per site and providing for a penalty, after 30 days notice, of not more than \$10 per month for each violation of such rules. Nothing herein shall be construed as requiring a park owner or operator to permit pets, other than those which remain entirely within the manufactured housing and normally require no outside facilities.

(d) 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.

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:6 Fees, Charges, Assessments.**

I. A manufactured housing park owner or operator shall fully disclose in writing all terms and conditions of the tenancy including rental, utility and service charges, prior to entering into a rental agreement with a prospective tenant. No charges so disclosed may be increased by the park owner or operator without an explanation for the increase and specifying the date of implementation of said increase, which date shall be no less than 60 days after written notice to the tenant. Nothing in this section, however, shall be construed to permit a park owner or operator to vary the terms of a written or oral rental agreement without the express written consent of the tenant.

II. In the event that a park owner or operator shifts responsibility for payment of water, sewer, or any other utility service to the tenant, the park owner or operator shall be responsible for the cost incurred in the conversion, including the cost of installation of utility meters, if any, on each manufactured home in the park, except as permitted by the public utilities commission pursuant to RSA 374 and RSA 378. After such a conversion, manufactured housing park tenants shall be billed directly by the utility for the use of such services.

III. Any park owner or operator who is billed as a single entity for any utility service shall be prohibited, on and after the effective date of this paragraph, from charging manufactured housing park tenants an administrative fee in relation to such utility service, except as permitted by the public utilities commission pursuant to RSA 374 and RSA 378.

**205-A:7 Security Deposits.**

No owner or operator of a manufactured housing park shall require as a security or damage deposit an amount greater than one month's rent. Said deposit shall be held or disposed of by said owner or operator in compliance with the provisions of RSA 477:48.

2. This case deals with issues surrounding water shortages, water quality, water usage, allowable pets, and storage of campers and related issues. What precipitated this

complaint was a letter dated 3/31/03 from Cotton Farms to the tenants informing them of a rent increase, a revised set of park rules and the installation of water meters.

## **PRELIMINARY MATTERS AND PROCEDURAL HISTORY**

3. On June 2, 2003, Attorney Andrew C. Bauer, Jr. filed a Special Appearance and a Rebutting Statement to the complaint on behalf of the park owner.
4. On June 6, 2003, the Board met and reviewed the complaint and the response and the Board by letter dated July 7, 2003, requested that the Complainants provide more specificity in their complaint. The Complainants responded on July 22, 2003, detailing several sections of RSA 205-A that they claimed have been violated by the park.
5. A hearing on the merits was scheduled for August 22, 2003, and later continued at the request of Elena Katz without objection from Attorney Bauer.
6. On August 13, 2003, Attorney Bauer filed Respondent's Motion to Dismiss For Failure to State Cause of Action. Ms. Katz filed a timely objection.
7. On September 29, 2003, the Board heard arguments on the motion. Attorney Bauer indicated that without more specificity as to the specific complaints he could not prepare an a defense and asked the Board to dismiss the complaint. Ms. Katz responded by referring to the good faith latter dated April 23, 2003 detailing the issues in dispute. Attorney Bauer stated he did not have the April 23, 2003 letter and requested time to prepare a response. The Board gave the Respondent time to respond and to complete discovery. A new hearing date was set for December 8, 2003. The Board encouraged the parties to mediate their disputes.
8. On November 3, 2003 Ms. Katz filed several motions with the Board including the following: Petitioner Motion to Quash Respondents False Answer and Petitioners Motion to Compel and Petitioners Request for Default, Petitioners Supplemental Sworn Statement of Facts, Motion to Place on Record Respondents Legal Owners and Petitioners Request to Compel the Legal Owners to Attend the Hearing on the Merits, Petitioner Motion for Protective Order, and Petitioners Affidavit of Compliance with the Board Rules.
9. Attorney Bauer filed on November 13, 2003 the following pleadings: Respondent's Objective to Protective Order, Respondent's Motion to Continue, Respondent's Motion to Strike and Remove Documents From the Record, Objection to Petitioners' Motion to Place on Record Individual Interests and Petitioners' Request to Compel Attendance, Respondent's Objection to Petitioners' Supplemental Sworn Statement of Facts, and Limited Objection to Petitioners' Motion to Quash False Answer and Compel Answer and Default. Ms. Katz subsequently filed an Objection to the Motion to Continue.
10. On November 14, 2003, the Board heard argument on the above motions and ruled as follows:

- a. Respondent's Motion to Continue was denied. The Board became aware the park owner was in the process of selling the park and to delay this action any further would not be just.
  - b. Motion for Protective Order was denied. This motion dealt with a notice that Ms. Katz's travel trailer would be towed if not removed from the park. The parties agreed to a moratorium on this until after the hearing on the merits set for December 8<sup>th</sup>.
  - c. Respondent's Motion to Strike and Remove Documents from the Record. The Board reserved ruling on this until after the hearing on the merits.
  - d. Petitioners' Motion to Place on Record Individual Interests and Petitioners' Request to Compel Attendance. This issue dealt with disclosing the individual members of the LLC park owners and compelling their attendance at the hearing. The Board took this motion under advisement.
  - e. Petitioners' Supplemental Sworn Statement of Facts and Respondent's Objection. The Board reserved ruling on this until the hearing on the merits.
  - f. Petitioners' Motion to Quash False Answer and Compel Answer and Default and Respondent's Limited Objection. The Board reserved ruling on this until the hearing on the merits.
  - g. The Board also established dates for the parties to exchange witness lists prior to the hearing on the merits.
11. On November 19, 2003 the Board received an Appearance from Kenneth Burnham, a member of Cotton Farms MHP, LLC and advising the Board that the Property Manager, KDM Development Company, had exceeded its authority under its management contract when it retained Attorney Bauer on behalf the park owner. Attorney Bauer subsequently filed a Motion to Withdraw. On November 26, 2003 Ms. Katz filed an Objection to the Motion to Withdraw.
12. On November 24, 2003 the Board received copies of Interrogatories prepared by Kenneth Burnham to be answered by Elena Katz.
13. On December 1, 2003 the Board received from Kenneth Burnham the following pleadings: Affidavit of Respondent Re: Attorney Bauer's Motion for Withdrawal and Petitioner's Objection to Withdrawal, Motion to Preclude the Presentation of Witnesses by Petitioner, Motion to Produce or Preclude Presentation of Evidence by Petitioner on Matters Relating to Respondent's Interrogatories, Motion to Preclude to Limit Scope of Hearing, and eleven separate Motions for Partial Summary Judgment.
14. On December 8, 2003 the Board addressed the above pending motions prior to proceeding with the hearing on the merits:
- a. Attorney Bauer's Motion to Withdraw. Ms. Katz argued that the motion should be denied. Attorney Bauer stated he was hired by the Property Manager in error, he has been discharged by the park owner and there is no prejudice to Ms Katz. The Board granted to Motion to Withdraw and allowed Kenneth Burnham to proceed to represent the park.

- b. Motion to Continue. Cotton Farms withdrew a Motion to Continue.
- c. Motion to Produce or Preclude Presentation of Evidence by Petitioner on Matters Relating to Respondent's Interrogatories was withdrawn by Cotton Farms.
- d. Motion to Preclude the Presentation of Witnesses by Petitioner. Kenneth Burnham spoke to Ms. Katz witness list which failed to identify witnesses my name. He stated Cotton Farms is selling the park. The tenants are in the process of signing a purchase and sales agreement. If the tenants do not buy the park, the park has another interested buyer. Ms. Katz' only witness is Senator Jack Barnes. The Motion is granted by the Board.
- e. Motion to Preclude to Limit Scope of Hearing. Much of this issue was addressed at the November 14, 2003 hearing. The Board agreed to limit the scope of the hearing to specified issues.
- f. The Motions for Partial Summary Judgment. The Board was concerned that their were numerous motions and arguments, but as yet no testimony on the underlying complaints. These motions were put aside so that testimony could begin.

## HEARING ON THE MERITS

- 15. Both Ms. Katz and Mr. Grodman offered testimony and called Senator Jack Barnes as a witness.
- 16. Senator Barnes testified that he was initially contacted by Ms Katz, who lives in his Senate District, concerning the water meters and shutting off of water to the tenants in the park. He referred Ms. Katz to NH Dept. of Environmental Services and the Board of Health Officer for the Town of Danville. The Dept. of Environmental Services wrote to Cotton Farms concerning the definition of excessive use of water and other issues. Senator Barnes had no personal knowledge about the water quality or about charging for underground systems other than his conversations with Ms. Katz.
- 17. Kenneth Burnham testified on behalf of the park owner. He stated that Cotton Farms had drilled a well last year which was not adequate and that the park was working with the health officer and has not charged for water.
- 18. The Board stated that the water issues were being handled by the appropriate agencies and that that the Board was concerned with the park rules and alleged violations of RSA 205-A. The Board requested that testimony and evidence be presented on each issue identified in the complaint separately.
- 19. RSA 205-A:2 II (a). At issue is "for sale" signs. The park rules (Rule 2H) allow a sign inside of the home in a window and on community property with approval of management. When asked is she had asked to park owner to put up a sign Ms. Katz responded no. Mr. Burnham stated he would allow a for sale sign to be put on the property.
- 20. RSA 205-A:2 II (d). At issue is restricting occupancy to a home. Park Rule 2A states

that Cotton Farms, in accordance with town occupancy codes, shall determine the number of persons living in a home after considering the number of bedrooms, living space, septic size, and location of the home. This does not preclude allowing overnight guests. It was pointed out that the town does not determine occupancy. Mr. Burnham stated he has not tried to enforce any occupancy standards. No correlation of “excessive” water usage and the number of occupants in a home has been determined. No one has been charged a fine for excessive use of water, unless there is an intentional waste of water.

21. RSA 205-A:2 III. At issue is requiring a home that is safe, sanitary and in compliance with the aesthetic standards of the park be removed from the park. No testimony or evidence was offered on this issue with regard to the Grodman/Katz home.
22. RSA 205-A:2 VIII (c). At issue is the three cats owned by Mr. Grodman and Ms. Katz. Ms. Katz testified that her cats are 15-16 years old and are indoor/outdoor cats. She received a notice of violation of the new park rules. Rule 3A (effective 7/1/03) restricts tenants to no more than one pet. Ms. Katz stated she had permission for the three cats from the prior owner of the park.
23. RSA 205-A:2 VIII (d). At issue is requiring a tenant to sell or dispose of personal property which the tenant had prior permission to possess or use. There was testimony again concerning the cats. Ms. Katz also stated she acquired a tent camper in June 2001. The park management had asked her to store her camper behind the home. On 10/10/03 after this complaint was filed she received a violation of the park rules (Rule 7E) stating she must either store the camper behind her home or remove it from the park. Rule 7E does not allow campers to be stored or operated on the property except for loading, unloading and minor repairs.
24. RSA 205-A: IX. At issue is charging for underground repairs to utilities. There is no evidence presented that the tenants were being charged for any underground repairs. The installation of water meters was without charge to the tenants.
25. RSA 205-A:2 VII. At issue is the failure to disclose all terms and conditions of the tenancy. Ms. Katz stated that the new park rules which went into effect on 7/1/03 violated this section of the statute. Notice of these rule changes were provided to Ms. Katz and other residents in the park by letter dated 3/31/03. The requisite 90 day advance notice for a rule change was adhered to. (see RSA 205-A:2 XI). Ms. Katz was particularly concerned about Rule 4G of potentially being charged for “excessive” water usage. “Excessive” is not defined in the rules. (See also discussion in Paragraph 20 above).
26. RSA 205-A:7. At issue is security deposits. No testimony or evidence was presented concerning any violations of this statute.
27. RSA 205-A:6. At issue are fees, charges and assessments. The Board does not have jurisdiction over any alleged violations of this statute. (See RSA 205-A:27 I).

## DECISION

28. RSA 205-A:2 II (a). Mr. Grodman and Ms. Katz are not in the process of selling their home and have not asked for permission to display any for sale signs. Rule 2H is reasonable.
29. RSA 205-A:2 II (d). Mr. Grodman and Ms. Katz have not been asked to restrict occupancy or to move from the park. Rule 2A is reasonable.
30. RSA 205-A:2 III. This complaint is dismissed as there was no evidence of any violation of Mr Grodman or Ms. Katz being asked to remove the home from the park.
31. RSA 205-A:2 VIII (c). Ms Katz received a notice to remove her cats for which she had permission from the prior park owner. The cats are grand fathered in and may stay in the park. Once the cats are gone they may not be replaced and she will be limited to one cat consistent with Rule 3A which is reasonable.
32. RSA 205-A:2 VIII (d). The older park rules are silent on campers and boats. Vehicles must be registered. The request to remove the camper from the property was made after the complaint was filed. The park management asked that the camper be placed behind the home. A motion was made and seconded that the camper be allowed to stay on the property behind the home. Park Rule 7E is reasonable, but not as applied to Ms. Katz.
33. RSA 205-A: IX. This complaint is dismissed as there was no evidence of any violation of charging for underground systems.
34. RSA 205-A:2 VII. Rule 4G says that the park may charge tenants for excessive water usage. Excessive use and how much money would be charged is not defined. The rule has not been enforced against Mr. Grodman or Ms. Katz. This rule needs to define excessive use.
35. RSA 205-A:7. This complaint is dismissed as there was no evidence of any violation concerning security deposits.
36. RSA 205-A:6. The Board does not have jurisdiction over violations of this section of 205-A.
37. All other issues and any other pending motions are rendered moot by this decision.
38. Findings of fact and rulings of law are embodied in this decision.

## **PETITIONERS REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW**

39. Petitioners Requests for Findings of Fact are granted for the following: 1 (with regard to excessive water usage only), 2, 8, 13. All others are denied or specifically not ruled upon.
40. Petitioners Requests for Rulings of Law are denied.

41. A decision of the Board may be appealed, by either party, by first applying for a rehearing with the Board within thirty 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**

By: \_\_\_\_\_

Kenneth R. Nielsen, Esq., Chairman

Members participating in this action:

Judy Williams

Rep. Robert J. Letourneau

Rep. David Russell

Linda J. Rogers

George Twigg III

Florence E. Quast

Steve Baker

Kenneth R. Nielsen, Esq.

**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the forgoing Decision has been mailed this date, postage prepaid, to Arnold Grodman and Elena Katz, P. O. Box 1135, East Hampstead, NH 03826 and Kenneth C. Burnham, Member, Cotton Farms MHP, LLC, 70 Old Stonefield Way, Pittsford, NY 14534

Dated: \_\_\_\_\_

\_\_\_\_\_  
Anna Mae Twigg, Clerk  
Board of Manufactured Housing

**BOARD MEMBERS CONCURRENCE**

**Arnold Grodman & Eleana Katz v. Cotton Farm Mobile Home Park, LLC,  
Docket No. 005-03**

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STEPHEN J. BAKER

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REP. ROBERT J. LETOURNEAU

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JUDY WILLIAMS

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KENNETH R. NIELSEN, ESQ.

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FLORENCE QUAST

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LINDA ROGERS

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REP. DAVID H. RUSSELL

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GEORGE TWIGG III

OrderKatz005-03 Feb. 20, 2004