

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Marlene P. Couture)	
"Complainant")	Docket No. 002-05
)	
v.)	
)	
Valley Stream Estates,)	
Thomas Grappone)	
"Respondent")	

Hearing held on May 16, 2005, at Concord, New Hampshire.

DECISION AND ORDER

The Board of Manufactured Housing ("the Board"), heard a complaint filed by the home Co-owner, Marlene P. Couture ("Complainant") (a co-owner, along with Ms. Couture's daughter and son-in-law) of a manufactured home which is situated at 40 Stevens Drive, Concord, alleging that Thomas Grappone, Valley Stream Estates, ("Respondent") has violated RSA 205-A:2, IV, which prohibits the park owner from requiring any tenant to purchase any goods or services, including but not limited to fuel oil, paving, snow plowing, dairy products, laundry services, bakery products, or food products, from any particular person or company. The park owner or operator may require skirting on the manufactured housing and may make rules governing the size and number of outbuildings and additions; but in such case, must provide the tenant with reasonable options as to the type of materials and construction. The park owner or operator may also impose reasonable conditions relating to central fuel and gas metering systems in the park; provided that if such conditions are imposed, the charges for such goods or services shall not exceed the average prevailing price in the locality for similar goods and services; and RSA 205-A:2, IX, which prohibits the park owner from charging or attempting 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.

Prior to the filing of the subject complaint before the Board, the other co-owners of the manufactured home had brought action in Concord District Court (Docket No. 04-LT-0602) under NH RSA 540-A, alleging the community owner had, contrary to statute, disconnected utility services to the leased premises, which action was dismissed following a settlement agreement between the parties.

As the same basic set of circumstances gave rise to the prior, settled and dismissed Concord District Court action and the complaint before the Board, the Respondent, through it's attorney, Eaton W. Tarbell, III, Esq. filed a Response and Motion to Dismiss based on the theories of *Res Judicata* and *Defensive Collateral Estoppel* . Evidence relevant to the Motion to Dismiss was heard prior to the hearing on the merits of the case before the Board. After hearing testimony from both parties, followed by discussion amongst Board members, the Motion to Dismiss was denied, and testimony relative to the complaint before the Board began.

After considering all testimony and evidence presented to the Board, including all documents in the record, the Board issues the following order.

BACKGROUND INFORMATION

A hearing was held on May 16, 2005, in Room 201 of the Legislative Office Building, Concord, New Hampshire. Board members John P. Dowd, Peter J. Graves, Kenneth R. Nielsen, Esq., Mark H. Tay, Esq., George Twigg, III and Judy Williams heard this case. Florence E. Quast was present at the hearing however abstained from voting on the Board's Decision.

The Complainant was present, and represented by her husband, Mr. Phillip Couture. The Respondent was present and represented by Eaton W. Tarbell, III, Esq.

On February 28 2005, Complainant, Marlene P. Couture filed a complaint with the Board alleging the following issues: That the Community Owner/Respondent would not allow the Complainant to bring On Demand Plumbing onto the job. The plumbers are related to Respondent. Also, that the Complainant is being charged for repairs to the underground sewer system.

FINDING OF FACT

Complainant, Marlene P. Couture presented the Board with testimony as follows:

The Complainant introduced, through her husband, Phillip Couture, testimony and evidence to support the Complainant's position that she was being unlawfully charged by the Respondent for repairs necessitated by repeated clogging of the underground sewer line. In addition to verbal testimony, of Mr. Phillip Couture, the Complainant included a written Complaint Form completed by Mr. Roy Gilbreth of NH Dept. of Environmental Services, a letter from the NH Insurance Department, a sketch of the sewer system to which Mr. Gilbreth's DES business card was appended, and several pages of typed and hand written testimony of the Complainant. Central to the evidence presented verbally and through the written testimony of the Complainant were repeated discussions of the suitability for flushing of the "baby wipes" or premoistened

towelettes that the residents of the manufactured home habitually utilized in their hygiene. A lengthy chronology, of several parts, submitted by the Complainant, as well as the complaint and settlement agreement of Concord District Court Docket No. 04-LT-0602 provide a detailed history of the problem central to the matter. Mr. Gilbreth's NH DES Complaint Form gives clear evidence of a large clog in the underground sewer, which Mr. Gilbreth indicated was cleared by pressure jetting by Rowells Services of Tilton, NH. The clog showed a large amount of "dark, putrid waste" and "white material". Mr. Gilbreth's letter also indicated that a red test dye introduced into the subject manufactured homes commode followed the white material as the clog was relieved. The Complainant indicated out of pocket expenses totaling \$1499.17 incurred through March of 2005 – expended on several drain clearing professionals - employed to relieve the clogged sewer line.

In cross examination, the Respondent's Attorney, Eaton Tarbell, III, Esq. clarified that the Complainant does not reside in the home with its co-owners. Further, the Complainant, although aware of a stipulation from the Settlement Agreement reached in Concord District Court that the use of "baby wipes" at the manufactured home was to be discontinued, had no direct knowledge that the practice had in fact been discontinued. Cross examination of Mr. Phillip Couture, and written evidence introduced by Attorney Tarbell from Mr. Gilbreth, also revealed that although Mr. Gilbreth's business card was attached to the sketch of the sewer system provided by the Complainant, Mr. Gilbreth had not prepared the sketch and had not even seen it until provided a copy by Attorney Tarbell. Mr. Couture also acknowledged that Tom Grappone had initially hired AK Plumbing, and that Rowell's Jetting Service had been hired by the Complainant, although Mr. Grappone also utilized Rowell's video services, after the clog had been cleared, at Mr. Grappone's own expense.

In defense of the Complainant's allegations, Attorney Tarbell introduced verbal testimony from the Respondent, as well as testimony of Mr. John Hrycuna - the owner/plumber of AK Plumbing. Written evidence introduced included a brief letter from CBC Environmental Services relative to a video inspection of the sewer line at 40 Stevens Drive. The Respondent (Tom Grappone) testified that the subject manufactured home was the first house on the sewer main in question and the furthest up gradient. Mr. Grappone stated that, although the residents of the manufactured home had agreed not to flush further "baby wipes" after the settlement agreement reached in the Concord District Court matter, they had, in fact, continued to do so. Mr. Grappone testified that no other home or service on the sewer main had reported a problem, and that for a period of time, between January and March 2005, the Complainants had not reported a problem. Mr. Hrycuna, of AK Plumbing, testified that he had initially been hired by Mr. Grappone to clear the clogged line. As part of his initial efforts, his power snake had retrieved a portion of a t-shirt, as well as a number of "balls" of wipes. Mr. Hrycuna also gave testimony illuminating the physical layout of the sewer main and service lines in question. CBC Environmental's letter was introduced, and finds that "rags" were visible in the line on the videotape of the sewer line. Verbal testimony indicated that these rags were bright and did not appear to have been in the sewer for a long period of time. The CBC letter stated that "there were

no issues concerning flowage” visible in the sewer line.

In cross examination of the Respondent’s witnesses, Mr. Couture elicited information that Mr. Hrycuna is Mr. Grappone’s relative. There was a disputed dialogue concerning what power-snake attachments were utilized, and in what chronology; as well as how far the snake was initially run into the service line and sewer main when AK Plumbing first responded in January 2005.

The Respondent, through its Attorney, submitted Requests for Findings of Fact and Rulings of Law as follows:

1. Fact – Marlene P. Couture and Holly T. Couture are co-owners of a certain manufactured housing unit located at 40 Stevens Drive, Concord, New Hampshire 03301 by deed recorded at the Merrimack County Registry of Deeds at Book 2591, Page 0221. *So found.*
2. Fact – Holly T. Couture and her significant other, Eric Gagnon, filed a suit in the Concord District Court stemming from the same nucleus of material facts as the case filed before this Honorable Board. (See Holly & Eric Couture Gagnon v. Thomas Grappone, Concord District Court, Docket No. 04-LT-0602.) *So found as to the physical sewer line clog. The Board finds the underlying statutes and causes of action to be separate and distinct.*
3. Fact – Holly & Eric Couture Gagnon v. Thomas Grappone was dismissed *with prejudice* on or about January 12, 2005. *So found.*
4. Fact/Law – Any and all complaints that arise prior to January 12, 2005 shall be dismissed as they are barred by *Res Judicata* and *Defensive Collateral Estoppel*. *Denied.*
5. Law – Marlene P. Couture, the plaintiff, carries the burden of proof by a preponderance of the evidence for her case in chief. *Man 210.02. So found – see Rulings of Law, below.*
6. Fact – Marlene P. Couture was on notice not to dispose of baby wipes by flushing the same down the sewer as Holly T. Couture and Eric Gagnon signed an agreement with Thomas Grappone stating that they would not flush the same. *So found.*

7. Fact – Marlene P. Couture was on notice not to dispose of baby wipes by flushing the same down the sewer as the sewer had previously backed up due to the flushing of baby wipes. *So found.*
8. Fact – Marlene P. Couture continued to negligently flushed baby wipes. *Denied. Testimony indicates Complainant does not reside in the subject premises.*
9. Fact – The flushed baby wipes caused sewer to clog. *So found.*
10. Fact – Marlene P. Couture contacted the Defendants complaining about the sewage back up. *Denied. Testimony indicates co-owners/residents contacted Respondent.*
11. Fact – After receiving complaints from Marlene P. Couture, the Defendants hired AK Plumbing. *So found as to Respondent (Defendant) action.*
12. Fact – Marlene P. Couture did not hire AK Plumbing. *So found.*
13. Fact/Law – Neither Valley Stream Estates, Inc. nor Thomas Grappone violated RSA 205 A:2 IV as Marlene P. Couture did not purchase the services from AK Plumbing. *So found.*
14. Fact – AK Plumbing did not find any problem with the Plaintiff’s drain other than the negligent flushing of baby wipes. *So found.*
15. Fact – CBC Environmental services did not find any problem with the Plaintiff’s drain and there were no issues concerning flowage. *So found.*
16. Fact – Roto Rooter did not find any problems with the drain other than the negligent flushing of the baby wipes. *Denied - Evidence and testimony mute.*
17. Fact – An internal inspection of the drains, done by video camera, did not reveal any damage to the drain. *Denied. Evidence does not discuss damage.*
18. Fact – A representative from New Hampshire’s Department of Environmental Services inspected the sewer drain and found no problems. *Denied.*
19. Fact – No other manufactured housing unit owner at Valley Stream Estates complained of any sewage back up during the pertinent time frame. *So found.*
20. Fact – The sole cause of the sewage clog was the negligent flushing of baby wipes. *So found.*

21. Law – RSA 205 A:2 IX allows park owner or operator to charge for underground repairs so long as the repairs required were caused by the negligence of the tenant (aka manufactured housing unit owner). *So Ruled. See Below.*
22. Fact – The invoices submitted to Marlene P. Couture were not paid. *So found.*
23. Law/Fact – The invoices submitted to Marlene P. Couture were made in accordance with, and not in violation of RSA 205 A:2 IX. *So found.*
24. Law/Fact – Marlene P. Couture’s complaint should be denied with prejudice. *So found/ruled. See below.*

RULINGS OF LAW

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

IV. Require any tenant to purchase any goods or services, including but not limited to fuel oil, paving, snow plowing, dairy products, laundry services, bakery products, or food products, from any particular person or company. The park owner or operator may require skirting on the manufactured housing and may make rules governing the size and number of outbuildings and additions; but in such case, must provide the tenant with reasonable options as to the type of materials and construction. The park owner or operator may also impose reasonable conditions relating to central fuel and gas metering systems in the park; provided that if such conditions are imposed, the charges for such goods or services shall not exceed the average prevailing price in the locality for similar goods and services.

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.

CONCLUSION AND DISCUSSION

The board finds the following:

After review of all testimony and written evidence, the Board finds that the clogged sewer line was most likely caused by the continued flushing of rags and/or wipes by the residents of the manufactured home. Several pieces of written evidence, including the letters from Mr.

Roy Gilbreth of NH DES, and CBC Environmental, as well as the Complainant herself, indicated the presence of “white material”, “rags” and “workers rag” in the sewer line. Verbal testimony indicates that these items could not have entered the sewer line from anywhere other than the Complainant’s home. Further, the evidence presented indicates the introduction of these items into the sewer system continued after the initial remedy of the problem, and in spite of the Concord District Court Agreement of January 2005. As the preponderance of the evidence suggests that the clog was caused by actions of the manufactured home residents, which actions the parties had by previously agreed would cease, the Board finds the Respondent is not in violation of RSA 205-A:2. The repairs and services in question were caused by negligence on the part of the manufactured home resident. Additionally, the Respondent did not require the purchase of goods or services from a particular person or firm, as evidenced by the employment of contractors of the Complainants choosing in the March 2005 clog episode.

Man 211.01 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:

Rep. John P. Dowd
Peter J. Graves
Kenneth R. Nielsen, Esq.
Florence E. Quast (Abstained from voting)
Mark H. Tay, Esq.
George Twigg, III
Judy Williams

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Marlene P. Couture, 71 S. Spring St., Concord, NH 03301, Thomas Grappone, Valley Stream Estates, Inc. 4A McKee Dr., Concord, NH 03301 and Eaton W. Tarabell, III, Esq. Tarbell PA, 45 Centre Street, Concord, NH 03301.

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Marlene P. Couture v. Valley Stream Estates, Thomas Grappone, Docket No. 002-05

REP. JOHN P. DOWD

PETER J. GRAVES

KENNETH R. NIELSEN, ESQ.

MARK H. TAY, ESQ.

GEORGE TWIGG, III

JUDY WILLIAMS

Order Couture 002-05 May 16, 2005.doc