

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Arline and Donald F. Whynot)
 "Complainants")
)
) Docket No. 003-05
)
)
Paul Batakis, Trustee)
240 Newbury St. Realty Trust)
d/b/a Great Brook Village)
 "Respondent")

Hearing held on August 1, 2005, at Concord, New Hampshire.

DECISION AND ORDER

The Board of Manufactured Housing ("the Board"), heard a complaint filed by the home owners, Arline and Donald F. Whynot ("Complainants") of a manufactured home which is situated at 12 Magnolia Lane, Belmont, New Hampshire, alleging that Paul Batakis, Trustee 240 Newbury St. Realty Trust, d/b/a Great Brook Village, ("Respondent") has violated RSA 205-A:2, X, a, b, and c, which prohibits the park owner from failing to provide each tenant with the name, address and telephone number of a manager or agent who resides within 10 miles of the park, if the park owner or operator does not reside within 25 miles of the park, which manager or agent shall: Be reasonably available in person, by means of telephone, or by telephone recording device checked at least twice daily to receive reports of the need for emergency repairs within the park; Be authorized to make or contract emergency repairs without specific authorization from the park owner or operator; and be authorized to make or contract to make necessary non-emergency repairs if the park owner or operator cannot be reached within a reasonable amount of time.

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 August 1, 2005, in Room 201 of the Legislative Office Building, Concord, New Hampshire. Board members Rep. John P. Dowd, Peter J. Graves, Juanita J. Martin, Florence E. Quast, Rep. David H. Russell, George Twigg, III and Judy Williams heard this case. Mark H. Tay, Esq., recused himself from the hearing as he had a conflict of interest by representing the park owner in other legal matters. In the absence of the Chairman, the

hearing was conducted by George Twigg, III.

The Complainant was present, and was accompanied by supporting witness, James Dwyer. The Respondent was present and represented by Patrick H. Wood, Esq.

On June 20, 2005, Complainants, Arline Whynot and Donald F. Whynot filed a complaint with the Board alleging the following issues: For the past two years to the present day there is no manager available for five months of each year, as the Community Owner/Respondent, Paul Batakis, goes to Hawaii and has failed to provide each tenant with a name, address or telephone number which violates RSA 205-A:2 X in its entirety.

FINDING OF FACT

Complainant, Arline Whynot presented the Board with testimony as follows:

The Complainant introduced testimony that she and her husband bought a home at Great Brook Village in 2002. They were given Tom Codik's address and phone number in case of emergency when the office was closed. The Complainant offered a brochure from the park and noted that on page 3, item number 8 states that there is an onsite manager. The Complainant also noted that Tom was let go either in the summer or the fall of 2003, and since the owners of the park were home from Hawaii, they took care of the park. The Complainant also testified that there was a woman by the name of Darlene who was working in the yard, but she had no authority to make decisions when Mr. Batakis wasn't around. After Tom was gone, there was an ad in the paper for a new manager and no one was hired by the time the owners' left for Hawaii in January 2004. In May of 2003, a residents committee was formed. The Complainant noted she had minutes from 3 meetings with the board and they discussed numerous times what to do in case of emergency or non-emergency. In November of 2003, the park tenants were concerned because with winter approaching, Darlene was no longer employed by the park. On January 20, 2004, at a subsequent board meeting, Ellen Bernard mentioned the park owner, Mr. Batakis, called her and asked if they should meet with him before he left for Hawaii. The Complainants point was that the owners leave every January and do not return until May or early June, and the residents of the park have no idea who is in charge. The Complainant mentioned that they had to call the office and that the secretary always had to wait for the owner to return the call to get an answer for them. The office hours are supposed to be Monday through Friday, 9:00 a.m. to 5:00 p.m., however, that isn't always the case. The Complainant offered three statements from residents in the park stating they were unaware of whom the manager is and they had a lot of issues to be addressed. The third letter the Complainant supplied was from her husband, Donald Whynot, stating he was familiar with the notification about Bruce being the manager, but when he congratulated him Bruce denied it.

The Complainant offered testimony from James Dwyer to defend her testimony. Mr

Dwyer stated that when he moved into the park he volunteered to help with the gardening and act as park manager but was told no one who lived in the park could work in the park. There is a document in question labeled "Good News" about a park manager being hired. Mr. Dwyer stated he had never seen it before. Mr. Dwyer talked about a conversation he had with the office secretary, Betty, in which, she told him that she can't answer his questions, as there is no one in charge, and Mr. Batakis is the only one who can make the decisions. Mr. Dwyer moved into the park approximately July 2004, and he still had no idea who the park manager was.

In cross examination, the Respondent's Attorney, John Wood, clarified that on January 16, 2003, a letter was sent stating they had found a park manager and confirmed it was Bruce Garabee. He also entered a letter dated July 20, 2005, from Mr. Garabee, stating he was the park manager. He also asked Mrs. Whynot questions regarding her testimony about the letters and flyers sent out, and the Complainant stated her husband knew about the park manager but she did not.

The Respondent, through his attorney, offered testimony from Ellen Bernard who lived in the park for 3-1/2 years, and served on the liaison committee for 2 years. She spoke about the letter dated July 20, 2005, in which Mr. Garabee stated he was the park manager, and that his duties were to be available by means of telephone or recorded device that was checked at least twice daily to get reports of emergency repairs in the park. In his letter, Mr. Garabee stated he was authorized to make the necessary repairs without the consent of Mr. Batakis. Since he was park manager, his wife, Diane, had to resign from the association. The park owner, Paul Batakis, stated that the park was constructed in 1993, and Mr. Garabee had been the manager since January 2003. He did state that notices were sent out to the residents in the community. He also commented that when Mr. Dwyer moved into the park after the notices were sent, Mr. Dwyer did not inquire as to who the manager was.

RULINGS OF LAW

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

- X. Fail to provide each tenant with the name, address and telephone number of a manager or agent who resides within 10 miles of the park, if the park owner or operator does not reside within 25 miles of the park, which manager or agent shall:
 - (a) Be reasonably available in person, by means of telephone, or by telephone recording device checked at least twice daily to receive reports of the need for emergency repairs within the park;
 - (b) Be authorized to make or contract emergency repairs without specific authorization from the park owner or operator; and
 - (c) Be authorized to make or contract to make necessary non-emergency repairs if the park owner or operator cannot be reached within a reasonable amount of time.

CONCLUSION AND DISCUSSION

The board finds the following:

After hearing all of the testimony submitted by the parties, the Board finds that the park owner must make it clear who will be in charge. A letter should have been sent to all park residents by the Respondent prior to his leaving for Hawaii, stating who will be in charge during his absence. A motion was made to dismiss the complaint as the Complainant failed to submit evidence to support her allegations. While there is no violation of the statute, the Board strongly suggests that the park owner send out notices to all park residents advising them as to the duration of his absence, and identifying the individual who will be responsible for management decisions. The motion was seconded and the vote was unanimous.

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: _____
George Twigg, III, Chairman

Members participating in this action:

Rep. John P. Dowd
Peter J. Graves
Juanita J. Martin
Florence E. Quast
Rep. David H. Russell
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 Arline and Donald F. Whynot, 12 Magnolia Lane, Belmont, NH 03220, Paul Batakis, Trustee 240 Newbury St. Realty Trust d/b/a Great Brook Village, Belmont, NH 03220 and Patrick H. Wood, Esq., Wescott, Millham & Dyer, LLP, 28 Bowman Street, P. O. Box 1700, Laconia, NH 03247-1700.

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Arline Whynot & Donald F. Whynot, v. Paul Batakis, Trustee 240 Newbury St. Realty Trust, d/b/a Great Brook Village, Docket No. 003-05

REP. JOHN P. DOWD

PETER J. GRAVES

JUANITA J. MARTIN

FLORENCE E. QUAST

REP. DAVID H. RUSSELL

GEORGE TWIGG, III

JUDY WILLIAMS

Order Whynot 003-05 Aug. 1, 2005.doc