STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Nellie Corringham	)	**Docket No. 006-05**
"Complainant"	)	
	)	
v.	)	
	)	
Pine Gardens Manufactured Homes, Inc.	)	
"Respondent"	)	

Hearing held on January 30, 2006 at Concord, New Hampshire.

DECISION

This matter came on for hearing before the Board of Manufactured Housing (hereinafter referred to as the Board) on the complaint of Nellie Corringham (hereinafter referred to as the Complainant) against Pine Gardens Manufactured Homes, Inc., (hereinafter referred to as the Respondent) alleging the Respondent's conduct to be in violation of RSA 205-A:2 II, 205-A:2 II (f), 205-A:2 II (f) (2), 205-A:2 III, 205-A:2 IV, 205-A:2 VII, 205-A:2 VIII (d), 205-A:2 IX. At the hearing, both parties were represented by counsel. After careful consideration of all the evidence presented, including the exhibits offered and the testimony adduced, the Board finds the following facts and makes the following rulings:

FINDINGS OF FACT

The Complainant and her now-deceased husband purchased their manufactured housing (a 1974 Skyline 65 X 12) by deed dated September 30, 1987 situate at 24 Spruce Drive, Belmont, New Hampshire in a manufactured housing community apparently owned at the time by Lawrence Dupont, in his individual capacity. While the evidence was not clear it is apparent that at some point thereafter, Mr. Dupont, who was present at the hearing and sat at the table reserved for respondents, changed the form of doing business and either the ownership or operation of the manufactured housing community became vested in the Respondent. The Board notes paragraph 1 of Respondent's rebuttal wherein he states the proper party is "Pine Gardens Mobile Home Park, Inc." Accordingly the Board considers both the named party (to the extent it is an existing entity) and Pine Gardens Mobile Home Park, Inc as parties to this action. At the time of the purchase a shed was situated on the site with the approximate dimensions of 16'3" L X 12'3" W X 10' 3" H. Although there is no reference to the shed in the purchase agreement, or in the deed, it is not disputed that the shed was on the premises at the time of purchase and was included in the transaction. The shed was in violation of

rule 9B of the park rules then in effect which provided in pertinent part that "…a storage building… shall be no larger than 8 feet by 8 feet by 8 feet high. It shall be kept in good repair at all times and shall be color coordinated with the home. The Park Owner reserves the right to inspect the sheds for repairs from time to time." There was conflicting testimony as to whether the Respondent and her husband were told at the time of their purchase that they would not be permitted to keep the shed on resale because it exceeded the size limitations. The Complainant testified that the shed was material to their purchase. Her husband used the shed as a woodworking studio. It is serviced by electricity. She now uses the shed for storage of storm windows and screens, yard tools, pots & pans, seasonal and other items. The Complainant at some point informed the Respondent of her intent to sell her home in writing and was informed in writing by the Respondent of certain conditions attaching to the intended sale of the premises, inter alia, that the shed on the site "is now old and needs to be replaced according to the size described in the Park Rules. The Buyers of your home can be responsible for the new shed.." There was some evidence also that the Respondent had attempted to charge the Complainant a fee for continuing to keep the oversized shed on the property. However the Respondent's clear position at the hearing was that no such charge has been imposed, nor would be imposed at any time during the remainder of the Complainant's tenancy. There was further evidence that the shed is in disrepair, with mold growing on it, a roof in need of repair, and not in conformity with the requirement that it be color coordinated with the home. (Park Rule 9B).

Sometime in the fall of 2003, the Respondent engaged the services of a tree contractor to remove all of the trees from the Complainant's homesite. The trees were removed because they were causing a potential hazard to the Complainant's home. She was not told prior to the contract work that the trees would be removed, nor was she advised that it would be her responsibility to clean up the homesite and to assume responsibility for landscaping. Thereafter the Complainant and her family cleaned up the homesite from the debris left behind by the contractor. The homesite was left with sand and bare spots where roots from the removed trees were taken out. Park Rule 9 provides that "Lawns and landscaping must be maintained by the homeowner. Lots must have a well-kept appearance. In the event the park owner determines that the homeowner is not properly caring for his lot a written notice shall be presented to the homeowner to that effect. If the problem is not corrected the park owner shall have the right to maintain such lot and all expenses thereof shall be borne by the homeowner. If this condition persists the homeowner shall be placed on perpetual care at an additional charge of $100.00 per month due at the time of rental payment." Betty Seavy, Respondent's office manager, testified that the Respondent views the perpetual care language of the rule as "elective" with the implication that it is a service that the resident can request, not a mandatory response to the failure to adequately maintain a homesite. Notwithstanding her testimony, the Complainant was served with a notice dated May 16, 2005 stating that her lot needs loam and grass seed giving her 30 days to "take care of her lot" failing which she would be charged $100.00 per month for "perpetual care." The Board also notes inconsistencies between different rules and the charges in place. For example, Complainant's exhibit 5 purporting to be a communication from Ms. Seavy to Attorney Hunt, with Park Rules apparently in effect in 1987 when the Complainant established residency imposes a $ 75.00 "perpetual care" charge. Exhibit 11 is a copy of rules signed by the

Complainant's deceased husband reciting a $25.00 charge. Current rules appear to carry a $100.00 charge for this service. For the reasons set forth in the Board's ruling below, the inconsistencies are immaterial.

From the inception of her tenancy the Complainant was required to pay a water and sewer fee every 3 months in the amount of $ 75.70. At some time during her tenancy the charge was raised to $ 76.00 quarterly. A notice was issued by the Respondent that the separate charge would be rolled into rent and be included therein effective February 1, 2006 (See Complainant's Exhibit 9). Complainant's Exhibit 12 is a water/sewer bill for the fourth quarter of 2005 showing the charge for usage by 165 units to be $ 1653.25. The prorated amount per unit of the quarterly bill is $ 10.01. The Board notes that while the monthly rent and other charges are made a part of the written rules of the Park (see Complainant's Exhibit 11 page 12) the water/sewer charge was not part of those written rules. This requirement was never disclosed in writing to the Complainant. The requirement to pay the quarterly charge, although not disclosed in writing, was nonetheless a park rule and a term and condition of the Complainant's tenancy. She testified that she paid the charge when due throughout her tenancy and offered supporting evidence of the same (Complainant's Exhibit 14).

The Complainant was notified that any proposed buyer of her home would be required to pay an Entrance Fee in the amount of $ 885.00 for a credit check, a home inspection done by the park and a title search " by our attorney" (Complainant's Exhibit 6.) The notice also states the charges would be itemized and any refund due would be returned to the buyer. The Board notes that current rule 10 (6) of the park rules states "A potential buyer of a home must complete the application provided by the park owner with a three month retainer **RSA 205 A:2.** [sic] There shall be a credit check." Because the Respondent, in Complainant's Exhibit 6, advances the cost of a credit check, home inspection, and title search by the Park's Attorney to support of the $ 885.00 fee to be charged, the Board has examined park rule 10 entitled SALE OF HOME BY HOMEOWNER in its entirety. Rule 10 (2) requires the *homeowner* [emphasis added] to have his home inspected by a licensed inspector *hired by the park* [emphasis added]. The stated purpose of the inspection is to determine if the home, additions, and outbuildings are in a safe and sanitary condition and in conformance with "authentic" standards of general applicability (Rule 10 (3)). That rule further clarifies "factors" to be considered during the course of the inspection. There is no reference to a title search on the manufactured housing to be performed by the park owner's attorney in Rule 10, and no provision providing for recoupment of the cost of the home inspection.

RULING

The Board is charged with hearing and determining matters involving manufactured housing park rules, specifically RSA 205-A:2, RSA 205-A:7, & RSA 205-A:8. (See RSA 205-A:27 I) The Board is further vested with the authority to determine whether a rule is reasonable as applied to the facts of a specific case. (See RSA 205-A:27 I-a). Neither party raised the issue of reasonableness of the rule limiting the size of sheds as applied to the facts of this case. Because the Board was not asked to

make this determination the Board does not reach this issue. However we note that our Complaint form does not readily lend itself to a request for determination by the Board of the reasonableness of a rule pursuant to RSA 205-A:27 I-a (effective January 1, 2005). RSA 205-A:2 IV permits the park owner or operator to "…make rules governing the size and number of outbuildings" and that accordingly the shed-size limitation is not, per se, a violation of that section as alleged by the Complainant. The Board finds and rules (consistent with our previous decisions) that because the Respondent is not requiring the *Complainant* to remove the shed, there is no violation of RSA 205-A IX as alleged, since that section prohibits the making or attempted enforcement of a rule requiring a "…***tenant*** [emphasis added] to sell or otherwise dispose of any …fixture…which the tenant had prior permission from the park owner or former park owner to possess or use." (The Board rules that any attempt to require the Complainant to remove the shed because of its size or to collect a fee for the complainant's continued use of the shed would be in violation of RSA 205-A IX.) The Board finds no violation of RSA 205-A II. That section precludes a park owner or operator from requiring "the resident or purchaser to remove the manufactured housing from the park on the basis of the sale thereof." It does not prohibit requiring the removal of an outbuilding. The Board further finds and rules that the Complainant did not sustain her claim that the Respondent violated RSA 205-A:2 II (f) (relative to the Respondent's duty to notify a tenant of required repairs and improvements within 14 days of receipt of a written notification of sale from the tenant) as no evidence was presented as to the date of receipt of such written notification by the Respondent. The Board further finds no violation of RSA 205-A:II (f) (2) which permits a park owner to require compliance with aesthetic standards relating to maintenance and repairs, and RSA 205-A:2 III which addresses conformity of the manufactured housing (and not outbuildings) with aesthetic standards. The Board finds that the Complainant's claim that the requirement of removal of the shed upon resale was a prior undisclosed term and condition of her tenancy in violation of RSA 205-A:2 VII is not sustained. The Board therefore finds for the Respondent on the issue of requiring the removal of the Complainant's shed upon resale.

The Board finds that the Respondent's attempt to require the Complainant to perform landscaping, loaming and seeding of her homesite is not reasonable under the circumstances where the Respondent independently determined that the trees on her homesite required removal. It was because of Respondent's unilateral action that the Complainant's homesite is in the condition Respondent faults the Complainant for. The Board finds that it is the Respondent's obligation, at its cost and expense, to loam and seed the homesite in accordance with the standard it sought to impose upon the Complainant. The Board further finds that the Respondent has not specifically violated any provision of RSA 205-A:2 I – X on this issue but that the attempt to impose a charge for "perpetual care" on the Complainant in any amount or to impose on her the obligation to loam and seed is unreasonable. RSA 205-A:27 I-a , I-b.

The Board finds that the park rule requiring payment of a quarterly water/sewer charge is in violation of RSA 205-A:2 VII. This was a rule that was clearly a term and condition of the tenancy as it was a utility charge and required to be disclosed in writing prior to the entering into of any rental agreement. The Complainant, as noted, has been

charged such a fee since September 30, 1987. The Board also notes that while the Board's authority is limited to violations of RSA 205-A:2, 7 & 8, the charge imposed by this park owner is particularly egregious when considered against the provisions of RSA 205-A:6 III which has prohibited a park owner billed as a single entity from charging manufactured housing park tenants an administrative fee for the payment of any utility (except as permitted by the public utilities commission) on and after that statute's adoption effective July 27, 1996. Our Supreme Court has held that the Respondent, "[a]s a landlord … is charged with knowledge of the statute." Miller v. Slania Enterprises, Inc., 150 N.H. 655, 662 (2004) *citing* Johnson v. Wheeler, 146 N.H., 594, 597 (2001).The administrative fee charged to the complainant per quarter was a $64.99 markup over the $10.01 prorated charge to the Respondent. The Board rules that the Respondent's failure to disclose this charge in writing was a willful and knowing violation of RSA 205-A:2 VII.

Finally the Board rules that the proposed charge of $ 885.00 to a prospective applicant is unreasonable. RSA 205-A:27 I-a. The Board was not asked to determine whether the proposed charge was in violation of RSA 205-A:2 I, or RSA 205-A:2 II (e) and does not reach those issues. The Board has carefully considered both the letter to the Complainant dated July 13, 2005 (Complainant's Exhibit 6) and the current park rules (Respondent's Exhibit B). The board does find that the imposition of any charge for a home inspection on a proposed buyer is unreasonable. Park Rule 10 (2) states that the *homeowners* (and not the prospective purchaser,) "shall have their home inspected by a licensed inspector *hired by the park*.[emphasis added]" The park rules do not disclose anything more than that the potential buyer complete an application and remit "a three month retainer," and that there will be a credit check. By the Respondent's own rules it is the park's responsibility to pay for such an inspection. There is no provision for reimbursement to the park by either the homeowner or "potential buyer" in the rules, and therefore the Respondent is precluded from collecting such reimbursement. In any event RSA 205-A:2 III provides in pertinent part: "The park owner or operator shall have the burden of showing that the manufactured housing is unsafe, unsanitary, or fails to meet the aesthetic standards of the park." To require the homeowner or potential buyer of the unit to pay for an inspection impermissibly shifts the burden imposed by statute from the park owner to the tenant or his buyer. The Board finds that the requirement of a title search by the respondent's attorney can serve no legitimate business interest of the Respondent and therefore the imposition of the charge for this upon a prospective buyer is unreasonable. (The Board notes that the reference in the July 13, 2005 correspondence to "our attorney" does not necessarily refer to the Respondent's counsel of record in this proceeding.) The only justification remaining to the Respondent (and as limited by its own rules) is a credit check on a prospective purchaser. While this may be considered to be a legitimate cost to be borne by the purchaser, such a cost would be included in the fees permitted to be charged in accordance with RSA 205A:2 II (f). A charge of $ 885.00 for a credit check is patently unreasonable. The Board rules that any charge by the Respondent of any fee to a prospective purchaser of the Complainant's home without first complying with the provisions of RSA 205-A:2 II (f) shall be unreasonable.

The Parties' requests for findings of fact and rulings of law are granted and denied consistent with this decision.

Man 211.01 Motions for rehearing, reconsideration or clarification or other such posthearing motions shall be filed within 30 days of the date of the Board's order or decision. Filing a rehearing motion shall be a prerequisite to appealing to the superior court in accordance with RSA 205-A:28 II.

SO ORDERED

BOARD OF MANUFACTURED HOUSING

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

Members participating in this action:

Rep. John P. Dowd
Peter J. Graves
Juanita J. Martin
Kenneth R. Nielson, Esquire
Rep. David H. Russell
Mark H. Tay, Esquire
George Twigg, III
Judy Williams

CLERK'S NOTICE

I hereby certify that a copy of the foregoing Decision of the Board of Manufactured Housing has been mailed this date, postage prepaid, to Nellie Corringham, 24 Spruce Drive, Lot B-9, Belmont, NH 03220, Robert D. Hunt, Esquire, Burke & Eisner, 401 Gilford Avenue, Suite 125, Gilford, NH 03249, Pine Gardens Manufactured Homes, Inc. P.O. Box 135, Winnisquam, NH 03289, Pine Gardens Mobile Home Park, Inc., P.O. Box 135, Winnisquam, NH 03289, James F. LaFrance, Esquire, Normandin, Cheney & O'Neil, PLLC, P.O. Box 575, Laconia, NH 03247 and to James D. Rosenberg, Esq., Shaheen & Gordon, 107 Storrs St., P.O. Box 2703, Concord, NH 03302-2703.

Dated:_____ _____

Anna-Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Nellie Corringham v. Pine Gardens Mobile Home Park, Inc., Docket No. 006-05

_____
REP. JOHN P. DOWD

_____
PETER J. GRAVES

_____
JUANITA J. MARTIN

_____
KENNETH R. NIELSEN, ESQ.

_____
REP. DAVID H. RUSSELL

_____
MARK H. TAY, ESQ.

_____
GEORGE TWIGG, III

_____
JUDY WILLIAMS

Order Corringham 006-05 Mar. 6, 2006(b).doc