THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

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| Alice M. Moulton<br>Complainant | ) | |
| v. | ) | Docket Number: 005-06 |
| Joseph Roy - Crown Properties and Home Sales, LLC<br>Respondent | ) | |

Hearing held on March 19, 2007 at Concord, New Hampshire

## DECISION AND ORDER

The Board of Manufactured Housing ("the Board") heard a complaint filed by Alice M. Moulton, ("the Complainant") of a manufactured home which is situated at 203 Lafayette Rd., #65, North Hampton, NH on a tract or parcel of land owned by Joseph Roy - Crown Properties and Home Sales, LLC ("the Respondent"). The complaint alleges that contrary to the written rules of the community, the Respondent is attempting to hold the Complainant responsible or attempt to charge for the costs of removing a tree (which fell during a storm in August 2006) onto the roof of the Complainant's home.

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 March 19, 2007, in Room 201 of the Legislative Office Building, Concord, New Hampshire. Board members Atty. Kenneth Nielsen, Peter J. Graves, Juanita J. Martin, Florence E. Quast, Rep. David H. Russell, Rep. Anthony F. Simon, George Twigg, III, and Judy Williams heard this case. Mark H. Tay, Esq. recussed himself from the hearing as he had a conflict of interest, having represented the Respondent in other legal matters.

The Complainant was present, representing herself. The Respondent was present, also representing himself. Neither party was accompanied by any witnesses. After swearing in both the Complainant and the Respondent, the Board Chairman – Atty. Kenneth Nielsen, allowed the Complainant to present her case.

The Complainant, Alice M. Moulton, gave testimony that after a severe storm a large tree had fallen and landed upon the roof of her home. Said tree caused damage

to her roof, siding and porch or deck. The Complainant stated that she had "waited a few days" to see if the tree would be removed. The Complainant testified that after several days, she asked the park manager, identified only as "Scott", about the tree's removal. The Complainant gave further testimony – that her home was without power for a period of time long enough to cause her to rent a generator; and that the tree was eventually placed on the ground via subcontractors of the community owner (Respondent), but had to be removed from her lot by her neighbors.

The Complainant described the damage to her home as being extensive. At some point shortly after the storm, the Complainant's insurance carrier sent an adjuster to the Complainant's home. This adjuster's visit gave rise to the primary issue before the Board, in that the adjuster included an amount of Five Hundred Dollars ($500.00) for tree removal in his estimate for damages. The Complainant explained that the adjuster had communicated this designation and amount to the Respondent, and thereafter the Respondent had billed her that same sum for the removal of the tree. The Complainant stated she felt it unfair that she be held responsible for the costs of the removal of a tree that belonged to the community owner/Respondent. The Complainant's feeling was apparently aggravated by the total amount of the settlement paid by her insurance company. The Complainant testified that the settlement fell far short of the costs to repair her home resultant from the fallen tree.

The Complainant's testimony also touched on the amount she is being billed for tree removal having more recently inflated to $900.00; that the amount was exorbitant as the tree was only placed upon the ground and not removed from the lot; and that written community rule IV says that all trees and shrubs are the property of the community owner. The Complainant provided photographs to document the tree and its damage to the home.

The Respondent was offered a chance to cross examine the Complainant, but declined.

The Respondent then took the stand and offered testimony to the Board as follows:

That on August 2, 2006 a severe storm had caused extensive damage to the community and the homes within the community. The Respondent described, vividly, the amount of trees which were knocked down, and the damage to the electrical supply system (pole and wires) servicing the community. The Respondent testified that immediately after the storm he began emergency efforts to restore power and remove trees and limbs from homes and roads in the community. These efforts included the hiring of a tree removal subcontractor and crane service, and a utility pole contractor. The Respondent testified that the tree which had fallen on the Complainant's home was removed and set on the ground, and a new utility pole installed by August 4, 2006. The Respondent also read aloud a letter he had received from the Tenant Association of the community, which, in essence, expressed appreciation for the Respondent's timely response to the emergency conditions created by the storm.

Further testimony from the Respondent confirmed that the adjuster from the Complainant's insurance company had supplied him with a copy of a letter telling the Complainant that the $500.00 allowance for tree removal should be paid to the Respondent. According to the Respondent, he had incurred costs of $1600.00 for the effort of tree and crane service removing the tree from the Complainant's roof and setting it on the ground. The Respondent stated that in a conversation with the Complainant's insurance adjuster, the adjuster indicated feeling that the $500.00 was "more than fair".

During cross examination by the Complainant, the time frame of power outage at the Complainant's home, and the validity of the adjuster's letter and conversation were challenged. Several points not related to the matter at hand were also debated between the parties.

## FINDINGS OF FACT

It is clear from testimony of both parties that on August 2, 2006 a major a violent storm struck the Community owned by the Respondent and in which the Complainant resides. Further, both parties agree that this storm caused a large tree to fall upon the Complainant's home, resulting in substantial damage to the home. The issue before the Board is thus distilled down to a question of which party shall bear the cost associated with the removal of the tree from the Complainant's property – the manufactured home.

During questioning by the Board, the Respondent stated that residents in the community are not allowed to remove trees without express permission, as the trees in the community are the property of the Respondent.

This same information can be gleaned from the written rules of the community, specifically on page 3 (of 5), Rule #5; which states: *"…Any trees, bushes, shrubs, walks or fences placed shall become the property of the Park and may not be removed without written permission of the Park."*.

The Respondent testified that in many cases necessitated from the same storm, homeowners were not charged for tree removal as they had no insurance coverage. It was evident that the Respondent's billing of $500.00 for tree removal stemmed from the Complainant's insurance adjuster's estimate, and the adjuster's apparent opinion that the Respondent was entitled to this amount.

However, the Board does not agree.

The Respondent's concern and efforts to alleviate the damage caused by the storm of August 2, 2006 are noteworthy and certainly appreciable. But the single most important fact in the matter is that the tree which caused the damage and Complainant's insurance claim was the property of the Respondent. The insurance adjuster's alleged opinion does not create liability nor establish a cause of action.

## RULINGS OF LAW

After the conclusion of testimony in the hearing, the Board considered the inputs of both parties and the uncontested facts derived therefrom. Also considered were the written rules of the community as provided by the parties in their filings with the Board.

New Hampshire RSA 205-A requires the written rules of a manufactured home community to be reasonable. In this matter, the written rules are found to be reasonable. However, the Respondent's attempt to circumvent the logical extension of its own rules - which, along with the Respondent's testimony before the Board, clearly establish the trees in the community as the Respondent's property – is found to be unreasonable. This point is underscored by the disparity of treatment between residents in the community according to whether or not they had insurance coverage that the Respondent might lay claim to.

## CONCLUSION AND DISCUSSION

The Board finds the following:

The Complainant's home was damaged by a tree during a storm on August 2, 2006. While the storm, the tree falling and the resultant damage to the Complainant's property cannot be said to be foreseeable, nor negligent on anyone's part, the result was damage to the Complainant's property from property belonging to the Respondent.

The Complainant was insured to protect her property. However, this does not mean the proceeds from the Complainant's coverage can be claimed by the Respondent as a receivable to cover its/his own losses. The Complainant cannot be said to have an insurable interest in the Respondent's property – the tree – therefore her insurance coverage should not be tapped to cover costs associated with the tree being lain upon the ground. If the Respondent has General Liability insurance coverage for storm and/or tree damage, then such insurance should provide reimbursement for costs incurred by the Respondent arising from the storm.

Any billing claimed by the Respondent to be due from the Complainant for the costs of removal of the tree which fell during the storm of August 2, 2006 is unreasonable, and in the light of RSA 205-A, unenforceable and void.

A motion was so made, and seconded, passing 7 to 1 (Rep. Anthony Simon voting against).

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 motion 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:_____
Atty. Kenneth Nielsen, Chairman

**Members participating in this action:**

Atty. Kenneth Nielsen
Peter J. Graves
Juanita J. Martin
Florence E. Quast
Rep. David H. Russell
Rep. Anthony Simon
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 Alice M. Moulton, 203 Lafayette Rd., # 65, North Hampton, NH 03862; Joseph Roy – Crown Properties, LLC, PO Box 1627, North Hampton, NH 03862 .

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

## BOARD MEMBERS CONCURRENCE

**Alice M. Moulton v. Joseph Roy – Crown Properties LLC, Docket No. 005-06**

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ATTY. KENNETH NIELSEN

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PETER J. GRAVES

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JUANITA J. MARTIN

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FLORENCE E. QUAST

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REP. DAVID H. RUSSELL

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REP. ANTHONY F. SIMON

_____
GEORGE TWIGG, III

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JUDY WILLIAMS