

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

Robert Brooks

v.

Docket No. 002-007

Camp Sargent Road Cooperative, Inc.

DECISION OF THE BOARD

Background

The Board of Manufactured Housing (hereinafter “board” or “BMH”) held an evidentiary hearing regarding the above captioned complaint on June 13, 2008 in Concord, New Hampshire. The complaint was filed by Robert Brooks of 3 Buttonwood Lane, Merrimack, New Hampshire (hereinafter “Brooks” or “complainant”). It was filed in late November of 2007 and alleged that the manufactured home park in which he and his wife reside, Camp Sargent Road Cooperative (hereinafter “respondent” or “park”), had violated state law regarding such parks in two respects. Respondent is a New Hampshire corporation located at 1 Nottingham Lane, Merrimack, New Hampshire.

The complaint consisted of two allegations of illegal conduct. The first claim was for a violation of New Hampshire Revised Statutes Annotated section 205-A:2 II (g) in that the park had failed to provide Brooks with the required written notice of his acceptance as a member of the cooperative, a prerequisite to his impending purchase of the Buttonwood Lane home. Such notice is required to be given within fourteen (14) days of the approval of membership.

The second allegation claimed that the respondent’s president had unexpectedly appeared at the Brooks closing and threatened to “withhold residence in the park unless the new tenants, under duress, sign a document predated May 18th, that they would give up half their lot, yet pay the full rent.” Complaint, third page. These actions violated N.H. RSA 205-A:2 II and VII according to the complaint.

The park responded to the complaint in a filing received by the BMH on December 6, 2007. With regard to the first allegation, the park acknowledged that “[t]hrough accident and mistake, no written notice was sent to Mr. and Mrs. Brooks by the Cooperative.” Response, page 3. Describing this as “ a harmless violation of the statute,” *Id.*, respondent

went on to explain that the Brooks' had received telephonic notice of their acceptance from the cooperative's president.

The board first considered this matter at its meeting of January 28, 2008. No testimony was presented at this hearing but both complainant's and respondent's representatives addressed the issue of whether the board had jurisdiction in the case. Noting that Brooks had not alleged any harm resulting from the lack of written notice the board concluded that this omission was, indeed, harmless. With regard to the lot line, the board determined that there was no park rule on the subject. Given this, the board dismissed the claim. See ruling dated February 5, 2008.

In a motion received on March 5, 2008 the complainant requested that the board rehear the case. Recognizing that the matter had been dismissed on the pleading and that the complainant was not present on January 28th, on March 17, 2008 the BMH granted the motion to the limited extent of permitting the complainant the opportunity to personally demonstrate that the dismissal was "unlawful, unjust or unreasonable." See ruling dated March 17, 2008.

The complainant took advantage of this opportunity on May 12, 2008. With both parties present and after argument from each, the board voted to grant, in part, the rehearing request. Recognizing that the complainant's allegation of duress regarding the lot line issue, if it could be substantiated, might constitute a violation of both N.H. RSA 205-A:2 II and VII, an evidentiary hearing was scheduled for June 13, 2008. See ruling dated May 16, 2008.

Testimony Presented

The hearing took place as scheduled with both parties presenting three witnesses. The complainant's first witness, Carol Perkins, testified that she had been on the park board for eight years including service as both vice president and president. She said that she had never attended a closing when a home was sold and that lot boundaries were established on a driveway to driveway basis. She could not explain why the lot at 3 Buttonwood was an exception to this. She acknowledged that this policy was not contained in the written park rules but she said that this arrangement was generally understood throughout the park.

Brian Smith, formerly a resident of 3 Buttonwood who currently lives at another address in the park, was the next witness. He said that he always assumed that the lot line now in issue was a line of shrubs between 3 and 5 Buttonwood. He acknowledged writing a memorandum to the park board in 2000 asking that the boundary lines not be changed. This memorandum was written in response to a lot line dispute that was taking place at that time between the residents of 5 Buttonwood and 7 Buttonwood. A copy of this communication had been provided to the board in one of the filings prior to this hearing.

The complainant himself was the final witness on that side of the case. On direct examination Robert Brooks testified that he had been told that the lots in the park were driveway to driveway. He also said that at the closing he was told that he and his wife would have to sign a document stating that their lot was smaller than others in the park and that if they didn't accept that arrangement they were not wanted there. He testified that he believed that if he had not agreed, and not signed the document, "he would have been out on the street with nowhere to go."

However, on cross examination his story changed considerably. He acknowledged meeting with respondent's membership committee approximately two weeks prior to the closing. He said that during that meeting the committee discussed the location of the lot line with him. He stated that they told him that the tenant of the adjacent unit, Mr. Foster, had taken part of the land. He told the committee, he testified, that "he could live with the situation" but that didn't mean that he had to. He also said that he had talked to Foster about their lot boundary but had not asked him about adjusting that line. He also said that his lot line on the other side of his home was the driveway.

Current park president Connie Holbert was the first witness for the respondent. She, too, testified that there is no formal park rule regarding the boundaries between lots. As far as she knows this unwritten policy has worked without problems. She said that she was the park official who had gone to the Brooks closing and that she had done so to deliver a document that needed to be signed. After she arrived, she was asked to stay, she said, and she agreed to do so. She was emphatic in denying that she had gone to the closing to coerce the Brooks' into signing anything and testified that neither Brooks nor his wife appeared to be experiencing any kind of duress or stress. She also stated that the Brooks' seemed to know about the lot line situation.

Next to testify was Charles Foster of 5 Buttonwood Lane. He told the board that he purchased his home in June or July of 1997. The boundary line and the bushes marking that line were there when he moved in, he said, and nothing has changed in that regard. He described a conversation he had about the line when he moved in. That discussion was with a Mr. Santoro who was apparently the park manager at the time. He testified that Santoro told him he was one of the lucky ones because he had a larger lot. Foster was unable to explain why Santoro apparently wrote a letter in May of 2007 stating that when he managed the park all of the lot lines, including the line at 5 Buttonwood, were driveway to driveway. A copy of the Santoro letter was among the material that was provided to the board at one point during this case.

Foster also testified that he understood that the boundary line lines are lot designations only. He acknowledged, as did all of the witnesses who testified on this point, that the park consists of one large lot that is owned by the cooperative. (This lot is 12.97 acres in size according to a letter from the Town of Merrimack dated November 7, 2007.) No park resident has a deed that conveys ownership in any of the land. Rather, the park's board of directors is responsible for establishing the boundaries that exist between the structures in the park.

The final witness was Pam King who is a member of respondent's membership committee and who participated in the meeting with Brooks. Her testimony generally corroborated the Brooks cross examination testimony regarding the discussion with that group regarding the location of the lot line and the size of the lot.

Findings and Ruling

As stated above, the board retreated from its initial dismissal of this matter and determined that it was appropriate to conduct a full hearing on the one claim of this complaint. It did so based upon its recognition that the facts alleged, if proved, could possibly establish a violation of one or both of two sections of RSA 205-A:2.

Subsection II of that statute provides that a park owner or operator may approve a purchaser of manufactured housing so long as any withholding of approval is not unreasonable. The owner or operator may also require that the purchaser and his household "meet the current rules of the park." Id.

Similarly, subsection VII of the same statute requires a park owner or operator ". . . 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"

In this case, were Brooks able to establish that he was not told of the unusual lot boundary until his arrival at the closing and, if then, respondent attempted to coerce him and his wife into signing an agreement to accept this unusual lot line and smaller lot, these facts could well amount to a failure to disclose all of the terms and conditions of the tenancy, RSA 205-A:2 VII, and/or a requirement that he and his household meet changed, not the current, rules of the park. RSA 205-A:5 II.

However, after hearing all of the witnesses presented by both parties, the board unanimously agreed that complainant had failed to carry his burden of proof. Simply put, Brooks failed to establish that his knowledge of the status of the lot line was last minute or that anyone attempted to coerce him into accepting the situation.

The complainant's inability to establish either proposition is primarily grounded in his own testimony. He acknowledged that he met with respondent's membership committee at least two weeks prior to the closing and that he was told by them about the state of the lot boundary at the home he planned to purchase. No evidence was introduced to suggest that he could not have backed out of the sale or that he made any attempt to do so. Rather, commenting on the lot line, he told the committee that "he could live with it" even if he was not particularly happy about doing so. Each of the other witnesses who were involved, at least to some degree, in the details of the transaction corroborated Brooks in this regard.

The board notes that RSA Chapter 205 is not designed to assure happiness in manufactured housing matters. The purpose of the statute is, rather, to establish a reasonable degree of equity and fairness between and among the parties who own, live in and wish to purchase such housing.

For the reasons stated, the board rules that allegations of this complaint have not been proven. Therefore the complaint must be, and hereby is, dismissed.

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**

Dated: _____

By: _____
Rep. Anthony F. Simon, Esq.

Members participating in this action:

Peter J. Graves
Juanita J. Martin
Kenneth R. Nielsen, Esq.
Rep. David H. Russell
Rep. Anthony Simon, Esq.
Mark H. Tay, Esq.
George Twigg, III
Judy Williams

Members not participating in this action:

Robert Hunt, Esq. (recused)

CLERK'S NOTICE

I hereby certify that a copy of the foregoing Ruling of the Board of Manufactured Housing has been mailed this date, postage prepaid, to Robert Brooks, 3 Buttonwood Lane, Merrimack, NH 03054, and to Robert M. Shepard, Esq., Smith-Weiss Shepard & Durmer, 47 Factory St., P. O. Box 388, Nashua, NH 03061-0388.

Dated: _____

Anna-Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Robert Brooks v. Camp Sargent Road Cooperative, Inc. Docket No. 002-06

PETER J. GRAVES

JUANITA J. MARTIN

KENNETH R. NIELSEN, ESQ.

REP. DAVID H. RUSSELL

REP. ANTHONY F. SIMON, ESQ.

MARK H. TAY, ESQ.

GEORGE TWIGG, III

JUDY WILLIAMS

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