

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Patricia A. Golden)
"Complainant")
)
v.) Docket No. 001-10
)
Forest Park Tenants' Association)
Cooperative)
"Respondent")

Hearing held on April 16, 2010, at Concord, New Hampshire.

DECISION AND ORDER

The Board of Manufactured Housing ("the Board"), heard a complaint filed by the home owner, Patricia A. Golden ("Complainant") of a manufactured home which is situated at 54 Forest Park, Jaffery, New Hampshire, alleging that the Forest Park Tenants' Association Cooperative, ("Respondent") has violated RSA 205-A:2, IV; V; and IX, which statutes prohibit a park owner or operator from: requiring any tenant to purchase any goods or services from any person or company; prevent any person or company from selling or delivering any tenant such goods or services; or charge or attempt to charge a tenant for repair or maintenance to any underground system of the park for causes not due to negligence of the tenant.

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 April 16, 2010, in Room 201 of the Legislative Office Building, Concord, New Hampshire. Board members Rep. Larry Brown, Peter J. Graves, Juanita J. Martin, Rep. David H. Russell, Atty. Ken Nielsen, Lois Parris, George Twigg, III and Judy Williams and Chairman Mark H. Tay, Esq. heard this case.

The Complainant was present, and was accompanied by supporting witness - her daughter, Kathleen Golden. The Respondent was present and represented by Marjorie Andrews, Operations Manager for the Cooperative, and Attorney Robert M. Shepard, Counsel for the Respondent.

On February 19, 2010, Complainant Patricia A. Golden filed a complaint with the Board alleging the following issues: That on December 30, 2009 the Complainant noticed a sewer drainage problem manifesting itself in the plumbing drains of her home at 54 Forest Park. Attempting to remedy the problem, the Complainant contacted “Roto-Rooter” in order to have the plumbing snaked. While in the process of snaking the pipes, (which had progressed beyond the above ground plumbing of the home to the below ground system) Roto-Rooter’s personnel were advised by a Maintenance Subcontractor of the Respondent that below ground systems are the responsibility of the park operator, and that Roto-Rooter should cease further repair efforts.

Thereafter, and over the course of the next three days, personnel, including ~~Subcontractors-subcontractors~~ and volunteers from the Cooperative, worked to remedy the sewer drainage problem. This work included removing the rear stairs to the home, portions of the home’s skirting and insulation board, excavating and replacing a section or sections of the sewer line servicing the Complainant’s home. However, the Complainant expresses dissatisfaction with the condition both her property (stairs, rear bath drain pipe, skirting and insulation) and that of the Respondent (the manufactured housing lot) were left in at the conclusion of the work. Among allegations of the complaint are: 1) a rear bathroom of the home was left out of service; 2) the home was left with a means of ingress and egress from the rear door as the stairs were not replaced; and 3) the -condition that the skirting and backing insulation were left in caused the water service supply line to the home to freeze and burst in the weeks after the work was stopped.

Moreover, the Complainant subsequently received a billing from the Respondent for \$630.00, apparently representing one half of the costs incurred by the Respondent in remedying the drainage problem. This billing was paid by the Complainant “under protest” as the Complainant did not feel she should be liable for underground system repairs. Further, the Complainant expended the sum of \$326.40 in order to have the frozen/burst water supply line repaired, a cost she feels to be resultant of actions (and/or inactions) of the Respondent.

FINDING OF FACT

Complainant, Patricia A. Golden via her daughter, Kathleen Golden, presented the Board with testimony as follows:

_____ The Complainant introduced testimony that Patricia A. Golden had resided at 54 Forest Park for the past 10 years, and Kathleen Golden has resided there for the past 6 years. In that time there had not been a prior drainage/sewer issue. On December 30, 2009, the Complainant noticed sluggish draining, and bubbling coming from the plumbing fixture drains throughout the manufactured home. Believing that the pipes of the home were clogged, they contacted Roto-

Rooter and engaged Roto-Rooter to come snake the pipes of the home. Roto-Rooter did arrive at the home that day, and determined that no clog was present in the plumbing of the home. Roto-Rooter was in the process of snaking the sewer line feeding the home – which is part of the underground sewer system of the park – when the Park’s maintenance person (Mr. Courtney Davis), who was plowing snow, stopped and informed them that underground sewer maintenance was the responsibility of the park, and that Roto-Rooter should proceed no further.

Over the next three, bitterly cold days, Mr. Davis, assisted by volunteers from the Cooperative, removed the rear stairs of the home, several sections of skirting and the insulation board behind the skirting, and snaked the underground sewer line servicing the home. The eventual repairs included excavating and repairing/replacing section(s) of the sewer line.

Per the Complainant’s testimony, the excavated portions of the lot were poorly re-graded, and the skirting was not properly re-secured to the home, and the insulation board and rear stairs to the home were not put back into place at all. Further, the sewer line, above ground but under the home, was not re-connected to the home’s plumbing system, leaving one bathroom of the home out of service. On January 29, 2010 the home experienced a freeze up of the potable water supply line, which burst. This required the repair by a licensed plumber and a resultant cost incurred by the Complainant of \$326.40. The Complainant testified that in the previous 10 years, the potable water line had never frozen, even in temperatures that were colder than that of January 29th, 2010 and the Complainant felt the freeze up to be the direct result of the insulation board and skirting not being properly replaced by the Park’s personnel after the sewer drainage issue was addressed.

The Complainant also spoke to the Respondent’s written Complaint Response which alleges that the original sewer line clog was caused by feminine napkins and paper towels. The Complainant introduced third party written testimony refuting this as a possibility.

Under cross examination by Attorney Shepard, the Complainant acknowledged that Roto-Rooter had removed one section of the home’s skirting and insulation board, and had disconnected the rear bathroom from the sewer line as part of their efforts, prior to being stopped by Mr. Davis. The Complainant stated that Mr. Davis had told Roto-Rooter not to reconnect the pipe, as he might be snaking the pipe from that location as well.

Ms. Marjorie Andrews, representing the Respondent, testified that she worked alongside Mr. Davis repairing the sewer line. Ms. Andrews testified that she and Mr. Davis did remove the stairs from the manufactured home – but that said stairs were “rotted through the first step”, were dangerous, and that it was her impression that the Complainant had plans to replace the stairs in the future. Further testimony from Ms. Andrews included information pertaining to the cold conditions, the depth of frost encountered, the nature of the equipment utilized to effect the repairs, the depth, length and type of sewer pipe (both under the home and in the ground). Ms.

Andrews said that the pipe was about 3.5 feet deep at the home and 4 feet deep at the sewer manhole in the street; that the pipe underground was most likely the original infrastructure; and of the type known as “orangeburg”. Ms. Andrews spoke to the attempts made to secure the skirting when the work was completed on January 3rd, and that portions of insulation were not reinstalled. Ms. Andrews also confirmed testimony provided by the Complainant that the Respondent acknowledged much work was unattended in January, but the Respondent intended to address these issues “when the weather warmed” (the issues pertaining to the disconnected rear bath sewer line and some grading issues having been resolved in the days just prior to this hearing).

Ms. Andrews stated that the decision to bill the Complainant \$630.00 was made by “the Board” of the Cooperative, and that she, personally, felt it fair to bill the Complainant for one half of the costs, given the Park’s determination of what had caused the clog - being the aforementioned feminine products and the like.

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 operator may require skirting on the manufactured housing and may make rules governing the size and number of out buildings 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 and services shall not exceed the average prevailing price in the locality for similar goods and services.

V. Prevent any person or company from selling to or delivering to or otherwise supplying and servicing any tenant with goods or services, or make any charge or request any fee from any such person or company for such activities; provided, that a park owner or operator may prohibit or regulate the soliciting or peddling of sales, goods or services within the park premises.

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 hearing all of the testimony submitted by the parties, the Board feels that the Respondent did not violate either RSA 205-A:2 IV or V, as alleged in the Complaint.

However, the Board does find that the Respondent failed to meet its affirmative obligation-burden of proof to establish the Complainant/Tenant's negligence to the sewer system by a preponderance of the evidence. The testimony provided, the age and characteristics of orangeburg pipe, and the physical constraints of the sewer system itself, including the pitch of the sewer pipe, introduce other potential causes. A simple clog would not have necessitated the excavation and replacement of the sewer pipe, but "orangeburg" pipe, a composite of wood chips and pitch, is known to deteriorate over time. Such deterioration would be more in keeping as a cause of mid-winter excavation and pipe replacement than a clogged line. As RSA 205-A:2 IX requires negligence on behalf of the Tenant before the Tenant can be charged for repairs to any underground system, the Board finds that the Respondent must refund the sum of \$630.00 to the Complainant. This motion was made and seconded, and the vote was unanimous.

The Board also finds that the Respondent must pay to the Complainant the sum of \$326.40 to cover the costs of the repair to the frozen potable water supply line. It being The Board determined by a 6-3 majority that the cause of the frozen line was the Respondent's removal of the skirting exposing the water line to the elements and subsequent failure to take preventive measures against the risk of a "freeze-up" - including failure to properly reinstall the skirting and insulation board - after completing the work it was able to do in January. This motion was made and seconded; the vote of the Board was split 6-3 with; Members Brown, Martin, Parris, Russell, Twigg and Williams voting in the affirmative; Members Graves, Nielsen and Chairman Tay dissenting. Dissenting members believed that the Complainant introduced insufficient evidence that the removal of the skirting and insulation was the cause of the frozen line and further, that she had a duty to mitigate her damages by taking steps herself to guard against the risk she advanced as the cause of her damages.

The Complainant requested the Board grant her the following relief: "Professional repair and reinsulation at, no cost to me, of the extensive damage caused to my personal property at no behest of mine." The Complainant offered no evidence of the cost of such repairs. The Board does not have the statutory authority to grant injunctive relief, and to order the Respondent to effectuate the requested repairs. Hynes v. Hale, 146 N.H. 533, 776 A.2d 722 (2001). The Board

denied the claim. This motion was made and seconded, and the vote was unanimous.

It was the ~~concensus~~consensus of the Board that there was no pertinent rule that is in violation of the provisions of RSA 205-A: 2, I-X. (RSA 205-A:27, I-b)

OTHER MATTERS:

A pre-hearing motion made by the Complainant for summary judgment was denied.

A pre-hearing motion made by the Respondent to dismiss was ~~denied~~deferred until the close of the evidence and ruled upon in accordance with this decision.

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: _____
Mark H. Tay, Esq., Chairman

Members participating in this action:

Rep. Larry Brown

Peter J. Graves

Juanita J. Martin

Lois Parris

~~Atty.~~ Ken Nielsen, Esq.

Rep. David H. Russell

Mark H. Tay, Esq.

George Twigg, III
Judy Williams

~~CERTIFICATION OF SERVICE~~ CLERK'S NOTICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Patricia A. Golden, 54 Forest Park, Jaffery, NH 03452; and Forest Park Board of Directors, 49 Forest Park, Jaffery, NH 03452, and Attorney Robert Shepard, Smith-Weiss Shepard, PC, PO Box 388, Nashua, NH 03061-0388.

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Patricia A. Golden v. Forest Park Tenants' association Cooperative; Docket No. 001-10

REP. LARRY BROWN

PETER J. GRAVES

JUANITA J. MARTIN

LOIS PARRIS

REP. DAVID H. RUSSELL

GEORGE TWIGG, III

JUDY WILLIAMS

~~ATTY.~~ KEN NIELSEN, ESQ.

MARK H. TAY, ESQ.