

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Robert Tigges, Jr.)	
“Complainant”)	
)	
v.)	Docket No. 002-11
)	
Silver Fox Estates)	
“Respondent”)	

Hearing held on June 20, 2011, at Concord, New Hampshire.

DECISION AND ORDER

The Board of Manufactured Housing (“the Board”), heard a complaint filed by the home owner, Robert Tigges, Jr. (“Complainant”) of a manufactured home which is situated at 221 Friendship Avenue, Pembroke, New Hampshire, alleging that Silver Fox Estates/Merrilee Grandmaison, (“Respondent”) has violated RSA 205-A:2, VIII (d); and IX, which statutes prohibit a park owner or operator from:

Requiring a tenant to sell or otherwise dispose of any personal property, fixture, or pet, which the tenant had prior permission from the park owner or former park owner to possess or use; provided, however, that such a rule may be made and enforced if it is necessary to protect the health and safety of other tenants in the park; 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 June 20, 2011, in Room 201 of the Legislative Office Building, Concord, New Hampshire. Board members Peter J. Graves, Juanita J. Martin, Rep. David H. Russell, Lois Parris, George Twigg, III, Judy Williams and Chairman Mark H. Tay, Esq. heard this case.

The Complainant was not present. The Complainant's father, Robert Tigges, Sr. represented the Complainant under authority of a Power of Attorney acknowledged in the Complainant's current State of residence – Florida. The Respondent was present and represented by Merrilee Grandmaison, (Partner) and Linda McClintock (Park Manager).

On February 10, 2011, Complainant Robert Tigges, Jr. filed a complaint with the Board alleging the following issues: That on or about November 20th of 2003 the Complainant received a notice from the Park Owner/Respondent that a large “shed”, which had been included as additional property in the purchase of the Complainant's manufactured home, was situated outside of the Complainant's leased site; and further, that said shed would be required to be removed from the Respondent's property.

The Complainant further alleged that in September of 2004, a potential sale of the Complainant's manufactured home fell apart when the purchaser was informed that a second shed on site would also be required to be removed, along with the underground fuel oil storage tank servicing the manufactured home site – both at the potential purchaser's expense.

In his filing with the Board of Manufactured Housing, the Complainant sought to recover claimed losses including the value of the shed that was removed, its costs of removal, revenue from the lost sale, and rent that was paid as a result of the sale's loss.

FINDING OF FACT

Complainant, Robert Tigges, Jr., via his father, Robert Tigges, Sr., presented the Board with testimony as follows:

The Complainant introduced testimony that the subject manufactured home and shed(s) had been purchased in October of 2003. In late November of 2003, the tenants of Silver Fox Estates were notified by Merrilee Grandmaison, Park Owner, that any buildings, not located within a 100'x 100' “site” accommodating their manufactured homes, would have to be removed per a requirement of the Town of Pembroke. Between March and August of 2004 there had been verbal and written communications between the Complainant and Respondent concerning the removal of an expansive shed owned by the Complainant that a portion or portions fell outside the area proscribed in the Respondent's notice.

Mr. Tigges, Sr. stated that he had approached the Respondent regarding removing the shed himself and via independent subcontractor; but was denied for lack of [proper] insurance and potential damage to the park's roads by heavy equipment. Finally, at the direction of the Respondent, the Complainant contracted with a Mr. Frank McClintock – former husband of the Park Manager. The offending shed was removed by McClintock on or about October 2004. Mr. Tigges provided a letter from Mr. Peter Rowell, Code Enforcement Officer for the

Town of Pembroke, which, in part, states “...if [Silver Fox Estates] wants Mr. Tigges to put all his buildings within the 100’ x 100’ lot that he rents from them it is [Silver Fox Estates] responsibility to require this”. The letter, in its entirety, seeming to refute the Respondent’s Notice to tenants that the requirement for buildings to be moved originated with the Town.

Per the Complainant’s testimony, the subject manufactured home was put under contract for sale in September of 2004. A copy of the first page of a standard realtor form Purchase and Sale Agreement was submitted in support of this testimony (**the Board wishes to note that the remaining 2 pages were not submitted into evidence*). The Complainant continued to state that the potential Buyer backed out of the Agreement when informed of the Respondent’s requirement that the underground oil tank, and another shed be removed before approval of the conveyance would be granted. A hand written withdrawal by the Buyer was also submitted into evidence supporting this testimony.

Under cross examination by the Respondent, the chain of title to the manufactured home was brought into question. The Complainant acknowledged that a sale between family members (Robert Tigges, Jr. to Tammi Tigges – his sister) had been fully performed, but that the deed resultant from this conveyance was never recorded. A copy of this deed was submitted into evidence by the Respondent. The Respondent questioned the Complainant about the physical nature of the shed, asking if the Complainant was aware that persons had established a dwelling within the structure, and if he was aware of “partying” that went on within it’s walls. The Complainant stated that he had no knowledge of such occurrences.

The Respondent provided testimony, both written and oral, to support their position that the Notice to tenants requiring buildings be moved (or removed) to the 100’ x 100’ site. Included was a site plan by Holden Engineering, Inc., dated December 22, 2003, which depicted 100’x100’ lots. This plan also showed that the subject manufactured home site was “skewed” slightly to accommodate the shed in question.

The Respondent refuted the Complainant’s testimony that the Complainant was steered toward the Park Manager’s ex-husband (Frank McClintock) for the removal of the shed, stating in essence, the park provided McClintock’s insurance, so they knew the insurance to be good and adequate. The Respondent also provided a copy of a written statement, signed by the Complainant, that the contract for the work was given “*without obligation or coercion*”.

In cross examination the Respondent did state that the underground fuel oil tanks were gifted to the tenants “years ago”. This oral statement is in support of written evidence, provided by the Respondent, in their original response to the Complaint. The Respondent raised the defense that the claims were too old.

RULINGS OF LAW

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

VIII (d). require a tenant to sell or otherwise dispose of any personal property, fixture, or pet, which the tenant had prior permission from the park owner or former park owner to possess or use; provided, however, that such a rule may be made and enforced if it is necessary to protect the health and safety of other tenants in the park.

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 Complaints against the Respondent, (while at least in part are valid and the Respondent did in fact operate contrary to RSA 205-A), are unenforceable because of the expiration of the Statute of Limitations. The Board is of the opinion that RSA 508:4 relative to limitation of actions applies to the facts of this case. The Complaint action was brought about by Robert Tigges, Jr. As the Complainant's ownership of the manufactured housing, and thus tenancy at Silver Fox Estates, terminated on the conveyance to his sister – the deed being dated January 31, 2005 – and the act complained of occurred in October, 2004. Thus more than three years transpired before the Complainant's action was initiated. The Board is unmoved by the testimony provided by Robert Tigges, Sr. concerning his promise to his daughter that **HE** (emphasis added) would do nothing until she sold the home and moved out of the park.

However, the Board does find that the Respondent is culpable, by their own admission, of a direct violation of NH RSA 205-A: 2, IX. The language of the statute leaves nothing unclear as to its prohibitions: "No person who owns or operates a manufactured housing park shall:

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**". (Emphasis added)

While this finding does not constitute the basis of a judgment for the Complainant in this matter for the reason(s) stated above, it does constitute a basis warranting action against the Respondent by this Board itself. The Board finds that the gifting of the below ground oil tanks to the tenants of Silver Crest Estates – no matter how many years ago – is void and unenforceable. Therefore, to the extent that there remain underground oil tanks in the community, they remain the property of the Respondent notwithstanding the illegal attempt to transfer ownership of the same to the tenants and while the Complainant's claim is barred, there may be other tenants in the community who have a basis to assert a claim against the Respondent for this violation of RSA 205-A: 2, IX.

OTHER MATTERS:

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:

Mark Tay, Esq. - Chairman
Peter J. Graves
Juanita J. Martin
Lois Parris
Rep. David H. Russell
George Twigg, III
Judy Williams

Members not participating in this action:

Rep. Clifford Newton
Kenneth R. Nielsen, Esq- Vice Chairman

Also Present:

Constance M. Stratton, Esquire, Senior Assistant Attorney General

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Robert Tigges, 5 Kimberly Lane, Allenstown, NH 03275 and to Silver Fox Estates/Merrilee Grandmaison, 31 Pleasant Street, Pembroke, NH 03275.

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Robert Tigges, Jr. v. Silver Fox Estates/Merrilee Grandmaison; Docket No. 002-11

PETER J. GRAVES

JUANITA J. MARTIN

LOIS PARRIS

REP. DAVID H. RUSSELL

GEORGE TWIGG, III

JUDY WILLIAMS

MARK H. TAY, ESQ.

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