THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Yvette Johnson "Complainant"	)	
v.	)	Docket No. 12-02
Iron Wheel Inc. Thomas Waters "Respondent"	)	

Hearing held on April 12, 2013, at Concord, New Hampshire.

DECISION AND ORDER

The Board of Manufactured Housing (the Board) heard a complaint filed by the home owner, Yvette Johnson (Complainant) of a manufactured home which is situated at #6 Axle Avenue, Danville, New Hampshire, alleging that Iron Wheel, Inc., Thomas Waters (Respondent) has violated RSA 205-A:2 IX, which statute indicates that a park owner or operator is prohibited from charging or attempting 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 12, 2013, in Room 307 of the Legislative Office Building, Concord, New Hampshire. Chairman Mark Tay, Esquire, and board members Juanita J. Martin, Representatives Carol H. Friedrich and Rose Marie Rogers, Lois Parris, Judy Williams, Ken Nielsen, Esquire, and Peter Graves heard this case.

The Complainant, Yvette Johnson, was not present. The Complainant was represented by her son, Mr. Mark Johnson. The Respondent, Iron Wheel, Inc., represented by Mr. Thomas Waters, President, was present.

On September 18, 2012, Complainant Yvette Johnson filed a complaint with the Board alleging the following issues: That the manufactured housing pad site (the lot) at #6 Axle Avenue, serviced by a subsurface septic system, experienced an effluent back-up on or about May 12, 2012. As a result of the Complainant's efforts to rectify the back-up, plumbing and

other invoices, in excess of $900.00, were generated. Thereafter, when the Complainant sought reimbursement from the Community Owner/Respondent, reimbursement was denied.

As a result of the Respondent's refusal to reimburse the Complainant for the costs she incurred, the Complainant brought this matter before the New Hampshire Board of Manufactured Housing.

FINDING OF FACT

Complainant, through her written submissions, and verbal statements of Mark Johnson, her son, presented the Board with testimony as follows:

The Complainant introduced testimony that the subject manufactured home lot experienced a septic back-up over the weekend of May 12, 2012. Being a weekend, the Complainant was told by other residents that the community operator would be unavailable, and that she should simply call a plumber – which she did. The Complainant included an invoice from Drain King, Inc., dated May 12, 2012 (a Saturday), in the amount of $640.00 with the complaint filing.

Further testimony included that Drain King, Inc. had "snaked" the plumbing of the home and beyond into the underground system owned by the Park Operator/Respondent to approximately 22 feet from the home. At this point the Complainant was told by Drain King, Inc.'s service technician that the line might be blocked or broken, and that a camera would need to be inserted into the septic line to be sure. Mr. Johnson testified that the technician told his mother that the toilet(s) and drains would function for the duration of the weekend but, beyond that timeframe, nothing was guaranteed.

Also included with the Complainant's filing with this Board was an invoice from Drain King, Inc., dated May 14, 2012 (a Monday), in the amount of $295.00 for camera services of the septic line on that date. The results of that camera inspection indicated a breakage or blockage of the underground line.

Under cross-examination by the Respondent, Mr. Johnson stated that he did not believe his mother had tried to contact the Respondent on May 12, 2012, or at any other time over the weekend, relying instead on the word of others "that he would not be available" and that "she should just call a plumber".

The Respondent, Thomas Waters, then offered testimony that he had first become aware that Ms. Johnson was experiencing a septic problem on Monday morning when his office called him – the office having then received a call from Ms. Johnson. Mr. Waters testified that he was in the park, so he drove right over. When he arrived at the home at 6 Axle Avenue, the camera technician was just finishing the work and putting away the camera. After discussion with the

Drain King, Inc. technician, Mr. Waters then dug up and located the problematic section of underground pipe which he replaced. Mr. Waters indicated that he felt the damage to the pipe was caused by the work of the cable utility burying its line in the immediate vicinity of the septic pipe. Photo(s) of the damaged pipe and cable were introduced as evidence.

Mr. Waters testified that he did not charge Ms. Johnson for any work that he performed in replacing the damaged pipe section, and reiterated that the first he had heard of the Complainant's septic problem was a very short time before he arrived at her home that Monday morning. Mr. Waters also testified to the set-up of clean outs in the underground septic lines, and his own efforts to remedy such problems for the residents of the Park.

Questions from the Board Members revealed that the Complainant had lived in the manufactured home community for perhaps thirty years. Also revealed were the facts there is an office answering machine and that the Respondent's office telephone number is call forwarded to his office staff over the weekends.

The Complainant was unable to explain why, after being told that the problem was in the underground septic pipe (acknowledged to be the property and responsibility of the Respondent), there was no effort made over the weekend to contact the Respondent; nor why the camera work had been scheduled for the following Monday morning without an attempt to contact the Respondent.

RULINGS OF LAW

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

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:

For the Majority:

After hearing all of the testimony submitted by the parties, the Board feels that the complaints against the Respondent are not sustained. Per Man 210.02, the burden of proof resides with the party asserting the proposition, by a preponderance of the evidence. In this matter, that assertion is that a violation of the statute's language: "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" has occurred. To the contrary, the preponderance of the evidence presented indicates that the Respondent was not afforded an opportunity to remedy the blocked septic line until after the Complainant's considerable expenses had been incurred.

While it was noted that the costs incurred by the Complainant were somewhat excessive, clearly there was some tangible benefit to the Respondent for the Complainant's efforts to remedy the blockage. However, it is equally clear that had the Respondent been contacted by the Complainant when the blockage had manifested itself, the repairs that were ultimately affected could have been made without any expense to the Complainant.

While the majority of the Board members feel that it would be prudent business, or a moral decision, for the Respondent to share in the costs the Complainant incurred, the Respondent cannot be compelled to pay for services he was not consulted about, resulting from a problem he was not advised of. The negligence of the Complainant (failing to so much as try to notify the Respondent of the septic blockage) disqualifies the Complainant from prevailing in an action under RSA 205-A:2 (IX).

Motion was made, seconded, and passed by the Board members (5-3) that the Complainant's complaint be dismissed.

Board Members Tay, Parris, Graves, Friedrich and Martin voting in the Majority

<u>For the Minority:</u>

It is felt that the lack of a clear and unambiguous publication to his residents by the Respondent of the prescribed method to contact the Respondent in the event of emergency, gives rise to a manner of "comparative negligence" in this matter. Thus, the Respondent has an obligation to participate in the expenses incurred by the Complainant, for at least the initial invoice of May 12, 2012.

Board Members Nielsen, Rogers and Williams voting in the Minority

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 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

Dated: April 22, 2013

By:_____
Mark H. Tay, Esquire, Chairman

Members participating in this action:
Mark H. Tay, Esq., Chairman
Kenneth R. Nielsen, Esq., Vice - Chairman
Peter J. Graves
Juanita J. Martin
Lois Parris
Rep. Carol H. Friedrich
Rep. Rose M. Rogers
Judy Williams

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Order has been mailed this date, postage prepaid, to Yvette Johnson, 6 Axle Avenue, Box 23, Danville, NH 03819 and Iron Wheel, Inc.,Thomas Waters, 589 Main Street, Danville, NH 03819.

Dated:_____

_____
Suzanne Beauchesne, Clerk
Board of Manufactured Housing