THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Thomas Maniscalco "Complainant"	)	
v.	)	Docket No. 13-04
Labonville Trailer Courts "Respondent"	)	

Hearing held on August 23, 2013, at Concord, New Hampshire.

DECISION AND ORDER

The Board of Manufactured Housing ('the Board"), heard a complaint filed by the home owner, Thomas Maniscalco ("Complainant") of a manufactured home which is situated at 500 Main Street, Lot 2, Gorham, New Hampshire alleging that Labonville Trailer Courts ("Respondent") has violated RSA 205-A:2, VIII (d), IX , XI and XII, 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

Charging or attempting 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; or

Failing to provide each person who applies to be a tenant of the park with a written copy of the rules of said manufactured housing park; or

Failing to respond to a written request of the consumer protection and antitrust bureau of the department of justice by not mailing or delivering a copy of the current park rules to the bureau within 7 days of receipt of the request.

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 August 23, 2013, in Room 307 of the Legislative Office Building, Concord, New Hampshire. Board members Peter J. Graves, Juanita J. Martin, Rep. Rose Marie Rogers, Lois Parris, Judy Williams, Robert D. Hunt, Esq. and Chairman Mark H. Tay, Esq. heard this case.

The Complainant was present and was not represented by an attorney. Richard Labonville, park manager, was present for Labonville Trailer Courts (Owned by E.J. Labonville Trust) and represented by William B. Pribis, Esq.

On April 22, 2013, the Consumer Protection and Antitrust Bureau of the New Hampshire Attorney General's Office referred the Complainant's Consumer Complaint Form to the Board. On May 10, 2013, Thomas Maniscalco filed a complaint with the Board alleging the following issues: That the Respondent was charging the tenants for calling the town water department for underground problems; That the Respondent was requiring the Complainant to get rid of personal property including pets and a pick-up truck; and that the Respondent had changed park rules without providing a copy of the new rules to Complainant at least 90 days prior to the rules taking effect.

In his filing with the Board of Manufactured Housing, the Complainant did not specify the relief he was seeking from the Board.

FINDINGS OF FACT

The Complainant, Thomas Maniscalco, presented the Board with testimony as follows:

The Complainant introduced testimony that he moved into the subject manufactured home in November 2003. Approximately four years ago, Complainant began to have conflicts with the Respondent. On April 1, 2009, Respondent sent a letter to Complainant requiring him to remove a vehicle from the park alleging that it was in violation of a park rule prohibiting unregistered or immobilized vehicles. The Complainant testified that he removed the vehicle, a GMC pick-up truck, from the park in April 2009.

The Complainant provided further testimony that, in 2009, the Respondent raised the park rent from $250.00 to $300.00. Although he indicated that the Respondent was billing $65.00 per month per tenant for water usage, he stated that the $65.00 was not billed separately, but was instead built into the $300.00 rent payment. The Complainant testified that he believed that the reason the Respondent raised the rent was because swimming pools in the park were costing the Respondent money for water usage. He therefore asserted that the $50.00 increase was not reasonable under those circumstances.

The Complainant obtained a dog as a pet in January 2010. He specifically testified that the dog was not a service animal for hearing or sight issues, but simply his pet. The Complainant stipulated that the park rules in effect at that time prohibited dogs over ten pounds (later increased to 20 pounds) from the park and that park rules required him to have his dog tied. He

stated that he does not tie his dog, nor does he keep it on a leash when he takes him outside because he is always with the dog. The Complainant stated that his dog weighs 60 pounds and that the Respondent was requiring that the dog be removed from the park premises. He asserted that park rules prohibiting dogs over 10 pounds and requiring that dogs be tied was unreasonable. The Complainant further stated that there are at least eight other dogs in the park that exceed the weight limit.

In 2012, the Respondent brought an eviction action against Complainant in the Berlin District Court. Complainant testified that the Court in that case issued a default order against the Respondent because the Respondent failed to appear.

In January 2013, the Complainant's water pipes froze and he asked the Respondent to thaw them out. These were not underground pipes, and Complainant conceded that it was not the park's fault that the pipes had frozen. In 2010, the park rules provided for pipe thawing services at $50.00 per thaw. The rules changed, however, in 2012 to $50.00 per hour. The Complainant claims that he did not receive a copy of the 2012 changes to the park rules until April 4, 2013 and only then because he had taken the Respondent to court.

On January 25, 2013, the Complainant received a bill for $300.00 for the pipe-thawing services. He submitted an invoice he received from the Respondent to the Board in support of his statement. The Complainant asserted that the park charged him too much and that the bill amount was unreasonable because he had not received a copy of the new park rules. To date, he has not paid that bill.

The Complainant introduced testimony that, in April 2013, he had another vehicle, a 1997 Ford Freestar, immobilized in his driveway due to a bad transmission. According to the Complainant, the Respondent sent him another letter requiring him to remove the vehicle from the park, which he did. The Complainant asserted to the Board that the park rules limiting the number of vehicles per unit were also unreasonable. In fact, he stated that all the park rules in general were unreasonable.

On cross-examination by the Respondent's attorney, the Complainant testified that the Respondent had given him a copy of the park rules for 2010 in a timely manner. He stated that he did not believe that the $300.00 per month rent was unreasonable, and he admitted that the Respondent had never charged him for calling the city for services. The Complainant testified that he did not have any financial damages because he never paid the $300.00 charged by the Respondent for thawing his frozen pipes. He acknowledged that the park rules did not require him to hire the Respondent to perform pipe-thawing services and that he was free to hire a private contractor. While he recognized that the District Court found that the Respondent had not violated RSA 540-A, the Complainant testified that he was simply unhappy about the changes in the park rules.

The Respondent's attorney produced a letter, dated April 9, 2013, from the Respondent's attorney to the Complainant, and the Complainant testified that he had received that letter. The letter notified the Complainant that he was in violation of certain park rules, including Rule 11 for having a disabled vehicle in his yard, Rule 13 for having excessive debris, junk, etc. in his

yard and Rule 16 for having a dog in excess of 20 pounds. The letter further indicated that the Complainant had 30 days to cure the violations or the Respondent would commence eviction proceedings.

On further cross-examination, the Complainant indicated that he did have an immobilized vehicle in his yard at the time he received the April 9, 2013 letter from the Respondent. He did not agree that he had junk in his yard, but instead asserted that everything in his yard was in some way useful to him, including multiple wooden pallets that he eventually planned to make into planters for the yard. Although the Complainant admitted that his dog weighed 60 pounds, and that he had anticipated that it would weigh that much when he obtained it, he asserted again that the weight limit on dogs in the park rules was unreasonable on its face.

The Complainant finally stated on cross-examination that the Respondent had not given him a copy of the 2012 park rules until April 4, 2013 when he was in District Court with the Respondent.

On questioning from the Board, the Complainant testified that from 2008 – July 2013 he was the only person residing in the manufactured home at issue. He stated that in 2009 he had two vehicles and in April 2013 he had two vehicles.

The Respondent provided evidence, both written and testimonial, asserting that the park rules at issue were reasonable both on their face and as applied to the Respondent. Richard Labonville, the park manager for approximately 20 years, testified first with regard to park Rule 16 related to the weight limits on dogs. He stated that, while there are other dogs in the park, their owners all keep them on leashes. Mr. Labonville expressed his concern about the Complainant's dog because it is not leashed and it charges children when they are getting off the school bus at the park. He also stated that the Complainant lets the dog run loose in the park and does not clean up the mess made by the dog. Mr. Labonville stated that he never gave permission to the Complainant to have a dog in the park.

The Respondent provided testimony that when new park rules are issued, it is the policy of the Respondent to simultaneously provide copies to every single resident 90 days in advance of the rules going into effect. The Respondent submitted copies to the Board of the park rules from 2010 and 2012.

Mr. Labonville testified, however, that the Complainant refuses to accept documents sent or delivered to him, and that includes new park rules and notices. He asserted on direct examination that the 2012 rules were sent out prior to June 1, 2012, well before the April 9, 2013 letter to the Complainant regarding rule violations. Those rules included the new Rule 23 which increased the pipe-thawing fee from $50.00 per incident to $50.00 per hour.

Finally, Respondent provided testimony that the Complainant was never given permission to keep a disabled vehicle on his lot.

RULINGS OF LAW

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

VIII. Make, or attempt to enforce, any rule which:

(d) Requires 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.

XI. Fail to provide each person who applies to be a tenant of the park with a written copy of the rules of said manufactured housing park. Said rules shall set forth the terms and conditions of the tenancy and shall contain the following notice at the top of the first page printed in capital typewritten letters or in 10 point bold face print:

...NO RULE MAY BE CHANGED WITHOUT YOUR CONSENT UNLESS THIS PARK GIVES YOU 90 DAYS ADVANCE NOTICE OF THE CHANGE...

XII. Fail to respond to a written request of the consumer protection and antitrust bureau of the department of justice by not mailing or delivering a copy of the current park rules to the bureau within 7 days of receipt of the request.

CONCLUSION AND DISCUSSION

The Board finds the following:

After hearing all of the testimony submitted by the parties, the Board concludes that the Complainant failed to submit sufficient evidence to prove that the Respondent's park rules were or are unreasonable or unenforceable on their face or as applied to the Respondent. The Board further finds that the Respondent provided copies of the park rules to the Complainant in compliance with the language of RSA 205-A:2 XI.

Regarding Rule 11 of the park rules limiting the number, location and condition of vehicles each tenant of the park is permitted to have in the park, the Complainant did not deny that he was in violation of the rule. His position was that Rule 11 was unreasonable as it read in 2010 and continued to be unreasonable as it reads in the rules issued in 2012. Both versions of Rule 11 allow "one registered vehicle per person per household on their lot." The Board does not find this rule to be unreasonable on its face, as a manufactured housing park and its tenants

could have legitimate and reasonable aesthetic, sanitary and safety reasons for such a rule. Furthermore, the Respondent did not apply the rule unreasonably to the Complainant. The Complainant had more vehicles than were permitted by the rule in 2009 and 2013 and had an immobilized vehicle on his lot in 2013.

Rule 13 of the park rules requires that tenants keep their lots neat and clean at all times and further specifies requirements for doing so. The Complainant presented no evidence that this rule is unreasonable on its face and the Board does not find it to be. The Complainant submitted insufficient evidence that the Respondent applied the rule to the Complainant in an unreasonable way. In fact, the Respondent's letter of April 9, 2013 provided the Complainant with 30 days to clean up his lot, and the Complainant provided no evidence that he did so, or that being required to do so was unreasonable.

Rule 16 of the park rules addresses limitations on pets. The Complainant has a dog that weighs 60 pounds; a weight exceeding the 2010 rules limitation of 10 pounds and the 2012 rules limitation of 20 pounds. The Complainant also does not leash, tie up or clean up after his dog, according to the Respondent. Both the dog's weight and the Complainant's refusal to leash, tie up or clean up after his dog are a violation of the rule. The Board finds that Rule 16 was not unreasonable in 2010 and is not unreasonable as revised in 2012, nor did the Respondent unreasonably apply it to the Complainant.

Because the Board concludes that the Complainant was provided with a copy of the 2012 park rules prior to June 1, 2012, it cannot find that Park Rule 23 establishing a $50.00 per hour fee for the park's pipe thawing services were not known to the Complainant when he utilized those services in January 2013. The rule is not unreasonable in part because it does not require the Complainant to hire the Respondent to utilize its pipe-thawing services and because the Complainant is free to hire his own contractor should he so choose.

Although the Complainant checked the box on the Complaint indicating that the Respondent violated RSA 205-A:2 XII by failing to respond to a written request of the Consumer Protection and Antitrust Bureau of the Department of Justice, he presented no evidence on that issue.

Based on the foregoing law and fact, the matter is dismissed.

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: Oct. 28, 2013

By: _____
Mark H. Tay, Esquire, Chairman

Members participating in this action:

Mark H. Tay, Esquire, Chairman
Peter J. Graves, Vice Chairman
Robert D. Hunt, Esquire, Secretary
Judy Williams
Juanita J. Martin
Lois Parris
Rep. Rose Marie Rogers

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Order has been mailed this date, postage prepaid, to Thomas Maniscalco at 500 Main Street, Lot #2, Gorham, NH 03581 and to William B. Pribis, Esquire, Two Capital Plaza, 5th Floor, P.O. Box 1137, Concord, NH 03302-1137.

Dated: 10-28-13

Suzanne Beauchesne
Suzanne Beauchesne, Clerk
Board of Manufactured Housing