STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Estate of Arden McLean **Jane Healey, Administrator** **Complainant** **v.** **Cochecho River Cooperative** **Respondent**	))))))))))	**Docket No. 16-02**

Meeting held on November 13, 2015 at Concord, New Hampshire.

RULING

This matter came on for hearing before the Board of Manufactured Housing (hereinafter referred to as the Board) on the complaint of Jane Healey, Administrator of the Estate of Arden McLean (hereinafter referred to as the Complainant) against Cochecho River Cooperative (hereinafter referred to as the Respondent) alleging the Respondent's conduct to be in violation of RSA 205-A:2, VII, RSA 205-A:2, IX and RSA 205-A:2, XI. At the hearing, the Petitioner was represented by Attorney Maureen A. Howard. Attorney Donald F. Whittum appeared for the Respondent. Testimony was adduced through offers of proof by agreement of the parties. After careful consideration of all the evidence presented, including the exhibits offered and the testimony adduced, the Board finds the following facts and makes the following rulings:

FINDINGS OF FACT

The Estate of Arden McLean includes a manufactured home in the cooperatively-owned manufactured housing park. In her complaint the Administrator alleges violations of RSA 205-A:2, VII, RSA 205-A:2, IX and RSA 205-A:2, XI seeking a ruling from the Board that she should not be charged for excess water consumption because of a $7,000 water bill assessed to the Respondent allegedly the result of a broken waterline under the manufactured home due to her negligent care of the unit. She also seeks a "return" of $2,020 in rent but applied to the balance assessed. She alleges that the Respondent is responsible for the repair and maintenance of underground systems and that its assessment to her of the water bill is a violation of that provision. RSA 205-A:2, IX. She

also alleges since Respondent is responsible to provide water to the premises, its assessment to her of the water charge is a condition of the tenancy not disclosed in the rules in violation of RSA 205-A:2,VII. And in any event she claims that the assessment is arbitrary and not connected to the cost of actual usage. She lastly claims that the Respondent is in violation of RSA 205-A:2, XI for failing to provide a copy of park rules and by-laws after a request to do so but withdrew that claim at the hearing which accordingly is dismissed.

The Respondent is located in Dover, NH. Water to the park is supplied by the City of Dover. The park is master-metered. There are no individual meters to the units. Accordingly the City water department bills the Cooperative for all water passing through the master-meter. At some point prior to January 13, 2015 water began leaking from the Complainant's unit at the service connection under the unit. On the same day, the Respondent's then president shut the water down at the shut off on the home site which was thought to have stopped the leakage. Later, on April 2, 2015, residents again observed surface water on the Complainant's homesite. It was discovered that there was again water leaking from the service connection to the home. Another turn of the shut-off valve in the yard again appeared to shut the water down. The Complainant was billed $4,000 by invoice dated March 17, 2015 and another $3,000 by invoice dated April 14, 2015. While the water bills for the months of January and February, 2015 were offered in support of the billing, there is no breakdown for individual sites. Indeed, the two billings to the Complainant appear to be an arbitrary determination of the proportionate charges incurred as a result of the leak at the Complainant's unit. The total January, 2015 bill was $4,712.00 of which a flat $4,000 was billed to the Complainant. Similarly of the $3,741.17 billed for February, 2015 consumption, a flat $3,000 was billed to the Complainant. The historic water billings show a dramatic spike in usage during the period from January 8, 2015 and February 17, 2015 from $683.29 to $4,712.00. Water usage remained high prompting a general notice from the Respondent to all residents dated May 25, 2015 regarding the high usage rate and requesting a check for leaks. The Complainant testified that she believes the amount she is being billed for would equal approximately 750,000 cubic feet of water and that all that water should have been easily visible which it was not.

The Respondent testified that it was reasonably foreseeable that the failure to heat the unit would result in a freeze up and that the line would freeze back to the connection. It was due to the negligence of the Complainant that the water lines would break causing loss of water and a corresponding water bill. Rule 7 of the park rules provides, "It is the responsibility of the resident to see that sewer, water, and other connections to the mobile home are properly made, protected, insulated and maintained. The resident shall bear the cost of all charges incurred in this regard." The Respondent is only an 18 unit park and such a bill is onerous.

RULING

The Board is charged with hearing and determining matters involving manufactured housing park rules, specifically RSA 205-A:2, RSA 205-A:7, & RSA 205-A:8. (See RSA 205-A:27, I) The Board is further vested with the authority to determine whether a rule is reasonable as applied to the facts of a specific case. (See RSA

205-A:27, I-a). For the reasons set forth below, the Board unanimously finds for the Petitioner.

The Board finds that Rule 7 of the park rules standing on its own is not unreasonable and not in violation of any provision of RSA 205-A:2 I-X, specifically RSA 205-A:2, VII and RSA 205-A:2, IX as alleged by the Complainant.

RSA205-A:2, VII provides the park owner or operator shall not :

> "Fail 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, including rental, utility, entrance and service charges."

Rule 7 reasonably places each resident on notice that he/she/they shall bear the cost of all charges stemming from a failure to insure that the home is properly connected to the park water and that the pipe is properly protected and insulated. There is some evidence that the Complainant or heirs failed to do so and therefore would be responsible for any charges incurred as a result of the failure. There is no violation of the afore-cited statute.

RSA 205-A:2, IX provides the park owner or operator shall not:

> "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..."

The Respondent has not charged the Complainant for any repair or maintenance. Further, as stated there is at least a suggestion, although not proven, of negligence on the part of the Complainant. In any event, the assessment of the water charge is not a charge for maintenance or repair of an underground system and therefore there is no violation of RSA 205-A:2, IX. Further Rule7 clearly sets out community expectations of resident responsibility. These expectations as set forth therein do not illegally shift responsibility for underground systems to the Resident.

However, the rule is unreasonably applied to the Complainant under the facts of this case. This is because there is no logical relation between the amount charged to the Complainant by the Respondent for the amount of water lost and billed by the City due to any alleged negligence on the part of the heirs of the decedent or the administrator. There were continuing water leakage problems throughout the park after the situation at the Complainant's unit was brought under control and the leakage stopped. The Board finds it is more likely than not that the high bills were not the singular result of the leakage at the Complainant's unit and are likely therefore ultimately the collective responsibility of all residents, not just the Complainant. It is therefore the conclusion of the Board that the $7,000 assessed to the Complainant was unreasonable and on that basis finds for the Complainant.

The Complainant's requests for findings of fact are granted to the extent consistent with this decision.

Pursuant to RSA 205:A-27, I-a, this ruling shall be binding on the parties in any subsequent court proceeding between the parties unless the decision is reversed on appeal under RSA 205-A:28. Because of the Board's finding that the rule does not violate any

provision of RSA 205-A:2, I-X no damages, civil penalty, or attorney's fees shall be awarded to the Complainant notwithstanding the provisions of RSA 205-A:12, 205-A:12-a, 205-A:13-a, or 358-A.

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 205-A:28 II.

SO ORDERED

BOARD OF MANUFACTURED HOUSING

Dated: 2-12-2016

By: ____________________________
Mark H. Tay, Esquire, Chairman

Members participating in this action:

Mark H. Tay, Esq., Chairman
Peter J. Graves, Vice-Chairman
Robert Hunt, Esq., Secretary
Rep. Catherine Cheney
Kenneth Dame
Lois Parris
Former Rep. Glenn Ritter
Rep. Franklin Sterling
Judy Williams

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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 the parties.

Dated: 2-19-16

Rick Wisler, Clerk
Board of Manufactured Housing