STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Keith Henderson and Simone Henderson	)	**Docket No. 16-04**
"Complainants"	)	
	)	
v.	)	
	)	
Pine Gardens Manufactured Homes, Inc.	)	
"Respondent"	)	

Hearing held on September 23, 2016 at Concord, New Hampshire.

DECISION

This matter came on for hearing before the Board of Manufactured Housing (hereinafter referred to as the Board) on the complaint of Keith Henderson and Simone Henderson (hereinafter referred to as the Complainants) against Pine Gardens Manufactured Homes, Inc, (hereinafter referred to as the Respondent) alleging the Respondent's conduct to be in violation of 205-A:2 IX. At the hearing, the Complainant Simone Henderson appeared and was represented by David Estes and Joseph Dupont appeared as an employee of the Respondent. Respondent was represented by counsel, Ari B. Pollack, Esq. 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 Complainant Simone Henderson and Joseph Dupont are brother and sister and each has resided for a number of years at separate residences in Pine Gardens Mobile Home Park, Belmont, New Hampshire, a manufactured housing community owned at one time by their father Lawrence Dupont. The manufactured housing community is serviced by an underground non-potable water system which takes water from the Tioga River. Each home site is furnished with a PVC plastic riser pipe connected to an underground tee service coupling. The main servicing the entire park is about 5 inches below the surface at the point of the tee coupling. The riser is generally located at the rear of the homesite as in the Complainants' case. Attached to the riser is a spigot from which the resident may draw water for plant watering etc…and to which the resident may attach a garden hose for lawn irrigation, plant watering and other permitted uses. The system is installed so that residents will not use drinking water for outside purposes. Park rule 29 (Park Rules effective February 1, 2015-- Respondent's exhibit 9)

regulates in detail resident use of the system. On August 6, 2015 the plastic pipe rising from the tee was free-standing and unsupported. At the request of the Complainants their next door neighbor's 14 year-old son began to do work in their yard that day. Although the evidence is not entirely clear, the parties agree that in the boy's efforts to attach a hose to the spigot, the pipe broke off at the tee resulting in a continuous and unregulated flow of water. The Respondent's park manager was timely informed and the irrigation system shut down. The child did not appear at the hearing and no testimony was adduced from him on the issue of what actually occurred. The Respondent informed the Complainants that the break was due to their negligence in failing to keep the area around the pipe free from overgrowing vegetation. Respondent also advised that, "Our investigation reveals that your agent caused the damage to the system and Pine Gardens reserves all of its rights with respect to this matter." (August 17, 2015 letter marked as Plaintiff's exhibit 3) The Complainants point to park rule 11E making the Respondent responsible for maintenance of the irrigation system and that it should be repaired by Respondent. They advised the Respondent they had no authority to repair the system. And they point to park rule 12E prohibiting cutting of trees or bushes as the reason for their failure to weed whack around the sill. The Respondent pointed to no rule requiring the Complainants to weed whack or otherwise keep the brush away from the riser. The Respondent felt compelled to get the system back into operation and when the Complainants refused to have the repair made, the Respondent's contractor had the break repaired and a new tee and riser installed secured by duct tape to a wooden stake. The Respondent billed the Complainants $435.00 for the cost of repairs pursuant to rule 11 E as caused by the "actions" of the Complainants. The Complainants objected and bring this complaint.

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).

RSA 205-A:2 IX provides that no park owner shall "[c]harge 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."

The Board finds and rules that the water irrigation system is in fact an underground system as contemplated by RSA 205-A:2 IX . Rule 29 refers to it as an "irrigation system," and it is buried in the ground. The purpose of the PVC risers is to give access to the system and are therefore deemed to be part of the underground system for purposes of RSA 205-A:2 IX . The Respondent charged the Complainants for a repair to that system. However, the Respondent raised the issue of the Complainants'

negligence as the cause for repair. There is insufficient evidence adduced for the Board to make a determination that the cause for the repair was not due to the Complainants' negligence—that the pipe was not broken off due to the negligence of the Complainants' next door neighbor whom they engaged to work on their yard. No evidence was presented providing details of how the pipe actually broke. And while it was not clear how the failure of the Complainants to remove brush around the pipe contributed to its breaking, the Respondent did sufficiently raise the issue of the Complainants' negligence to put it in issue with its August 17, 2015 letter addressed to the Complainants. We interpret the statute as requiring the Complainants to establish by a preponderance of the evidence, that the cause for repair was NOT the result of their negligence once the issue of their negligence is raised, in order to prove a violation of this prohibited practice. Accordingly, the Board UNANIMOUSLY finds and rules that the Respondent is not in violation of RSA 205-A:2 IX by charging the Complainants the sum of $435.00 and that its rules are reasonable as applied to the facts of this case.

The Board makes no finding as to the reasonableness of the $435.00 charge, or as to the negligence or comparative negligence of the parties affecting any judgment that may be rendered in a proceeding in another forum.

The Respondent's requests for findings of fact numbers 5, 8 and 9 are GRANTED. The remaining requests for findings of fact and rulings of law are ruled upon consistent 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 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: Oct 21, 2016

By: _____
Mark H Tay, Esquire, Chairman

Members participating in this action:

Mark H. Tay, Esq., Chairman
Peter J. Graves, Vice-Chairman
Kenneth Dame
Glenn Ritter
Honorable Franklin Sterling
Judy Williams

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 and their counsel or representative.

Dated: 10-25-16

Rick Wisler

Rick Wisler, Clerk
Board of Manufactured Housing