

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Wayne and Linda Parkhurst)
"Complainant")
)
) Docket No. 13-03
)
v.)
)
Jean T. Howe/Pine Knoll Village)
"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 owners, Wayne and Linda Parkhurst ("Complainant") of a manufactured home which is situated at 83 Pine Knoll Village, Lee, New Hampshire, alleging that Jean T. Howe/Pine Knoll Village ("Respondent") has violated RSA 205-A:2 VIII (d), which statute prohibits a park owner or operator from making or attempting to enforce any rule which:

"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".

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. Vice Chairman Peter Graves and Board members Juanita J. Martin, Rep. Carol H. Friedrich, Judy Williams, Rep. Rose Marie Rogers, and Robert Hunt, Esquire, heard this case. Chairman Mark Tay recused himself, due to a conflict of interest, and left the hearing prior to its onset.

The Complainants, Wayne and Linda Parkhurst, represented by Attorney Donald F. Whittum were present. The Respondent, Jean T. Howe/Pine Knoll Village, was present. The Respondent's Park Manager, Mr. Toby Jensen; and Ms. Kathleen A. Casey were present as witnesses for the Respondent.

On March 27, 2013, Complainants Wayne & Linda Parkhurst filed a complaint with the Board alleging the following issues: That in response to an incident which occurred on October 31, 2012 involving the Complainant's dog and a dog belonging to another resident of the manufactured housing community, Ms. Kathleen A. Casey, the Complainants received letters from the Respondent instructing them to remove their dog from the community.

When the Complainants did not follow the instructions to remove their dog from the premises, they were served an Eviction Notice citing failure to comply with the written rules of the community. In response to the Eviction Notice, the Complainants filed the subject complaint alleging the violation of RSA 205-A:2 VIII (d).

It was noted by the parties to this action that the District Court case stemming from the service of the Eviction Notice was dismissed by that Court, pending the subject hearing of the Parkhursts' complaint by the Board of Manufactured Housing. In turn, the Board of Manufactured Housing noted that it does not adjudicate eviction proceedings, but the Board is empowered to review the reasonableness of a community's written rules, as those rules apply to the facts of a specific case.

As a matter of record, it is also noted that Attorney Whittum introduced a Motion to Suppress the testimony of the Respondent (and evidence entered) due to the Respondent's late filing of her response. However, at the June 28, 2013 Board meeting, the Board's Clerk noted the fact that the Respondent's filing, while late, was expected. Therefore, Vice Chairman Graves offered Attorney Whittum the opportunity to determine if the Respondent's response contained new or unknown material facts and/or evidence; and if so, to continue the matter to another date, or go forward as scheduled. Attorney Whittum elected to go forward, and the Motion to Suppress was DENIED per Man 204.01(b)(10).

FINDINGS OF FACT

Complainants, through their written submissions, and verbal testimony of Mr. Wayne Parkhurst, under questioning from Attorney Whittum, presented the Board with testimony as follows:

The Complainant introduced testimony that they had moved into Pine Knoll Village in either 1995 or 1996. About three years ago, they had acquired a dog, a Boxer/Shepherd mix. After possessing the dog for a short trial period – perhaps two weeks – the Complainants determined that they would keep the dog as a permanent household member. The Complainant sought out the Park Manager, Mr. Toby Jensen, and informed Mr. Jensen of the same. This communication happened in either late September or early October of 2010.

On October 31, 2012 – the day after New Hampshire experienced Hurricane Sandy – Mr. Parkhurst was making repairs to his front screen door which was damaged by the storm. Ms. Kathleen Casey was walking her own dog on the street. Mr. Parkhurst's dog saw Ms. Casey's dog, and squeezed out past Mr. Parkhurst and the damaged screen door. Mr. Parkhurst testified that the two dogs began fighting, and after a period of several minutes and the efforts of both dog owners, the two were separated. Mr. Parkhurst testified that Ms. Casey hurried off after the incident, apparently quite shaken, and did not answer his inquiries as to her dog's and her own well-being. Mr. Parkhurst stated that he had no knowledge of Ms. Casey being injured immediately after the incident.

Later that evening, Mr. Parkhurst was visited by Patrolman Lyczak of the Lee Police Department. A portion of Officer Lyczak's narrative report was included with the Complainant's complaint filing. *(The Board notes a minor discrepancy between the Complainants' date of the incident as 10/31/12, while the police report indicates 10/30/12).* The police report indicates that the report of a "dog bite" was initiated by Wentworth Douglas Urgent Care. Also indicated is that Ms. Casey suffered a puncture wound on her left arm. Officer Lyczak indicates that when he visited the Parkhurst residence to explain the quarantine procedure that the Parkhursts' dog was "very friendly". Both a black and white photocopy and a color copy of the photograph (apparently taken by Officer Lyczak) of Ms. Casey's injury was introduced as evidence.

Further questioning from Attorney Whittum brought forth that the Parkhursts' dog had no incidents of aggressive behavior before, or after, the occurrence of late October 2012. Also, according to Mr. Parkhurst, of the 20 homes on his street, approximately 10 have dogs residing in them.

Under cross examination from Ms. Jean Howe, Mr. Parkhurst testified that when he had moved into the community, he had no dog. Nor did the Parkhursts contact Ms. Howe, the community operator, regarding obtaining or registering the dog once it was obtained. The only communication the Parkhursts had regarding the dog was to Mr. Jensen. Ms. Howe produced a dog application form, stating that she used the form, along with a dog "interview" as part of the registration process. Mr. Parkhurst acknowledged that he had not filed the application form, nor was he aware of its existence. Mr. Parkhurst also acknowledged that his dog is not routinely leashed or tied when it is outside, that he relies instead on an electronic "shock collar" to control the pet. This shock collar was not on the dog when the incident in question occurred, as the dog was not intended to be outside the house – it simply escaped of its own volition upon spying Ms. Casey's dog.

Under re-direct questioning from Attorney Whittum, Mr. Parkhurst re-affirmed that his only communication regarding his acquiring a dog to the community management was his conversation with Mr. Toby Jensen, perhaps three years ago.

The Respondent, Ms. Jean T. Howe then introduced both written and oral testimony from Ms. Kathleen Casey. Ms. Casey's testimony centered on the aggressive behavior of Mr. Parkhurst's dog. Ms. Casey testified that not only did the Parkhursts' dog aggressively attack her animal, but also Mr. Parkhurst had to resort to extreme physical methods in order to break the attack. Ms. Casey's written testimony detailed the emotional effect of the incident, which apparently has caused her to seek out of the manufactured housing community. Ms. Howe introduced Ms. Casey's "acceptance" letter to the community which does note Ms. Casey's ownership of a dog, and that no replacement of the dog shall be allowed. Ms. Casey indicated that the Parkhursts' dog is never restrained via leash when it is outside. Further, Ms. Casey did not feel the shock collar would have had an effect, even if the dog had been wearing it. Ms. Casey also testified that she had not contacted the police after the incident; that action was taken by the staff at the hospital.

The Respondent then introduced the verbal testimony of Mr. Toby Jensen, her Park Manager. Mr. Jensen testified that his role as manager is to note issues within the community, to address what he is able – and to pass other matters on to Ms. Howe. Mr. Jensen testified that, like many issues, his response to the Parkhursts' communication that they had obtained a dog, would have been "send Ms. Howe a letter". Mr. Jensen stated that, as he resides in the community, and has to live amongst the residents, he often refers matters directly to Ms. Howe. Mr. Jensen stated that he, himself, did not feel he had authority to approve or disapprove of dogs being brought into the community.

Under cross-examination from Attorney Whittum, Mr. Jensen did indicate a recollection of the Parkhursts' communication that they had obtained a dog. Mr. Jensen re-affirmed that his response would likely have been "contact Ms. Howe". Mr. Jensen also stated that in his experience the Parkhursts' dog was friendly. His only negative experience was having to "knee the dog down" when it jumped up on him, as he himself does not like dogs jumping up in greeting. Mr. Jensen also confirmed to Attorney Whittum that there are perhaps 15-20 dogs currently in residence in the community.

Questioning from the Board Members centered on the demeanor of the Parkhursts' dog, the ambiguity of the community's written rules, and the familiarity of Ms. Howe with the animals in residence within the community.

Ms. Howe stated that she is frequently in the community – "sometimes twice a week"; yet, Ms. Howe also testified that she was unaware of how many dogs lived in the community and nor was she aware of how many "Dog Application" forms she was in possession of, for the dogs that do reside in the community.

Mr. Parkhurst stated that he was unaware of the "Dog Application" form, and the dog interview process.

Ms. Howe stated that she had not made contact with the Parkhursts after the incident of late October 2012 to see about the animal's demeanor (the "dog interview"), prior to writing the letters to the Complainants instructing that the animal be removed from the community's premises.

The Board members pointed out that the community's written rules appeared to contradict themselves, or the Respondent's statement of her policies, in several places:

Rule 15.4 states "No dogs will be accepted in the Park. Only under an unusual situation such as a seeing eye dog or small dog vital for a resident's well-being will be permitted".

Rule 15.5 states "Existing dogs which have been previously registered by the Park must be on a leash when outdoors..."

Rule 15.6 states "No dog replacements are permitted".

Rule 15.10 states "A barking dog shall be a ground for eviction if a written complaint is made to the *Park Manager* (emphasis added).

Rule 15.12 states "After two written notices of violation to an owner of a dog or cat about the animal's barking or behavior or about the animal running loose, there will be a \$10 per month charge for each animal in addition to the regular rent while that animal stays on the park property..."

RULINGS OF LAW

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

"Make or attempt to enforce a rule which 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".

CONCLUSION AND DISCUSSION

The Board finds the following:

The Respondent's rules, as applied to this case, are unreasonable, and thus, unenforceable. Of particular import to the Board's decision is an undeniable lack of communication and cohesiveness, in both writing and in practice, with the rules concerning dogs.

The first rule (15.4) in the applicable section flatly excludes dogs, except service and/or comfort animals.

The next rule (15.5) provides for existing dogs to be registered. Yet no methodology for registering a dog, the application form, nor interview process that Ms. Howe testified to, is offered. Ms. Howe, herself introduced written evidence that Ms. Casey was allowed to bring a dog with her when she moved into the community. This dog was clearly not "an existing dog" (i.e. "grandfathered" by a rule change, as rule 15.5 would seem to address). Further, the Respondent had no Dog Application form relative to Ms. Casey's animal, even though the Respondent testified said application to be part of the dog registration process.

Rule 15.10 specifically references complaints received by the *Park Manager* (emphasis added) as being grounds for eviction. Yet both Ms. Howe and Mr. Jensen testified that Mr. Jensen, as Park Manager, did not have or did not want authority in such matters. The disconnect between rule and practice is clearly an issue in the matter before the Board.

Finally, Rule 15.12 provides for a monetary fine to be imposed as a result of nuisance behavior by a dog (or cat), after two written notices. From all of the testimony presented, the incident involving the Parkhursts' dog in October of 2012 was the one and only such behavior in the three years the dog has been in residence. No prior written (or apparently even verbal) warnings had ever taken place. No problem since the incident of October 2012 has been reported. The Respondent had not taken any action to verify the purported vicious nature of the Complainants' dog; in fact, to the contrary, the police report and the Park Manager both describe the animal as friendly.

The interpretation of the written rules to escalate a single incident to an eviction level offense, even given the trauma felt by Ms. Casey and her dog, is felt unreasonable. No evidence provided points to a history, or presumable future of similar behavior by the Complainants' dog. Thus, the stance that such action is necessary to protect the health or safety of other residents is a leap which cannot be sustained.

The Respondent's claim that the Complainants' dog was unregistered - contrary to park rules - is also flawed. The animal resided in an open and uncontested fashion for as much as two years, and as revealed by evidence introduced by both parties, without attempt by the

Complainant to hide or conceal the dog's presence. The Respondent's own testimony, revealed a lack of oversight on the Respondent's part as to which – or even how many – unregistered dogs reside in the community. Likewise, while the Respondent is a self-described frequent visitor to the community, she failed to take action with an animal readily observable and unrestrained by leash or tether.

The uncontested fact that the dog was reported to the Park Manager; the lack of promulgated information on "how to" formally register a dog; the apparent porous enforcement of the rules regarding dogs; and what is felt to be conflicting statements embodied within the written rules concerning dogs, combine to make the lack of written registration an unreasonable criteria for the Complainants' dog to be removed from the premises.

The Board notes that it is the application of the written rules of the community, to the facts specific to the subject case which is found to be unreasonable, and therefore, disallowed. Nothing contained herein shall be construed as a finding relative to the written rules in absence of said facts.

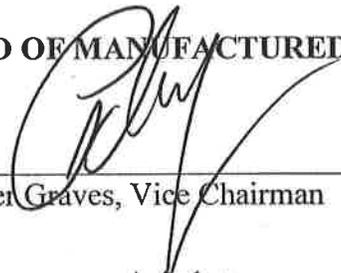
OTHER MATTERS

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: OCTOBER 28, 2013

By: 
Peter Graves, Vice Chairman

Members participating in this action:

Peter J. Graves, Vice Chairman
Juanita J. Martin
Lois Parris
Rep. Carol H. Friedrich
Rep. Rose M. Rogers
Judy Williams
Robert Hunt, Esquire

