

Attorney for Real Party in Interest
Debra Hamrick

LAZY LANDING, LLC, etc. et al.,
Petitioners and Plaintiffs,

THE COUNTY OF SANTA BARBARA,
Etc. et al,

Respondents and Defendants.

Real Party in Interest

) Case No.: 1403359
) [Assigned to the Honorable Thomas P.
) Anderle, Department No. 3.]

REAL PARTY IN INTEREST DEBRA HAMRICK'S ARBITRAION BRIEF ON REMAND FOR REVISED FINDINGS

Hearing Date: February 17, 2016
Time: 9:00 a.m.
Arbitrator: Stephen M. Biersmith, Esq.

- 1 -

1 The Notice specifies that that on remand, the record is limited to the record for the
2 Arbitration to Attachments A through S.

3
4 Finding 2: Award No. 5

5 Issue: Incurred Costs of \$62,145.53

6 The Court remanded consideration of amounts in excess of the original \$320,000 consisting
7 of specific items of incurred costs in the amount of \$62,145.5, previously incurred on specific items
8 of incurred costs to your Board to be vacated and reconsidered. The Board of Supervisors remands
9 this Award to the Arbitrator for make findings of fact on which the Arbitrator's decision is based
10 that are supported by a preponderance of the evidence. The \$320,000 was denied because it was not
11 definite and certain as to how it was going to be used as a proposed expenditure.

12 The board remanded the \$62,145.55 portion of Award 5 to make findings of fact on which
13 the Arbitrator's decision is based that are supported by a preponderance of the evidence.

14 Law:

15 11A-5(k) Evidence as to costs incurred prior to the next rent increased may be considered
16 only where such evidence shows these costs are definite and certain.

17 Law:

18 The evidentiary requirement are facts supporting a preponderance of the evidence.

19 Law:

20 Mobilehome Rent Control Rules for Hearing, Rule 2 Meet and Confer. No later than 10days
21 following the date in the notice of increase, management shall make available to representatives a
22 detailed list of expenses and income.

23 Law:

24 Presumptively, definite and certain applies to incurred costs.

25 Argument:

26 1. The \$62,145.53 are expenses for repairs and maintenance and are not Capital
27 Improvements or Capital Expenses that can be passed on.

1 2. Some of the expenses included in the \$62,145.53 are expenses that were not incurred
2 until after the Meet and Confer on February 16, 2011. See Board of Supervisors letter for Agenda of
3 January 5, 2016 referencing Attachment F, Exhibit J referencing Exhibit K.

4 Conclusion:

5 These expenses of \$62,145.53 should not be allowed as charges to the homeowners.

6
7 Finding 3. Award No. 6

8 Issue: Professional fees \$25,000

9 The Arbitrator did not identify which professional fees (\$25,000) were awarded or how they
10 were properly categorized as a cost of a capital improvement or capital expense so as to be passed
11 through to the homeowners. The Arbitrators decision does not contain any findings of fact on which
12 the decision or the reduction in fees is based; thus the Board of Supervisors determined that the
13 Arbitrator abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to
14 make findings of fact on which the Arbitrator's decision is based that are supported by a
15 preponderance of the evidence.

16 Law:

17 Mobilehome Rent Control Rules for Hearing Rule 2, Meet and Confer. No later than 10
18 days following the date in the notice of increase, management shall make available to
19 representatives a detailed list of expenses and income.

20 Law: 11A-5(k)

21 Evidence as to costs to be incurred prior to the next rent increase may be considered only
22 where such evidence these costs are definite and certain.

23 Presumptively definite and certain applies to incurred costs.

24 Argument:

25 1. Professional fees of \$25,000 include attorney fees from 2009 are from a prior lawsuit
26 Santa Barbara Superior Court Case No. 12641921. See Board of Supervisors letter for Agenda of
27 January 5, 2016 referencing Attachment F, Exhibit Q.

1 2. Management did not make available to the homeowner's representative a detailed list of
2 expenses within 10 days of the noticed increase.

3 3. Ordinances 11A-5 and 11A-6 contemplate that definite and certain applies to past
4 expenses and costs.

5 4. The round numbers given do not show that they are definite and certain.

6 Conclusion:

7 Based on the foregoing these professional fees of \$25,000 should not be allowed as charges
8 to the homeowners.

9
10 Finding 4. Award 7

11 Issue: Professional Architectural and Engineering fees of \$40,000.00

12 The Arbitrator did not identify which professional fees of the \$40,000 were awarded or how
13 they were properly categorized as a cost of a capital improvement or capital expense so as to be
14 passed through to the homeowners and the decision does not contain any findings of fact on which
15 the decision or the reduction of fees is based. The board of supervisors remands this Award to the
16 Arbitrator to make findings of fact upon which the Arbitrator's decision is not supported by
17 findings, or the findings are not supported by substantial evidence.

18
19 Law:

20 The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall
21 include the findings of fact on which the decision is based. (Rule 18). Abuse of discretion is
22 established where the Arbitrator's decision is in supported by the findings. (Rule 23(a).)

23
24 Law:

25 Mobilehome Rent Control Rules for Hearings Rule 2 Meet and Confer. No later than 10
26 days following the date in the notice of increase, management shall make available to
27 representatives a detailed list of expenses and income ...together with any other information upon
28 which an increase is based.

1 Law:

2 Ordinance 11A-5(k) requires that cost to be incurred prior to the next rent increase may be
3 considered only where such evidence is definite and certain.

4 Presumptively definite and certain applies to incurred costs.

5 Argument:

6 1. Given the age on some of the supporting documents some of this works appears stale.
7
8 Some of this work may have little value or no value as of the date of the arbitration.

9 2. The Arbitrator did not identify which professional fees were awarded or how they were
10 properly categorized as a cost of a capital improvement or capital expense so as to be passed
11 through to the homeowners. Thus these charges did not meet the preponderance of the evidence test.

12 3. The Arbitrator's findings are not supported by a detailed list of expenses and income.

13 4. These professional fees are not identified as to which capital asset they attach to. ...
14 together with any other information upon which an increase is based. (Rule 2 above)

15 Conclusion:

16 Based on the foregoing these charges of \$40,000 Architectural and Engineering fees should
17 not be allowed as charges to the homeowners.
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20 Finding 5. Award No. 8

21 Issue:

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23 The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall
24 include the findings of fact on which the decision is based and be supported by a preponderance of
25 the evidence.
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1 The findings of fact by the Arbitrator for past payments by park owners for increased
2 property are conclusionary in stating that "The \$130,531 spent by the Park Owners can be included
3 in the temporary increase.

4 The Board of Supervisors remands this Award to the Arbitrator to make findings of fact on
5 which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

6 Revised action by the Board of Supervisors found that the Arbitrator abused his discretion
7 and remanded Award No. 8 to the Arbitrator for adequate findings about the nature of the payment.

9 Law:

10 The Mobile Home Rent Control Rules for Hearings require that the Arbitrator's decision
11 shall include the findings of fact on which the decision is based and that the decision is supported
12 by a preponderance of the evidence. (Rule 18). The arbitrator did not identify whether the
13 supplemental tax increase was categorized as an increase in operating costs, cost of a capital
14 improvement, or capital expense so as to be passed through to the homeowners...

16 Law:

17 Mobilehome Rent Control Rules for Hearings Rule 2 Meet and Confer. No later than 10
18 days following the date in the notice of increase, management shall make available to
19 representatives a detailed list of expenses and income ... together with any other information upon
20 which an increase is based.

22 Law:

23 Ordinance 11A-6 – Capital Improvements and Capital Expenses do not include ordinary
24 expenses which are covered by Ordinance 11A-5.

25 Law:

26 Ordinance 11A-6(a)(2) is for amortization of Capital Improvements and Capital Expenses.

27 Argument:
28

1 1. The findings of fact by the Arbitrator for past payments by park owners for increased
2 property taxes are conclusionary in stating the "The \$130,531 spent by the Park Owners can be
3 included in the temporary increase. The parties were unsure whether or not such fees could be
4 awarded as part of any favorable property tax appeal. If there is such an award, judgement or
5 settlement in the future those amounts should be credited to the Homeowners."

6 2. Findings of fact must be made that are supported by a preponderance of the evidence.
7
8 The nature of the payment does not include a breakdown of amounts owed by mobilehome owners
9 upon change of ownership of mobilehomes as to amounts owed by past owners and amounts owed
10 by the new home owners during the time covered by this supplemental tax. The amounts to each
11 homeowner old and new are not definite and certain.

12 3. The supplement tax increase was treated as an ordinary expense under 11A-5 but passed
13 through under 11A-6 which is not allowed because it is not a capital improvement or capital
14 expense for pass through purposes under 11A-6(a)(2), amortization.

15 4. The nature of the payment was through the ground lease wherein Petitioners agreed to pay
16 the real property taxes.

17 Conclusion:

18 The \$130,531 supplemental tax should not be charged to the homeowners.
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22 Finding 6: Award No. 11

23 Issue: Attorney's fees for the collection of rent of \$110,000.

24 The Board of Supervisors Finding 6 states "For this award, the Arbitrator's decision merely
25 concluded that 'After reviewing the itemizations submitted by the Park Owner for expert and legal
26 services expended in this matter (Ex. R & S) and the Homeowners response a reasonable amount to
27
28

1 be paid by the later would be \$110,000...Findings for this Award are especially important because
2 legal fees are not expressly identified in the Ordinance as an allowable operating expense..."

3 These legal fees were treated as an operating expenses under 11A-5 but passed through as
4 though a Capital Improvement or Capital Expenses under 11A-6(a)(2), amortization of Capital
5 Improvements and Capital Expenses, in which there is no provision for passing through operating
6 expenses.
7

8 The Board remands this Award to the Arbitrator to make findings of fact on which the
9 Arbitrator decision is based that are supported by a preponderance of the evidence.' "

10 Revised action by the Board of Supervisors found that the Arbitrator abused his discretion
11 and remanded Award #8 to the Arbitrator for adequate findings about the nature of the payment.

12 Law:

13 Mobilehome Rent Control Rules for Hearings, Rule 2 Meet and Confer. No later than 10
14 days following the date in the notice of increase, management shall make available to
15 representatives a detailed list of expenses and income.
16

17 Law:

18 Ordinance 11A-6 – Capital Improvements and Capital Expenses do not include ordinary
19 expenses which are covered by 11A-5
20

21 Law:

22 Ordinance 11A-6(a)(2) is for amortization of Capital Improvements and Capital Expenses.

23 Argument:

24 1. There are no documents showing that \$110,000 in attorney fees is related to the rent
25 increase. The documentation actually shows that these attorney fees are largely related to Health
26 and Safety Code violations and other items See Board of Supervisors Agenda Letter for Agenda
27 dated January 5, 2016, Attachment F Schedule S.
28

1 2. These fees were never paid. See Board of Supervisors Agenda Letter dated January 5,
2 2016 Attachment M Arbitration Transcript page 172.

3 3. Interest is being paid by the homeowners on these attorney's fees that were never paid by
4 the park owners. See Board of Supervisors Agenda Letter for Agenda dated January 5, 2016
5 Attachment F Exhibit C spread sheet.

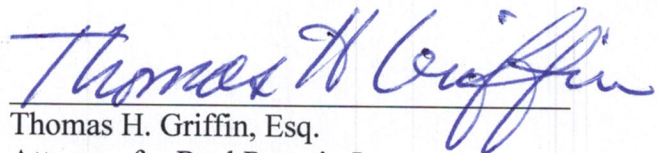
6 4. Legal fees should not be allowed. Legal Fees Associated with the Challenge to the Rent
7 Increase in the sum of \$110,000 are treated as an ordinary expense under Ordinance 11A-5 but
8 cannot be expensed under 11A-6(a)(2) as a pass through and thus legal fees should not be allowed.
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10 Conclusion:

11 The preponderance of the evidence does not support the award of attorneys based on the
12 foregoing.
13

14
15 Dated: February 16, 2016

16 Respectfully Submitted,

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18 

19 Thomas H. Griffin, Esq.
20 Attorney for Real Party in Interest
21 Debra Hamrick

PROOF OF SERVICE

I am a resident of the State of California my business address is 1758 Calle Cerro, Santa Barbara, California. I am over the age of 18 and not a party to this action.

On the date below I served on the parties in this action the following documents:

Real Party in Interest Debra Hamrick's Arbitration Brief on Remand for Revised Findings

☐ by placing the document(s) above in a sealed envelope with postage fully paid, in the United States mail at Santa Barbara, California addressed as set forth below:

☐ via facsimile the documents listed above to the fax number(s) below on the date below before 5 p.m.

☐ by personally serving the above documents on the entity(s) and/ persons listed above.

☒ by emailing the above document to the following email addressees

Steven Biersmith, Arbitrator email: sbiersmith@aol.com

Jenna Richardson, Esq. Deputy County Counsel email: jrichardson@co.santa-barbara.ca.us

Natalie Dimitrova County of Santa Barbara email: ndimitrova@countyofsb.org

James Ballantine, Esq. email: jpb@ballatinelaw.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

I am familiar with the firm's business practice for the collection and processing of correspondence for mailing. Under that practice, correspondence or documents served as above indicated would be deposited with the United States Postal Service the same day in the ordinary course of business, I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in the affidavit.

Dated: 2-16-16


Thomas H. Griffin, Esq.