

IN THE MATTER OR ARBITRATION BETWEEN

NOMAD VILLAGE MOBILE HOMEOWNERS,

Petitioner

and

**OPINION AND AWARD
(Revised on Remand)**

NOMAD VILLAGE MOBILE HOME PARK

Respondent.

ARBITRATOR

Stephen M. Biersmith
Attorney at Law

HEARING SITE

County Administration Building
County of Santa Barbara

HEARING DATES

September 19 – 20, 2011 &
February 17th and August 10th, 2016

REPRESENTING THE PETITIONER

Ms. Debra Hamrick
813 East Mason Street
Santa Barbara, CA. 93103

REPRESENTING THE RESPONDENT

Mr. James Ballantine
Attorney at Law
329 East Anapamu Street
Santa Barbara, CA. 93101

STATEMENT OF THE ISSUES

Was the notice of increase dated January 26, 2011, demanding a percentage increase of 2.59% of the current base rent and an additional \$161 per space, effective May 1, 2011 from the Nomad Village Management appropriate? If not, what is the appropriate amount of the increase?

PROCEDURAL MATTERS

On July 19 2016 the Board of Supervisors reviewed the arbitration decision on March 5, 2016. It remanded the decision back to the arbitrator for additional findings of fact as to the original Award Numbers 4, 5, 6, 7, 8, 11 & No. 12. No additional evidence was considered. Closing briefs were submitted by both parties.

If either party wishes to have this arbitration decision reviewed, such a “petition for review shall be filed by a party or his representative with the Clerk of the Ordinance no later than the fifteenth judicial day following the date the Clerk mailed the Arbitrator’s decision to the parties” (Rule 23 of the Mobilehome Rent Control Rules for Hearings). Any party wishing to seek a judicial review of the Board’s decision should refer sections 1094.5 and 1094.6 of the *California Code of Civil Procedure*.

ADDITIONAL FINDINGS OF FACT

1. Exhibit C and the expert testimony of Michael St. John regarding the same supported a finding that all temporary increases be amortized at 9% for seven (7) years.
2. Exhibit J and the invoices as presented in Exhibit K showed that \$62,145.55, as confirmed as paid by Ruben Garcia, were definitive and represented the amount spent for capital improvements prior to the commencement of the arbitration. The \$320,000 held in escrow at the time of the hearing were not definite and certain expenditures made prior to the commencement of the arbitration.
3. Per the testimony presented by Waterhouse, \$50,973 in professional fees were incurred and paid by the Respondent. A good portion of the line items in Exhibits K & Q itemizing the same do not appear to be relevant to any capital improvements and a reduction is appropriate. Exhibits K & Q do support a finding that at least \$25,000 of those fees were related to capital items.
4. The testimony presented by Waterhouse supported a finding that the plans and drawings purchased by the Respondents in Exhibits J & L have value as to operation and capital improvements for the park. Given the amount of time that has passed since their purchase, some of this work appears to be stale and would now have less utility. A more reasonable amount for such items would be \$40,000.

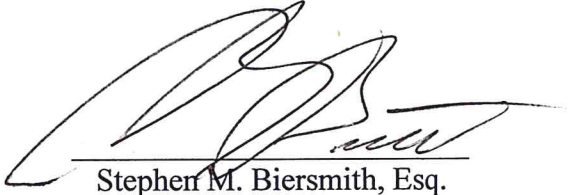
5. As supported by Exhibit G, the Respondent paid \$130,531 for supplemental tax increase payments.
6. The homeowner's expert conceded that legal fees incurred by the Respondent could be the basis for a rent increase. Exhibits R & S support a finding that \$110,000 in legal fees incurred by the Respondent were associated with the challenge to the rent increase.

AWARD

1. The notice of increase dated January 26, 2011, demanding a percentage increase of 2.59% of the current base rent and an additional \$161 per space, effective May 1, 2011 from the Nomad Village Management was not appropriate.
2. The CPI increase as calculated and proposed by the Park Owners in its letter dated January 26, 2011 can be charged to the Homeowners.
3. The Homeowners do not have to pay the additional 10% increase in ground rents.
4. The Homeowners are to pay the Park Owners for all real property taxes assessed by the County.
5. All granted temporary increases are to be amortized at 9% for seven (7) years.
6. The Homeowners are to pay the \$62,145.55 which were capital improvement expenses incurred prior to the commencement of the arbitration. The Homeowner are not required to pay the \$320,000 held in escrow at the time of the hearing in that they were not definite and certain prior to the commencement of the arbitration.
7. The original request of \$50,973 in professional fees for payment by the Homeowners is reduced to \$25,000, which is a reasonable amount for services associated with the capital expenses and improvements.
8. The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements.
9. The Homeowners are to pay \$130,531 for the supplemental tax increase payments.
10. The Homeowners do not need to pay for the uncompensated increases associated with the increased lease payments.

11. The Homeowners have elected not to proceed with a property tax appeal or reassessment and should not be charged with professional fees associated with the same.
12. The Homeowners are to pay \$110,000 for legal fees associated with the challenge to the rent increase.
13. The Permanent Increase is to be \$25.59 and the Temporary Increase \$39.44 as supported by the attached.

Dated: August 28, 2016



Stephen M. Biersmith, Esq.
Arbitrator

DECLARATION OF SERVICE BY MAIL

I am employed in the County of Ventura, State of California, I am a citizen of the United States, over the age of 18 years and not a party to nor have an interest in the within action. My business address is 5462 Rincon Beach Park, Ventura, California 93001.

On September 7, 2016 I served the within document described as:

OPINION AND AWARD (REVISED ON REMAND)

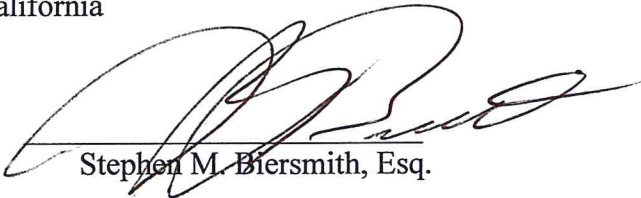
 X By placing the true copies in a sealed envelope(s) addressed as follows:

Mr. Don Grady
Real Property Manger
County of Santa Barbara
105 East Anapamu Street, Rm. 108
Santa Barbara, CA. 93101

 X (BY MAIL) I am readily familiar with the normal business practice of my employer for the collection and processing of correspondence and other materials for mailing with the United States Postal Service. In the ordinary course of business, any material designated for mailing with the United States Postal Service and place by me in a designated "OUT" box in the office of my employer is deposited the same day with the United States Postal Service.

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

Executed on September 7, 2016 at Ventura, California


Stephen M. Biersmith, Esq.