

1 Honorable David W. Long
2 Judge of the Superior Court (Ret.)
3 CREATIVE DISPUTE RESOLUTION
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6 **ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY**
7 **MOBILEHOME RENT CONTROL ORDINANCE**

8 *Arbitration before the Honorable David W. Long, Judge of the Superior Court (Ret.);*

9 **IN RE NOMAD VILLAGE MOBILE**
10 **HOME PARK**

11 **ARBITRATOR'S RULING**

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18 This hearing under the Santa Barbara County Mobile Home Rent Control Ordinance
19 (hereinafter, "the ordinance") began on November 18, 2016, consumed an entire hearing day on
20 that date, and concluded on February 10, 2017, which session also consumed an entire hearing
21 day.

22
23 Appearing at the first session in behalf of Petitioner, the Nomad Village Park
24 Homeowners Association (hereinafter, HOA) was Tony Allen. Seated with him at the counsel
25 table was also Lindse Davis.

26
27 Appearing in behalf of the HOA at the second session was Debra Hamrick. Also at the
28 counsel table with Ms. Hamrick was Lindse Davis and Abel Pizano.

1 *Each of the material facts shall be followed by a reference to the supporting*
2 *evidence...*” (Bold added; CCP Section 437c (b) (1)

3
4 It is axiomatic law that to prevail on a Motion for Summary Judgment there must be no
5 issues of material fact that are in dispute. If a party is going to attempt to use the *Summary*
6 *Judgment* as a vehicle for such adjudication one must comply with the provisions of the statute.
7 This motion did not so comply.

8 After hearing argument from both parties, the arbitrator denied the motion on the grounds
9 that it did not comply with the evidentiary requirements of CCP Section 437c as set forth above,
10 which alone legally requires the motion to be denied. There were specific material facts as to
11 each issue that were disputed.

12
13 Thus, although the motion could have been denied on strictly procedural grounds, even
14 if the merits of the motion were considered there were substantial disputed issues of material fact
15 that, substantively, would have, alone, required the motion to be denied.

16
17 The motion was denied on both grounds. With triable issues of fact, the positions taken
18 by the HOA in that putative motion became part of the evidence considered, not on “is there a
19 triable issue of fact” standard (CCP Section 437c) but on an evidentiary basis in the hearing itself
20 under a preponderance of the evidence standard imposed on the party with the burden of proof
21 on that/those issue(s).

22
23 **HOA OBJECTION TO MANAGEMENT’S REPLY BRIEF ON ATTORNEY FEES**

24 The arbitrator, rather than having everyone incur additional time and costs on a post-
25 arbitration hearing on attorney fees (for the fees and costs incurred as a result of **this** litigation
26 since the Notice of Space Rent Increase was served) the arbitrator allowed Management counsel
27 to assert that in a post-arbitration brief with an opposition brief being permitted by the HOA.
28 Inadvertently, the arbitrator did not specifically say that the Management may provide a brief

1 “Rebuttal” brief in response to the HOA opposition. The HOA now objects to that Rebuttal Brief
2 and asks the arbitrator to disregard it.

3 In such a briefing schedule, the party with the burden of proof, serves a brief, the opposing
4 party has the opportunity to file and serve an opposing brief and the moving party has the
5 opportunity to submit a Reply Brief.
6

7 Simple principles of *due process* require such. Moreover, The Santa Barbara
8 Mobilehome Rent Control Rules for Hearings (Rule 15 “d”) provides that hearings need not be
9 conducted according to technical rules relating to evidence and witnesses.
10

11 The issue of attorney fees, in this context, is at its heart an evidentiary matter and the
12 Rules for Hearing give the arbitrator great discretion in the conduct of such.

13 The objection to the Reply Brief of the Management is denied.

14 ERRATA

15 A troubling matter in this arbitration has been HOA’s seeming pattern of misstatements
16 of facts, contentions and written argument without evidence to support same and the record
17 itself.
18

19 For example, prior to receiving Management’s reply brief on the attorney’s fees issue I
20 noted that in the HOA Post-Hearing Closing Brief, page 2, lines 8-9, the HOA claims that
21 Management’s Exhibits 46 and 47 were received in evidence **over its objections. That is**
22 **patently false.**
23

24 The Reporter’s Transcript of the hearing, Volume 2, at page 58, lines 3-10 and page 70,
25 lines 3-10, respectively, unambiguously shows the arbitrator specifically asked the HOA if they
26 had any objections to the proffered exhibits 46 and 47 to which, without exception, Ms.
27 Hamrick responded “No”.
28

1 How such a representation in a brief can be made by a person who was actually present
2 at the hearing, speaking for the HOA, and in the face of a transcript by a Certified Shorthand
3 Reporter that clearly and unambiguously show the representations to be false, defies rational
4 explanation.
5

6 THE CONTESTED HEARING

7 Following the arbitrator's ruling on the HOA's "Motion for Summary Judgment," the
8 contested hearing began. The arbitrator heard opening statements from both sides, witnesses
9 were called by Management and testified under oath. Various documents, which had been
10 marked for identification were proffered and, with one exception, without objection were
11 received in evidence.
12

13 **It is important that I note, that the HOA Petitioner called no witnesses whether lay**
14 **witnesses, percipient witnesses or, more critically, even expert witnesses, although expert**
15 **testimony for the HOA was apparently proffered and received in the 2011 arbitration.**
16 **There was no "testimonial evidence" of any kind proffered by the Petitioner HOA although**
17 **solicited by the Arbitrator. (See Reporter's Transcript, Vol. 1 page 68, lines 1-6).**
18

19 Petitioner's Exhibits A through M and Exhibit Q (there were no Petitioner Exhibits N, O
20 or P) were marked for Identification. Exhibits D and M were not received in evidence.
21

22 Respondent's Exhibits 1 through 55 were marked for Identification and, without
23 objections from Petitioner, were received in evidence.

24 Witnesses called by Management were Kenneth Waterhouse and Dr. Michael St. John.

25 MEET & CONFER REQUIRMENT

26 The HOA contended that Management failed to comply with the "Meet & Confer"
27 Requirements of the Ordinance by failing to provide copies of documents to the HOA's
28 representatives when they went to the office to "obtain" them on April 11, 2016. There was no

1 claim or contention that “the documents” were not available for review, only that copies were
2 “not provided” for retention by the HOA.

3 The Ordinance does not require that copies of documents be provided. Rather it provides
4 that any such documents are to be “made available” for review by the HOA representatives.

5 That point was specifically conceded by the HOA toward the conclusion of the 2nd session
6 of the hearing. (See the dialog in the Reporter’s Transcript, Vol. 2, page 312, lines 3-24).

7 Between lines 10 and 24, Mr. Waterhouse testified that Management had done what was
8 required under the Ordinance although subsequently did provide copies to the HOA, to which
9 Ms. Davis replied, “*Yes, that is true.*”

10 The arbitrator finds that the evidence produced by Management, separate and apart from
11 the HOA concession on this issue clearly proves that Management complied with the Meet &
12 Confer Requirement of the Ordinance.

13 **TIMELINESS OF NOTICE OF INCREASE IN RENT**

14 Management delivered to all homeowners a Notice of Increase in Monthly Rent Effective
15 July 1, 2016 with various supporting documents on or about March 31, 2016. Per Mr.
16 Waterhouse’s testimony, that Notice was sent to all the homeowners of the park.

17 The Ordinance permits increases in rent not more than once per year and such increases
18 are subject to the “Notice” requirement. (See Ordinance, Section 11A-8.)

19 The last rent increase prior to the Notice at issue in this arbitration was in May of 2014
20 and was a 75% of CPI increase pursuant to the Ordinance.

21 The rent increase in the Notice at issue herein was to take effect, per the above, on July
22 1, 2016.

23 Thus, the currently sought rent increase is occurring approximately 2 years after the last
24 rent increase which is well within the provisions of the Ordinance.

1 No testimony nor other credible documentary evidence was proffered by the Petitioner
2 that would negate that conclusion.

3 Of *historical interest* it is noted that the rent increase that is at issue remains in its current
4 appeal by the HOA of many, repetitive appeals that they have filed.

5 I find that the Notice of Rent Increase and the operative date of that increase to be timely.

6
7 **RENT INCREASES ALLOWED**

8 **Automatic CPI Increase:** The Ordinance, Section 11A-5 permits, and in fact requires,
9 (“*The arbitrator shall allow....*” Language – 11A-5 (g)) an increase of seventy five percent of
10 the increase in the CPI Index.
11

12 Management’s expert economist, Dr. Michael St. John, testified that he obtained the CPI
13 increase numbers from the Department of Labor data base. That calculation produced a value of
14 1.8% being seventy five percent of the CPI Index contained in the Notice served on each of the
15 homeowners on or about March 31, 2016. The amount per space will vary based upon the rent
16 being charged for each of the respective spaces.
17

18 No contrary expert testimony, calculations or contrary evidence was proffered by the
19 HOA. Dr. St. John’s testimony was credible, persuasive and unrebutted.

20 Accordingly I will allow the noticed percentage of increased space rent based that seventy
21 five percent of the increase in the CPI.
22

23 **Further Increases:** The Ordinance specifically circumscribes those “return on
24 investment” increases that are shown in the documents served on the homeowners at the time of
25 service of the current Notice of Increase in Rents that can be allowed. Section 11A-5 (i) (1) thru
26 (4) set forth an addition to an allowable permanent rent increase above and beyond the automatic
27 increase of “75% of CPI covered above. Only the Automatic CPI increase permitted under the
28

1 Ordinance can be added pro rata based upon space rental component of each of the homeowners'
2 rental/lease agreements.

3
4 In the first session of this arbitration proceeding Dr. St. John testified at length as to the
5 methodology he utilized in calculating return on investment and capital expenditures and other
6 improvement issues that the Ordinance allows to be passed on to the homeowners as a rent
7 increase and their amortizations, where appropriate as required under Section 11A-6, et seq. of
8 the Ordinance.

9
10 He principally used what is known as an MNOI *method* (Maintenance Net of Operating
11 Costs to determine what is, substantively, a Return on Investment (ROI) calculation. Petitioners
12 challenged that method in cross examination as not specifically listed or contained in the
13 Ordinance. Dr. St. John testified, in essence, that the method used was appropriate for the
14 calculations and the end result. He testified that although the "MNOI" method was not
15 mentioned per se in the Ordinance it was a standard method of evaluation and calculation in his
16 profession.

17
18 His original calculations are reflected in Management's Exhibits 2 and 4 and provided
19 the basis for the increases set forth in the Notice served on March 31, 2016. (See, specifically,
20 Exhibit 4, page 4, lines 126 thru 150).

21
22 The arbitrator notes that no "specific method" of such calculations are required or even
23 mentioned in the Ordinance. That leads to my conclusion that the evidentiary value, if any, of
24 whatever method an expert uses in making his calculations and reaching his opinions is a matter
25 of the arbitrator's sound discretion based on the testimony and evidence received. I do not
26 conclude that the Ordinance's lack of specifically approved or prohibited methods of calculation
27 excludes or requires a particular such method. As noted supra, **there was no evidence presented**
28 **by the HOA to the contrary or to refute the expert opinions expressed by Dr. St. John.**

1 However, as we were at the end of the hearing day, he agreed to recalculate those numbers
2 as, in essence, requested by Petitioners and provide that information in further testimony at the
3 second session.

4 At the 2nd session on February 10, 2017, Dr. St. John again testified at length and
5 presented his, what I will call *revised calculations* in Management Exhibits 45, 46 & 47. These
6 exhibits are identical in “form” or “format” to Owner’s Exhibit 4 but show calculations using the
7 suggestions of the HOA from their cross-examination questions. **(Note: Questions, whether
8 on direct examination or cross-examination are not evidence. Only the witness’s answers
9 are evidence.)**

10 A review of Exhibits 45 thru 47 shows that all of those new calculations, utilized as
11 suggested by the HOA’s cross-examination questions, result in higher figures that, if used, would
12 justify a larger rent increase than was “*Noticed*” and sought in this arbitration. The elements of
13 the same categories, exclusive of the Automatic Increase of 75% of CPI, as shown in Exhibit 4,
14 total \$108.62. The new calculations done by Dr. St. John in response to the cross-examination
15 questions of the HOA would total **\$115.85 (Management’s Exhibit 45, page 4, lines 164 -167)**
16 **and \$122.65 (Management’s Exhibit 46, page 4, lines 166-170)**. These calculations are,
17 obviously, much worse for the HOA than the method used earlier as reflected in the Notice of
18 March 31, 2016.

19 Owner’s counsel voluntarily conceded that any total increase granted (save and except
20 for an award of new attorney fees, litigation costs and expert fees incurred after the date of the
21 Notice – which they are seeking - could not be greater than the amount in management’s notice
22 of rent increase. (See Section 11A-5 (j)). Management conceded that notwithstanding the “new”
23 calculations by Dr. St. John, they were otherwise limited to an amount no greater than set forth
24 in the Notice served on March 31, 2016.

1 **estimated number that appeared on the Notice of \$400,000.** As noted, supra, the total
2 **amount reflected in those Exhibits is actually \$408,935.09.**

3 Management obviously underestimated those costs but are “limited to” the amounts of
4 pre-hearing attorney fees and costs reflected on the Notice of Rent Increase for of March 31,
5 2016.

6
7 **Additionally,**

8 HOA objects to the award of any attorney fees or costs on the basis that such an element
9 does not appear in the Ordinance. They overlook the fact that attorney fees and costs were
10 allowed in the earlier litigation, of which the arbitrator took judicial notice (although is not bound
11 by that) and rulings of the California Supreme Court on that issue. (See *Galland v. City of Clovis*
12 (2001) 24 Cal 4th 1003; 1009, 1027-1028 & 1040.)

13 Although the *Galland* case dealt with a mobilehome park owner’s rights against the City
14 of Clovis, a municipal entity, the Supreme Court went on to say, as indicated in the Owner’s
15 brief, “...*the substantial legal and administrative costs attributable to the rent review process*
16 *should be properly included as expenses when calculating the proper rent readjustment...*”
17 (*Galland*, supra, @ pages 1027-1028). Moreover, an issue in *Galland* was weather the City of
18 Clovis had engaged in or had deliberately committed obstructive and unlawful acts designed to
19 interfere with the *Gallands’* property rights. In our case the seeking of fees arises from the
20 allegedly obstreperous and obstructive litigation conduct of the HOA in the litigation of this and
21 the 2011 case caused significant capital cost expenditures that need to be recouped, at least in
22 part, as an ROI issue, as testified to by Dr. St. John.

23
24 The arbitrator has taken the requested Permissive Judicial Notice of certain matters
25 pursuant to Evidence Code Section 452, without objection. On the “flip side of that coin,”
26
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1 HOA's Exhibit F was received in evidence without objection from Management. It is an Opinion
2 and Award from the 2011 case. To consider it, the arbitrator had to, and did, take Judicial Notice
3 of it, which I did.

4
5 The doctrines of Collateral Estoppel and Judicial Estoppel are applicable here. as the
6 positions taken by the HOA in that case against this same Respondent on substantively identical
7 issues and the previous testimony the HOA proffered through their retained arbitration
8 economist in that case, Dr. Kenneth Baar preclude relitigation in this case absent some new *expert*
9 *testimony* of changed circumstances or the like.

10
11 Even without "Estoppel" considerations, the *Galland* Supreme Court case, supra, clearly
12 permits such and the Santa Barbara County Ordinance does not specifically prohibit it, although
13 *Galland* appears to be dispositive of the issue.

14
15 As pointed out by Management counsel, judicial estoppel serves to **protect the integrity**
16 **of the judicial process** by preventing a party from asserting a position in a legal proceeding that
17 is contrary to a position previously taken in the same or some earlier proceeding.

18
19 Collateral estoppel prevents relitigation in a second proceeding of the same issues that
20 were litigated and decided in a prior proceeding by the same party (or a party in privity – not the
21 issue here) who litigated the issue in the prior proceeding. (See *Jackson v. County of Los Angeles*
22 (1997) 60 Cal App 4th 171 and *Lucido v. Superior Court* (1990) 51 Cal 3d 335, respectively.)
23 Those cases and their progeny appear to remain good law.

24
25 In the HOA's opposition brief to the Management's brief there is no new or separate
26 challenge to the amounts charged by either the Management's law firm or by Dr. St. John, the
27 Management's expert. Rather, they challenge the right to such fees.
28

1 I find that the right to such fees was acknowledged by the HOA's expert in the earlier
2 case as an appropriate capital expense that required consideration, capitalization and amortization
3 repayment.
4

5 **ATTORNEY FEES & COSTS Re CURRENT DISPUTE & HEARING**

6 As a post hearing matter, the Management are seeking attorney fees and litigation costs
7 of \$97,155.00 in fees and \$4,899.55 in direct litigation costs for a total of \$102,054.55 incurred
8 in defense the this current litigation.

9 They are also seeking expert fees in the sum of \$25,745.28. (See Management Exhibits
10 56 & 57).
11

12 The issue has been fully and properly briefed for the arbitrator by both sides.

13 Normally the "expert fees" for an expert's time spent beyond the time of the
14 expert's direct testimony and cross-examination should not be allowed. However, in this case,
15 much of the additional time, effort and billing by Dr. St. John deals with recalculations, in
16 essence, requested by the HOA by way of their challenge to the methodology he used in reaching
17 the numbers used in the Notice of March 31, 2016. In light of that, the additional time spent is
18 not inappropriately billed and represents a litigation cost to which Management incurred and is
19 obligated pay to the expert in defending this litigation.
20

21 The arbitrator has closely reviewed the Management's attorney's billing records and the
22 billing records of Dr. St. John, Management' expert economist. Given the manner in which this
23 case has been litigated by Petitioner HOA, I find no "padding" or improper billing in either the
24 claimed attorney fees and expenses or Dr. St. John's billing.
25

26 Accordingly, based on the analysis, supra, on these issues, I will award both attorney fees
27 and expert costs. The attorney fees and costs prior to this litigation/dispute arising have already
28 been appropriately capitalized and amortized over 7 years in the Notice of March 31, 2016.

1 The attorney fees and costs awarded are also to be capitalized and amortized over the
2 same 7 year time frame.

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5 **RULINGS SUMMARY AND AWARD**

6 After hearing all of the evidence in this case, testimonial and documentary, and after
7 careful and thorough deliberations (consuming many times more hours than the “2 hours”
8 permitted for deliberations and rulings), and having considered the written arguments briefed
9 post-hearing by the parties, I make the following Rulings and Awards”

- 10 1. The HOA’s motion, styled as a Motion for Summary Judgment was and is denied.
- 11 2. The HOA’s objection to Management’s Reply Brief on Attorney Fees was and is
12 denied.
- 13 3. The Meet & Confer requirement of the Santa Barbara County Mobilehome Rent
14 Control Ordinance was properly complied with by Respondent by a preponderance of
15 the evidence not even considering the “Admission” of such by the Petitioner HOA, as
16 noted, supra.
- 17 4. The arbitrator finds that the Notice of Increase In Monthly Rent Effective July 1, 2016
18 was timely.
- 19 5. The *Automatically Allowed rent increase* based upon 75% of the CPI increase, per
20 Section 11A-5 (g) of the Rent Control Ordinance, an increase of 1.8%, is granted. The
21 award of this “...Automatic Increase...” portion of this award is pro rata based upon the
22 individual currently existing rents for the respective 150 spaces in the park. This award
23 is retroactive to July 1, 2016.
- 24 6. The requested increase based upon Rule 11A-5 (i) (1) (2) in the total amount of \$29.31
25 as set forth in the Notice of Increase in Monthly Rent served March 31, 2016 is granted.
26 This award is “per space” not “pro rata” and is retroactive to July 1, 2016.
- 27 7. The amounts claimed for capital improvements for *Common Area Paving, Common*
28 *Area Electrical Work and Related Engineering Costs* are awarded as set forth in the
Notice of Increase in Monthly Rent served on March 31, 2016, which has been
capitalized at 9%, an amount the arbitrator finds reasonable, supported by the only
expert testimony presented, and is to be amortized over 11 years as set forth therein the
amount of \$23.01. This portion of the award is also retroactive to July 1, 2016.

- 1 8. On the issue attorney fees and costs incurred since the last arbitration hearing in
2 defending the multiple appeals and writ petitions arising from that 2011 arbitration, the
3 arbitrator finds in favor of the Respondent and against the Petitioner and awards the rent
4 increase requested in the March 31, 2016 Notice of Monthly Rent Increase in the
5 amount of \$56.30 per space retroactive to July 1, 2016.
6
7 9. The Respondent's post-hearing request for attorney fees and costs in the current
8 litigation as well as the request for expert fees for the same time period is granted.
9 Attorney fees are awarded in the amount of \$91,155.00 plus litigation costs in the
10 amount of \$4,899.55 for a total of \$102,054.55. (See Management Exhibit 57.)
11

12 Expert fees are awarded in the amount of \$25,745.28 plus costs in the amount of
13 \$1,432.78 for a total of \$27,178.06.

14 The total of such fees and costs awarded is \$129,232.61.

15 This portion of the Arbitrator's Award also needs to be capitalized at 9%, per Dr. St.
16 John's testimony, and for a period of 7 years making the \$2,979.23. Apportioned
17 per 150 mobile home spaces in the park the amount per space is \$13.86 per space
18 for that 7-year period. This award is not retroactive to July 1, 2016.
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20 DATED: June 16, 2017

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(Hon.) David W. Long, Judge of the
Superior Court (Ret.),

1 **PROOF OF SERVICE**

2 **IN RE NOMAD VILLAGE MOBILE HOME PARK**

3 I, the undersigned hereby declare, as follows:

4 I am employed in the County of Ventura, State of California. I am over the age of 18 and
5 am not a party to the within action; my business address is 3155 Old Conejo Road, Thousand
6 Oaks, CA 91320.

7 On June 16, 2017, I served the foregoing document described as: **ARBITRATOR'S
RULING** on the interested parties in this action as follows:

<p>8 James Ballantine 329 E. Anapamu Street 9 Santa Barbara, CA 93101</p>	<p>Counsel for Defendant Nomad Village Park Management Phone: (805) 962-2201/Fax: (805) 654-2048 jpb@ballantinelaw.com</p>
<p>11 Lindse Davis 4280 Calle Real, Space 133 12 Santa Barbara, CA 93103</p>	<p>Nomand Village Homeowners Representative Phone: (805) 967-6857 LindseD@aol.com</p>
<p>14 Don Grady County of Santa Barbara 15 Real Property Division Courthouse East Wing, Second Floor 16 Santa Barbara, CA 93101</p>	<p>County of Santa Barbara Phone: (805) 568-3065 dgrady@countyofsb.org</p>

17 **Via Electronic Mail.** I served the above-entitled document(s) on all parties as attachments
18 via e-mail pursuant to Rule 2008 of the California Rules of Court. The email addresses
of the receiving parties as set forth above or listed on the attached service list.

19 **Via U.S. Mail.** I am readily familiar with the firm's practice of collection and processing
20 correspondence for mailing. Under that practice it would be deposited with U.S. Postal
21 Service on that same day with postage thereon fully prepaid at Thousand Oaks, California
22 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 date of deposit for mailing in affidavit.

23 I certify and declare under penalty of perjury under the laws of the State of California
24 that the foregoing is true and correct. Executed on June 16, 2017, at Thousand Oaks, California.

25 
26 SJ Lance, Declarant