Nomad Village Mobilehome
Park Homeowners
4326 Calle Real
Santa Barbara CA

Debra Hamrick
Homeowners Representative, off-site
813 Mason Street
Santa Barbara CA

TO: MR. DON GRADY, CLERK OF THE ORDINANCE
HON. DAVID LONG (RET.), ARBITRATOR

IN RE: NOMAD VILLAGE ARBITRATION HEARING, SEPTEMBER 23, 2016

MOTION FOR SUMMARY JUDGMENT TO DENY NOMAD VILLAGE MOBILEHOME PARK MANAGEMENT'S RENT INCREASE EFFECTIVE JULY 1, 2016

Nomad Village Mobilehome Park homeowners ("homeowners") request that Nomad Village Mobilehome Park owner's ("management") rent increase in the amount of $108.61, consisting of a $29.31 permanent base-rent increase, a $23.01 temporary 15-year increase and a $56.30 temporary 7-year increase, plus 1.8% of homeowners' base rent, noticed on March 31, 2016, be denied in its entirety for the following reasons:

1. Does not comply with, and therefore violates, the Santa Barbara County Mobilehome Rent Control Ordinance ("ordinance"), Sections 11A-5(e)(1), 11A-5(l), 11A-6(a)(5) and 11A-6(b)(5).
2. Does not comply with, and therefore violates, rule 2 of the Rules for Hearing.
3. Effective date of increase is May 1, 2011 (Exhibit 1, detail).

BACKGROUND

On January 26, 2011, management noticed a $161.00 per month rent increase to homeowners, who filed a timely petition for arbitration hearing. The duly-noticed arbitration hearing was conducted on September 19 and 20, 2011, by Stephen Biersmith, Esq., whose final opinion and award was issued on December 20, 2011, reducing the noticed rent increase to a $25.59 permanent base-rent increase and a $67.09 temporary 7-year increase per month per space. One item Mr. Biersmith

awarded to management was $320,000 held in an escrow account for unspecified future capital improvements, which management admitted were not definite and not certain, with the condition that "If any of these monies are not spent on eligible items with[in] six months from the date of this award, the residual amounts are to be returned to the Homeowners." (Exhibit C, detail)

Homeowners petitioned for review by the Board of Supervisors, which was held on May 15, 2012, further reducing the 7-year temporary increase to zero and affirming the permanent base-rent increase (Exhibit D, detail), pending remand to Mr. Biersmith for clarification of one item in the notice regarding property taxes. Mr. Biersmith confirmed the board's decision on June 6, 2012, allowing the permanent base-rent increase and denying the temporary 7-year increase (Exhibit E, detail).

Management pursued judicial review (rule 25 of the Rules for Hearing) in Santa Barbara County Superior Court before Judge Thomas Anderle, whose ruling dated June 17, 2014, denied the $320,000 held in an escrow account for future unspecified capital improvements (Exhibit F, detail) and remanded the remainder to the Board of Supervisors and Mr. Biersmith for additional findings in support of their decisions.

As of June 2016, management has not reduced the temporary increase from Mr. Biersmith's December 20, 2011, opinion and award to comply with Judge Anderle's ruling that "...the Ordinance does not, as a matter of law, permit the pass through of the $320,000 escrow funds or any part thereof absent a showing that the proposed capital improvement or capital expense is 'definite and certain.'"

Homeowners received a rent increase notice dated March 31, 2016, for $108.61, in excess of 75% of the CPI change for the immediately preceding twelve months, again claiming $333,790 in capital improvements completed in 2013 and 2014. After filing the petition for arbitration hearing and while preparing a response to management's objection and response to homeowners' petition, homeowners discovered that management has not complied with the ordinance's restriction of one rent increase in excess of 75% of the CPI per twelve-month period and had revised the effective date to commence on May 1, 2011.

MANAGEMENT'S NOTICED INCREASE DOES NOT COMPLY WITH, AND THEREFORE VIOLATES, THE SANTA BARBARA COUNTY MOBILEHOME RENT CONTROL ORDINANCE, SECTIONS 11A-5(e)(1), 11A-5(l), 11A-6(a)(5) AND 11A-6(b)(5)

Ord. §11A-5(e)(1): The arbitrator shall deny an increase in the maximum rent schedule where homeowners prove by a preponderance of evidence that: Management has previously increased the maximum rent schedule such that the effective date of the proposed increase will be less than twelve months after the effective date of the previous increase.

12/20/2011 Arbitrator Stephen Biersmith awards management a $67.09 per month temporary increase that includes $320,000 for unspecified capital expenses and/or capital improvements to be completed within six months (June 19, 2012) of the award date.

5/15/2012 The Santa Barbara County Board of Supervisors reverses the $67.09 temporary increase award in total.

8/6/2012 On remand, the arbitrator confirms that "The amount of the Temporary increase is $ -0- per month."

6/17/2014 Judge Anderle denies the $320,000 escrow account arbitration award and remands the remainder to the supervisors for additional findings of fact.

Ord. §11A-5(l): Increases in the maximum rent schedule set by the arbitrator shall become effective as of the effective date in the notice o[f] rent increase.

Regarding capital expenses, Ord. §11A-6(b)(5): If management fails to begin construction of a capital expense item within six months after approval of the cost of the capital expense, then management shall discontinue the increase for the capital expense and shall credit any amount collected to each homeowner. If management fails to automatically discontinue such increase, then such increase shall be considered an increase in the maximum rent schedule and shall be subject to all the provisions of this chapter, including, but not limited to, amount and frequency of increase.

Ord. §11A-6(a)(5) is essentially the same wording applied to capital improvements.

Not only did management fail to begin any construction within six months of the arbitrator's December 20, 2011, opinion and award, but management was also directed by the arbitrator, the County Board of Supervisors and Judge Anderle to discontinue charging the homeowners as described in the aforementioned timeline. Management ignored each order and continued, until July 1, 2016, to charge $67.09 per household per month, as evidenced by homeowners' June 2016 rent statements (Exhibit B).

This "temporary increase," therefore, constitutes a rent increase per the express terms of Ord. §11A-6(b)(5) and §11A-6(a)(5), voiding additional rent increases until twelve months after the date on which the capital expense and/or capital improvement increase is discontinued.

Based on the above, homeowners request that management's rent increase be denied in total per the clear and express terms of the ordinance.

MANAGEMENT'S NOTICED INCREASE DOES NOT COMPLY WITH, AND THEREFORE VIOLATES, RULE 2 OF THE RULES FOR HEARING

Ord §11A-2(h): "Meet and confer" is an informal meeting between authorized representatives of management and homeowners of the same park for the purpose of discussing a proposed increase in rent and **the basis for it**. (Emphasis added.)

Ord. §11A-5(e)(2): The arbitrator shall deny an increase in the maximum rent schedule where homeowners prove by a preponderance of evidence that: Management has failed to provide a meet and confer session.

Rule 2 of the Rules for Hearing provides the requirements for a meet and confer.

a. …No later than ten (10) days following the date in the notice of increase, management shall make available to representatives selected by homeowners a detailed list of expenses and income, including utility costs and charges, for the prior

four (4) years unless such is unavailable on account of transfer of ownership of the park, together with any other information upon which an increase is based.

b. The contents of paragraph 2a above shall be included in the notice of rent increase in substantially the following form: "...Your representatives may obtain information upon which this increase is based at (place) beginning (date)."

Management's notice gave the park office as the location and Saturday, April 9, 2016, as the date representatives could obtain the information.

Homeowner representative Lindse Davis went to the park office on Monday, April 11, 2016, to obtain the documents and was told by on-site manager Miguel Lopez that he had been instructed by management's attorney, James Ballantine, not to give the 120-plus pages of documents to anyone. She was also told that the documents must remain in the park office for all residents to view. Mr. Ballantine refused to allow the representatives to take the documents for copying, to fax them to a representative's office or to bring a copier into the office for copying on site.

The clear intent of the meet and confer rule of the Rules for Hearing is for the representatives to review, consider and discuss the information before them so they may be informed and prepared to participate in a meaningful meet and confer. Management's clear intent was to prevent that. Management's attorney stated in an email to homeowners representative Debra Hamrick "...Park Management will take all legal steps necessary to address any authorized use or release of any of its confidential financial and other information..." (Exhibit A).

The park office is small, lacks seating, is open only sporadically and closes on weekends and holidays. Thus, homeowners representatives could not spend the hours required, standing at the counter, to carefully read 120+ pages of voluminous documentary material to ascertain the basis of the rent increase. Without management's cooperation in obtaining the documentation that representatives needed to discuss the basis for the rent increase prior to the meeting date stated in management's notice of rent increase, a meet and confer as defined in the ordinance did not occur.

The clear use and definition of obtain is to acquire, secure, procure, take possession. Black's law dictionary definition of obtain is: "To acquire; to get hold of by effort; to get and retain possession of; as in the offense of 'obtaining' money or property by false-pretenses."

Based on the above, homeowners ask that management's rent increase be denied in total per the clear and express terms of the ordinance.

Dated July 21, 2016

Debra Hamrick
Homeowners Representative, off-site
for Nomad Village Mobilehome Park
homeowners

DECLARATION OF SERVICE BY U.S. MAIL

I, Lindse Davis, declare:

I am, and was, at the time of service hereinafter mentioned, over the age of 18 years and a party to the action described herein. I am a resident of Santa Barbara County, and my home address is 4326 Calle Real, Space 133, Santa Barbara, California 93110.

On JULY 21, 2016, I served the foregoing document described as MOTION FOR SUMMARY JUDGMENT TO DENY NOMAD VILLAGE MOBILEHOME PARK MANAGEMENT'S RENT INCREASE EFFECTIVE JULY 1, 2016 on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope, first-class postage fully prepaid and deposited with the United States Postal Service, addressed as follows:

James P. Ballantine, Esq.
Attorney, Nomad Village
Mobilehome Park Management
329 E. Anapamu Street
Santa Barbara CA 93101

Mr. Don Grady
Clerk of the Ordinance
Manager, Real Property Division
1105 Santa Barbara Street
Santa Barbara CA 93101

Honorable David W. Long (Ret.)
Arbitrator, Nomad Village Hearing
3155 Old Conejo Road, Box 7
Thousand Oaks CA 91320

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

Executed on July 21, 2016, at Santa Barbara County, California.

Lindse Davis

EFFECTIVE DATE OF RENT INCREASE IS MAY 1, 2011

2. A Notice of Amount of Space Rent Commencing July 1, 2016, constituting a ninety-day Notice of Rent Increase in the Base Rent to each of the Spaces in the Park, dated March 31, 2016; the increases were in the amount of .75% of the CPI of the existing Base Rent for each of the Spaces, plus the permanent and temporary rent increases as outlined in the Notice of Increase in Monthly Rent, with the rent increase effective May 1, 2011. The amount of Base Rent, obviously, differs from space to space; but for each given space, Base Rent was increased by 75% of CPI, for the period. An example of such a Notice is attached hereto as **Exhibit B**.

LAW OFFICES
JAMES P. BALLANTINE

EXHIBIT 1, DETAIL

---------- Forwarded message ----------
From: "Debra Hamrick" <lanmipres@gmail.com>
Date: Apr 20, 2016 9:19 AM
Subject: Re: Meet and Confer
To: "James Ballantine" <jpb@ballantinelaw.com>
Cc:

Mr. Ballentine - no documents were scanned or imaged, it is my understanding that permission was asked of Miguel to bring in a copier, however, when I spoke to Miguel, he stated that a homeowner had asked that of him, and that he was clear with them that he needed your permission.

I intended to photograph the documents, however. most of the documents were of no value, as there were no supporting documents. I also assumed that you would release the documents if you intended to negotiate, which is what happened, I am not interested in "hiding" anything, as you know, I am always willing to speak what is on my mind. You and I will always a disagree on what the Rent Control Ordinance says.

Debra Hamrick

On Tue, Apr 19, 2016 at 3:14 PM, James Ballantine <jpb@ballantinelaw.com> wrote:

> You again continue to misstate the Rules, and in fact your email elucidates your fallacy. The portion of the Rule to which you refer specifically provides that the homeowners representatives can "obtain information" and not obtain the "release" of copies of documents, as you demand. Moreover, as you well know, the operative portion of the Rule provides simply that Park Management is to "make available" the documents, which Park Management has done for some time. A copy of the documentation list is attached (I am not sure if I sent you both pages previously).
>
> Regardless, your demand is moot, because I am informed that you went into the Park office under the pretense of reviewing the documents made available, and without authorization scanned and took images of the documents. So you have now helped yourself to the documents and cannot be heard to complain that you do not have unfettered access to the documents and information contained therein, but I would note that Park Management will take all legal steps necessary to address any authorized use or release of any of its confidential financial and other information that you took.

EXHIBIT A

CONTINUED ON PAGE 10

Regardless, Park Management will continue to make the documents available to the homeowners representatives at the meet and confer session, and will be glad to discuss any questions that the homeowner representatives might have.

JAMES P. BALLANTINE
ATTORNEY AT LAW
329 East Anapamu Street
Santa Barbara, CA 93101
voice: (805) 962-2201
facsimile: (805) 564-2048

On Thu, Apr 14, 2016 at 3:58 PM, Debra Hamrick <lanmipres@gmail.com> wrote:
Mr. Ballentine the rules for hearing state: Your representatives may obtain information upon which this increase is based at (place) beginning (date).

The "make available" that you are referring to is at the actual meet and confer, "obtain" means to get, acquire or secure.

Representatives are waiting for that information to be released

Thank you
Debra Hamrick
Homeowners Rep
Nomad Village

BILL FOR Jun 2016 No 83

NEW NOMAD PARK
4326 CALLE REAL
SANTA BARBARA CA 93110

[illegible]	FROM	TO	[illegible]	[illegible]	CHARGE
	4/ 6	5/ 6			
CuFtx100	4095	4121	26	27	29.29
KWH	79104	79248	144	144	21.34
CuFtx100	410	412	2		17.01

Rent	420.59
SEWER	31.10
ARB AWARD	67.09
SPEC CHG 3	0.00
Prev bal	2879.42

TO

TONY ALLEN
4326 CALLE REAL SP 83
SANTA BARBARA CA 93110

ACCOUNT 43200083 BILLING FACTOR 1.04200

PLEASE PAY TOTAL $3465.84

Bill due on first.
Paid ___ / ___ / ___ Amt= ________ Recd by ________________ Adj Tot ______

EXHIBIT B

4. All granted temporary increases are to be amortized at 9% for seven (7) years.
5. The Homeowners are to pay the $320,000. If any of these monies are not spent on eligible items with six months from the date of this award, the residual amounts are to be returned to the Homeowners.
6. The Homeowners are to pay $25,000 for professional fees associated with the capital improvements.
7. The Homeowners are to pay $40,000 for the A&E fees associated with the capital improvements.
8. The Homeowners are to pay $130,531for the supplemental tax increase payments already paid by the Park Owner.
9. The Homeowners do not need to pay for the uncompensated increases associated with the increased lease payments.
10. 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.
11. The Homeowners are to pay $110,000 for legal fees associated with the challenge to the rent increase.
12. The Permanent Increase is to be $25.59 and the Temporary Increase $67.09 as supported by Respondent's Exhibit T.
13. The Parties are to work towards agreement and payment of any overpayments by the Homeowners as a result of this award by March 1, 2012.
14. The Arbitrator will maintain jurisdiction until the expiration of the time line noted in #13 above.

Dated: December 20, 2011

Stephen M. Biersmith, Esq.
Arbitrator

EXHIBIT C, DETAIL

A motion was made by Supervisor Wolf, seconded by Supervisor Carbajal, that this matter be Acted on as follows:

a) Received and considered.

b) and c) i, ii, iii, 1) After considering Attachments A through P to the Board Agenda Letter dated May 15, 2012 and the Response by Nomad Village Mobile Home Park to Petition for Review, the Nomad Village Homeowners' Response to Management's Petition for Review Regarding Rent Increase Arbitration, and the Objections by Nomad Village Mobile Home Park Management to Homeowners' Response to Petition for Review, the Board took the following action on the ten awards made by the Arbitrator that are under petition for review:

Award No. 2) The Board affirmed the Arbitrator's decision.

Award No. 3) Remanded back to the Arbitrator.

Award No. 4) Found that the Arbitrator abused his discretion and reversed the decision in whole.

Award No. 5) Found that the Arbitrator abused his discretion and reversed the decision in whole.

Award No. 6) Found that the Arbitrator abused his discretion and reversed the decision in whole.

Award No. 7) Found that the Arbitrator abused his discretion and reversed the decision in whole.

Award No. 8) Found that the Arbitrator abused his discretion and reversed the decision in whole.

Award No. 9) The Board affirmed the Arbitrator's decision.

Award No. 11) Found that the Arbitrator abused his discretion and reversed the decision in whole.

Award No. 12) Remanded back to the Arbitrator for recalculation based on the remand of Award No. 3.

No rehearing was scheduled on matters remanded by the Board.

d) and e) Approved.

The motion carried by the following vote:

Ayes: 5 - Supervisor Carbajal, Supervisor Wolf, Supervisor Farr, Supervisor Gray, and Supervisor Lavagnino

EXHIBIT D, DETAIL

As to the second question, the Board made it clear that all of those items in the Award which would have led to a temporary increase in the monthly amount to be charged to the Homeowners were not to be allowed.

In reviewing the amount of any permanent increase, the only item left for consideration in that category after the Board's review of the earlier award was the portion attributable to real property taxes. Based on the factual determinations above that number would be $25.59 each month per the calculations submitted by the Park Owners.

AWARD

1. The amount of the Temporary Increase is $ -0- per month.
2. The amount of the Permanent Increase is $25.59 per month.

Dated: 8/4/2012

Stephen M. Biersmith, Esq.
Arbitrator

EXHIBIT E, DETAIL

"It seems pretty clear that capital expenses are supposed to be itemized and fit whatever the criteria is, and I never saw an itemized list and I think that was also mentioned. So, you know, there may be capital expenses that are charged later, but there's no specific list here as to what this $320,000 is to be spent on. And I think that was where the issue of electrical upgrades came in as well, whether that was included or not." (5 AR 1489.)

As quoted above, the Ordinance permits the pass through of the costs of capital improvements and expenses, whether those costs have already been incurred or are merely proposed. The Ordinance qualifies that proposed costs may be considered only where they are "definite and certain." The Ordinance does not provide or otherwise permit the pass through of capital improvements or expenses merely because the funds for such capital improvements or expenses have generically been set aside. Thus, the Ordinance does not, as a matter of law, permit the pass through of the $320,000 escrow funds or any part thereof absent a showing that the proposed capital improvement or capital expense is "definite and certain."

The evidence of proposed capital improvements and capital expenses consists of proposals to Management for certain construction items. Waterhouse in his testimony was clear that none of these proposals were definite or certain and it was uncertain what work was actually going to be performed. Petitioners presented no substantial evidence that any of the proposed capital improvements or capital expenses were "definite and certain." The arbitrator made no findings that any proposal was definite or certain and impliedly found to the contrary by qualifying Award No. 5 that "[i]f any of these monies are not spent on eligible items with six months from the date of this award, the residual amounts are to be returned to the Homeowners." The absence of any "eligible items" in evidence or in the Award demonstrates the arbitrator's expectation that what is "eligible" would be determined after the effectiveness of Award No. 5. The requirement that such items be "definite and certain" necessarily incorporates a determination that such item be at that time "eligible" for collection.

Because the finding of the arbitrator to include collection of $320,000 was not supported by substantial evidence, the Board correctly determined that this finding, insofar as it related solely to the $320,000 funds in escrow, was a prejudicial abuse of discretion. This is essentially the point discussed by Supervisor Farr at the May 15 hearing. The record does not show that this determination was prejudicially affected by ex parte communications.

However, the arbitrator also had before him evidence of specific items of incurred costs in the amount of $62,145.55, assertedly for capital improvements and capital expenses eligible to be passed through to the homeowners. The arbitrator treated all of the expenses together, without making findings specific to the $62,145.55 claimed under section 11-6 of the Ordinance. Consequently, the decision of the arbitrator is not supported by findings as to the $62,145.55 in claimed costs. The lack of findings on this issue constitutes prejudicial abuse of discretion by the arbitrator.

EXHIBIT F, DETAIL