

Attachment GG

Findings

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Finding for Award No. 4 (Amortization Period and Rate)

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall prepare a written decision which shall include a statement of the issues, the findings of facts on which the decision on this Award is based, the rent schedule imposed, and that the decision shall be supported by a preponderance of the evidence. (Rule 18.) Abuse of discretion is established where the Arbitrator's decision is not supported by findings. (Rule 23(a).) The Arbitrator determined that "[a]ll granted temporary increases are to be amortized at 9% for seven (7) years", but did not make any findings or analysis to support this award.

Because amortization is based upon the useful life of capital improvements and capital expenses (County Code § 11A-6(a)(2); (b)(2)) and other remanded Awards are temporary increases related to capital improvements and capital expenses which may be adjusted upon remand, the Board of Supervisors also remands Award 4 to the Arbitrator in light of the reconsideration of other Awards.

Finding for Award No. 5 (Escrow Account and Costs Expended)

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall prepare a written decision which shall include a statement of the issues, the findings of facts on which the decision on this Award is based, the rent schedule imposed, and that the decision shall be supported by a preponderance of the evidence. (Rule 18.) Abuse of discretion is established where the Arbitrator's decision is not supported by findings. (Rule 23(a).)

Park Owners made two claims as part of this Award for an increase in rent based upon capital improvements and capital expenses: \$62,145.55 previously incurred, allegedly for capital improvements and capital expenses; and another increase based upon the \$320,000 in the escrow account for which Park Owners had received proposals, but for which it was not clear what work was to be performed. The Arbitrator determined that "The Homeowners are to pay the \$62,145.55 which were capital improvement expenses incurred prior to the commencement of the arbitration. The Homeowner [sic] 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 commencement of the arbitration."

The decision of the Arbitrator that the \$62,145.55 is related to capital improvement expenses, and thus eligible to be passed on to homeowners, is not supported by any findings. The Board of Supervisors determines that the Arbitrator abused his discretion and remands the \$62,145.55 portion of Award 5 to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

Finding for Award No. 6 (Professional Fees)

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall prepare a written decision which shall include a statement of the issues, the findings of facts on which the decision on this Award is based, the rent schedule imposed, and that the decision shall be supported by a preponderance of the evidence. (Rule 18.) Abuse of discretion is established where the Arbitrator's decision is not supported by findings. (Rule 23(a).)

For this Award, the Arbitrator's decision merely concluded that "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." This is an even briefer statement than the previous one made by the Arbitrator that the Board determined to be inadequate: "The professional fees spent on capital improvement items should not be treated as a one shot expense, but rather amortized (Ex. K & Q). After considering the objections raised by the Homeowners, a good portion of the line items submitted by the Park Owner do not appear to be relevant to any capital improvement, therefore, a reduction of \$25,000 from the original request is warranted. The remaining \$25,000 is to be charged to the Homeowners."

The Arbitrator did not identify which professional fees were awarded or how they were properly categorized as a cost of a capital improvement or capital expense so as to be passed through to the homeowners. The Arbitrator's decision does not contain any findings of fact on which the decision or the reduction of fees is based; thus, the Board of Supervisors determines that the Arbitrator abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

Finding for Award No. 7 (Architecture and Engineering Fees)

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall prepare a written decision which shall include a statement of the issues, the findings of facts on which the decision on this Award is based, the rent schedule imposed, and that the decision shall be supported by a preponderance of the evidence. (Rule 18.) Abuse of discretion is established where the Arbitrator's decision is not supported by findings. (Rule 23(a).)

For this Award, the Arbitrator's decision merely concluded that "The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements, a smaller number than petitioned for due to the reduced utility of those items since their purchase." This is an even briefer statement than the previous one made by the Arbitrator that the Board determined to be inadequate: "Waterhouse testified he purchased certain plans to facilitate evaluating and then moving forward on certain capital improvements for the parl. Given the age on some of the supporting documentation, some of this work appears stale. Although the Park Owner represented that the County will work with them with such things as expired permits, some of this work may have little or no value as of this date. A more reasonable amount to be charged could be \$40k."

The Arbitrator did not identify which professional fees were awarded or how they were properly categorized as a cost of a capital improvement or capital expense so as to be passed through to the homeowners. The Arbitrator's decision does not contain any findings of fact on which the

decision or the reduction of fees is based; thus, the Board of Supervisors determines that the Arbitrator abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

Finding for Award No. 8 (Past Payments by Park Owners for Increased Real Property Taxes)

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall prepare a written decision which shall include a statement of the issues, the findings of facts on which the decision on this Award is based, the rent schedule imposed, and that the decision shall be supported by a preponderance of the evidence. (Rule 18.) Abuse of discretion is established where the Arbitrator's decision is not supported by findings. (Rule 23(a).) For this Award, the Arbitrator's decision merely concluded that "The Homeowners are to pay \$130,531 for the supplemental tax increase payments."

The Arbitrator did not make findings to bridge the analytic gap between the evidence presented and the ultimate decision made by the Arbitrator. The Arbitrator did not identify whether the supplemental tax increase was categorized as an increase in operating costs, cost of a capital improvement, or capital expense so as to be passed through to the homeowners; thus, the Board of Supervisors determines that the Arbitrator abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

Finding for Award No. 11 (Legal Fees Associated with the Challenge to the Rent Increase)

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall include the findings of fact on which the decision is based and that the decision be supported by a preponderance of the evidence. (Rule 18.) For this Award, the Arbitrator's decision merely concluded that "The Homeowners are to pay \$110,000 for the legal fees associated with the challenge to the rent increase." This is an even briefer statement than the previous one made by the Arbitrator that the Board determined to be inadequate: "After reviewing the itemizations submitted by the Park Owner for expert and legal services expended in this matter (Ex. R & S) and the Homeowners response a reasonable amount to be paid by the later would be \$110,000."

The Arbitrator did not make findings to bridge the analytic gap between the evidence presented and the ultimate decision made by the Arbitrator. Findings for this Award are especially important because legal fees are not expressly identified in the Ordinance as an allowable operating expense. The Arbitrator did not make findings regarding the final calculation of the legal fees awarded nor did the Arbitrator identify whether the legal fees were categorized as an increase in operating costs, cost of a capital improvement, or capital expense so as to be passed through to the homeowners. Thus, the Board of Supervisors determines that the Arbitrator abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

Finding for Award No. 12 (Total Permanent and Temporary Increase)

Because the total rent increase is based upon the final adjustment of Awards 4, 5, 6, 7, 8, and 11 which may be adjusted upon remand, the Board of Supervisors also remands Award 12 to the Arbitrator for reconsideration in light of the reconsideration of Awards 4, 5, 6, 7, 8 and 11.