

Petition for Review of the Mobile Home Rent Control Arbitration Opinion and Award on Remand

Nomad Village Mobilehome Park



**Skip Grey, Assistant Director
General Services Department**

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- On January 19, 2016, your Board held a hearing pursuant to the court order in Judge Anderle's remand, which granted in part and denied in part, relief sought by Park Management related to the Board's May 15, 2012 decision.
- At that January 19, 2016 hearing, your Board vacated, reconsidered, and remanded Awards 4, 5, 6, 7, 8, 11, and 12 to the Arbitrator for adequate findings and recalculation.
- On February 17, 2016, the Arbitrator held a hearing on remand and on March 5, 2016 executed the Opinion and Award (Revised on Remand).

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- On April 14, 2016, the Homeowners filed a petition for review of Awards 4, 5, 6, 7, 8, 11, and 12 made by the Arbitrator on remand, which was subsequently heard by the Board on July 19, 2016, and again remanded to the Arbitrator.
- Remanded arbitration was held on August 10, 2016, and the arbitrator's decision was served on both parties on September 12, 2016, and then subsequently appealed by the Homeowners on September 22, 2016, resulting in this hearing.
- Today's review of the Arbitrator's Opinion and Award occurs pursuant to the Mobilehome Rent Control Rules for Hearing.

County Code Chapter 11A (Mobilehome Rent Control)

Creates an arbitration process for rent control disputes in mobilehome parks within the unincorporated area whenever a proposed rent increase exceeds 75% of the Consumer Price Index as described within Chapter 11A.

The Parties

Park Management: Lazy Landing, LLC and Waterhouse Management, Inc.

Homeowners: Residents of Nomad Village Mobilehome Park.

Mobilehome Rent Control Rules for Hearings

Under Rule 23, Board reviews the Arbitrator's Opinion and Award under an "abuse of discretion", which is established only if the Arbitrator:

- Failed to proceed in the manner required by law;
- Made a finding not supported by substantial evidence; or
- Made a decision not supported by the findings.

Arbitrator's Awards and Staff's Recommendations:

Award #5 (previously Award #4) on Remand: “All granted temporary increases are to be amortized at 9% for seven (7) years.”

Staff's Recommendation: Find that the Arbitrator abused his discretion and remand Award #5 to the Arbitrator for findings about the useful life of the items subject to amortization, and in light of remanded Awards #7 and #8 which may change as a result of the further proceedings.

Award #6 (previously Award #5) on Remand: “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.”

Staff's Recommendation: Find that the Arbitrator did not abuse his discretion and affirm Award #6 regarding specific items of incurred costs in the amount of \$62,145.55.

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Award #7 (previously Award #6) on Remand: “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.”

Staff’s Recommendation: Find that the Arbitrator abused his discretion and remand Award #7 to the Arbitrator for adequate findings that identify which professional fees are awarded and how the awarded professional fees are properly categorized as a cost of capital improvements or capital expenses.

Award #8 (previously Award #7) on Remand: “The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements.”

Staff’s Recommendation: Find that the Arbitrator abused his discretion and remand Award #8 to the Arbitrator for adequate findings that identify which professional fees are awarded and how the awarded professional fees are properly categorized as a cost of capital improvements or capital expenses.

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Award #9 (previously Award #8) on Remand: “The Homeowners are to pay \$130,531 for the supplemental tax increase payments.”

Staff’s Recommendation: Find that the Arbitrator did not abuse his discretion and affirm Award #9.

Award #12 (previously Award #11) on Remand: “The Homeowners are to pay \$110,000 for the legal fees associated with the challenge to the rent increase.”

Staff’s Recommendation: Find that the Arbitrator did not abuse his discretion and affirm Award #12.

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Award #13 (previously Award #12) on Remand: “The Permanent increase is to be \$25.29 and the temporary increase \$39.44 as supported by the attached.”

Staff’s Recommendation: Find that the Arbitrator did not abuse his discretion in calculating the total increase; however, remand Award #13 to the Arbitrator for recalculation in light of remanded Awards #7 and #8.

CEQA Recommendation:

Determine that the proposed action is an administrative activity of the County which will not result in direct or indirect physical changes in the environment and is therefore not a “project” as defined for purposes of the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15378(b)(5).

The order for today's hearing will be as follows:

- Ex parte disclosures
- Staff presentation (7-8 min)
- Presentation by Homeowners (10 min)
- Presentation by Park Management (10 min)
- Public Comment
- Staff response to public comment
- Rebuttal by Homeowners (5 min)
- Rebuttal by Park Management (5 min)
- Board deliberation and vote

Recommended Procedural Motion

In accordance with Rules 13 and 23(b) of the Mobilehome Rent Control Rules for Hearings, the Board limits its review of the Arbitrator's decision to the paper record alone attached to the Board Agenda Letter dated January 24, 2017 as further detailed in that Board Agenda Letter, which consists of portions of Attachments 1 through 4. The Board will not consider any new evidence, and receives oral argument and Brown Act public comment as argument that focuses on evidence that is already contained in the record, rather than as new evidence.