

In The Matter Of:

In Re: NOMAD VILLAGE MOBILE HOME PARK

August 10, 2016

Tri-County Court Reporters

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ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY
MOBILE HOME RENT CONTROL ORDINANCE

IN RE: NOMAD VILLAGE)
MOBILE HOME PARK) HEARING BEFORE
)
) STEPHEN BIERSMITH, ARBITRATOR
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TRANSCRIPT OF PROCEEDINGS, taken in the
above-captioned matter, commencing at 9:02 a.m.,
Wednesday, August 10, 2016, at 267 Camino Del Remedio,
Santa Barbara, California, before MARK McCLURE, CSR No.
12203, Certified Shorthand Reporter in the County of
Santa Barbara, State of California.

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SANTA BARBARA, CALIFORNIA
WEDNESDAY, AUGUST 11, 2016
9:02 A.M.
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ARBITRATOR: Good morning, everybody. My name is Stephen Biersmith. I'm the arbitrator in today's matter, Nomad Village Mobile Home Park.

I'll ask the parties to state their appearances for the record, please, beginning with the park owner.

MR. BALLANTINE: Good morning, your Honor. I'm James Ballantine. I'm appearing on behalf of park management, which is Waterhouse Management Corporation, the park operator, and Lazy Landing, LLC, the ground lessee and park owner.

MS. HAMRICK: Good morning. Deborah Hamrick representing the homeowners of Nomad Village.

ARBITRATOR: Thank you.
In my possession I have briefs from both sides. I received yours as well as yours, both.
Have you exchanged briefs?

MS. HAMRICK: Yes.

MR. BALLANTINE: Yes, your Honor.

ARBITRATOR: So at today's hearing there will

1 be no additional testimony, no additional facts, you'll
2 be given an opportunity to make a short statement, and
3 then we will close it down for the day. Okay.

4 With that, I would ask that the park owner go
5 first.

6 MR. BALLANTINE: Yes, your Honor.

7 ARBITRATOR: And that we keep it brief and
8 that you address the other side's brief, if you can,
9 both sides.

10 Go ahead.

11 MR. BALLANTINE: Thank you, your Honor.

12 I believe that what's before your Honor, and
13 to try to keep this as brief as possible is what I think
14 before this matter is we had a remand hearing in
15 February, your Honor issued a statement, an award, a
16 statement of decision, essentially.

17 The issue is that the Board of Supervisors
18 have remanded for further findings, I think the only
19 issue before your Honor is essentially what findings
20 need to be made from the record that would support those
21 particular findings.

22 I think what the homeowners are attempting to
23 do in this case is retry the entire case. They don't
24 like the original findings and award, they don't like
25 the Court's order, and they don't like the last award

1 and basically have argued everything. I don't think
2 that's properly before your Honor.

3 What's before your Honor is essentially what
4 findings need to be made. We submitted a brief in which
5 we have cited specific items of record that we think
6 well support what the award stated.

7 I'll note the award didn't give the park
8 owner -- we didn't think the award was a fair award, it
9 didn't give the park owner everything we wanted. I'm
10 not back to reargue anything that we didn't get the
11 first time around, I'm just here to basically propose
12 what facts are clearly in the record, and we've cited
13 all of those that would support the award that was
14 actually issued on March 5.

15 So that's my main point. I'll make a few
16 points regarding the homeowners' brief, which I have
17 seen.

18 There's a lot of discussion, and basically I
19 think that there's several items that everyone is
20 talking about that are basically your Honor's award.
21 There's a number of items that are numbered, which is
22 helpful because we can identify and track what they are.

23 There's a lot of discussion regarding item
24 No. 4, the amortization and the capital items.
25 Actually, the amortization, the interest rate and the

1 period of all temporary items -- and basically that's
2 argued at length -- basically, that's not before your
3 Honor.

4 We had an extensive hearing back in 2011.
5 There were subsequent legal proceedings. Judge Anderle
6 issued an award. He specifically found that there was
7 substantial evidence in the record to support that
8 number. It's really not back before us here. As the
9 order on the writ of mandate found, it found
10 specifically that there was substantial evidence in the
11 record, and it cited what that evidence was in the
12 record.

13 The one general comment I would make is I
14 think the homeowners have some confusion here of two
15 different distinct but interrelated issues, and it's the
16 differing concept between a temporary rent increase --
17 that's not a permanent rent increase, it's temporary, a
18 temporary increase has a start time and a finish time,
19 so therefore it has a duration. It also has, because
20 it's temporary, to the degree that it's temporary
21 because it's based on a specific expenditure that the
22 park had, it has a limited duration and it has an
23 interest rate. Typically, a temporary expense is
24 employed in a capital item because the park has a
25 capital item that it pays for, and then it recovers that

1 amount through a rent increase, a temporary rent
2 increase. So it's got a period of time and it's got an
3 amortization period and an amortization rate in order to
4 give the park owner a fair return. That's what's
5 constitutionally required, is a fair return.

6 If the park owner had to expend dollars today
7 and didn't recover those dollars today -- in other
8 words, had to recover them over a period of time -- the
9 rate of return is essentially to allow the park owner --
10 the interest is to allow the park owner a rate of
11 return. That's a temporary increase. It may apply to a
12 capital item, it may apply to something else. That may
13 be a temporary -- that basically is a temporary rent
14 increase.

15 The homeowners, I think, confuse that concept
16 sometimes by saying well, this isn't a capital item.
17 Well, back in the 2011 hearing, and I don't want to go
18 through the whole thing and reargue the whole thing, but
19 basically in the 2011 hearing their expert, Dr. Barr,
20 acknowledged that fact and basically said he agreed that
21 some of the items that I'll be talking about, such as
22 the professional fees and the cost of the plans, those
23 were a temporary rent increase.

24 Now, professional fees can either be temporary
25 or permanent. They can lead to a permanent or temporary

1 rent increase. They can be construed as an operating
2 cost, and Dr. St. John could have put it in his MNOI
3 analysis and basically said because of all the costs
4 that we had, the park had a particular year, it showed a
5 loss or it showed sufficient decreased net income to
6 justify a permanent rent increase.

7 That wasn't what we asked for. We basically
8 said these were extraordinary expenses, and so therefore
9 they justified a temporary rent increase. It's, as
10 Dr. Barr indicated, favorable for the homeowners. I
11 didn't address that a lot in the brief that I gave your
12 Honor earlier this week, but we did address that in
13 Dr. Barr's testimony in the February 2016 brief that was
14 submitted. I didn't think we needed to duplicate it.
15 It's there. If you would like to reference back to it,
16 I specifically site Dr. Barr's testimony.

17 I think all of that is a nonissue because I
18 think that basically award No. 4 was upheld by the
19 court, it wasn't remanded other than to the degree that
20 there were specific considerations given to the specific
21 items that I'll talk about next, items 5, 6, 7. Other
22 than that, as to the number and the years, that was
23 upheld and I don't think we need to have further
24 discussion about that.

25 No. 5 is the capital expenditures. We

1 understand that your Honor ruled that the park
2 management, in accordance with the judge's decision,
3 wasn't entitled to the \$320,000 but was entitled to the
4 \$62,000 and change of capital items that were expended.

5 Basically, we cited what the record was. The
6 testimony is uncontradicted by Mr. Garcia and by the
7 documents in evidence, and I cited those. That those
8 were capital items that were expended, actually
9 expended, by the park for capital items for Nomad
10 Village Mobile Home Park. I've given the citations on
11 the record, and again the testimony is uncontradicted.

12 The ordinance is very clear that park
13 management is entitled to recover those costs through a
14 temporary rent increase, and that's essentially what
15 that award was. We provided what the citations to the
16 record were that would support a finding to support that
17 award.

18 And to the degree that the park owners tried
19 to argue in their brief now that those were operating
20 expenses, not capital expenses, that misses the point on
21 two different levels: A, they are trying to reargue the
22 case from 2011; that wasn't the argument then, it isn't
23 now, there was no cross-examination, there was no
24 testimony that those were operating expenses, there was
25 no contradiction of the park owner's testimony that

1 those were capital items, and I think if you look at
2 those items that are delineated in the spreadsheet -- I
3 think it's Exhibits J and K -- it's pretty clear that
4 those are capital items. So the homeowners in their
5 brief really kind of missed that point. They are
6 capital items.

7 Secondly, to the degree that they argue that
8 they were operating expenses, that also misses the point
9 because the point is that this is a rent-controlled
10 jurisdiction. The park owners, if it has expenses, they
11 are entitled to basically recover through rent, rent
12 sufficient to cover those expenses. Either those
13 expenses would be deemed as capital items, and so it's a
14 one-time shot that's basically amortized over a period
15 of time or it supports a rent increase because the
16 park's net operating income for that particular year,
17 2011, would be low and that would warrant a permanent
18 rent increase. If Dr. St. John had put it in his MNOI
19 analysis, which was presented to your Honor back in
20 2011, that would have basically showed that if those
21 were all expensed that year, less a net profit, to
22 warrant a permanent rent increase.

23 Well, a permanent rent increase is not as
24 favorable for the homeowners as a temporary rent
25 increase that basically ends after a period of time. So 10

1 to the degree that the homeowners are claiming that's
2 really an operating expense so therefore we don't have
3 to pay, that misses the point. If it were an operating
4 expense, then it would have been put in the MNOI
5 analysis, but that wasn't their argument in 2011, and
6 they can't make it now.

7 In any event, I've provided in the brief the
8 citations to the record that support the Item 5, the
9 \$62,000 and change as being capital expenses.

10 Item No. 6 is professional fees. That's a
11 similar argument. Those were professional fees that
12 were, by and large, related to capital items. To the
13 degree that the homeowners argue that that's really
14 operating costs, not a capital expense, then the same
15 argument applies. I mean either it's treated more
16 favorably for the homeowners as a long-term -- or as a
17 temporary expense, a temporary rent increase, or it
18 becomes part of the MNOI analysis that leads to a
19 permanent rent increase. That wasn't what the park
20 management asked for.

21 And again in the February brief I provided the
22 citations to the record of Dr. Barr, the homeowners'
23 expert, in which he acknowledged that that treatment was
24 more favorable for the homeowners and that he didn't
25 disagree that those professional fees could be treated

1 as a temporary rent increase rather than putting them in
2 the MNOI analysis. He conceded that point, and so again
3 it's a nonissue, some argument that they are operating
4 expenses.

5 The real issue that the court remanded back to
6 your Honor was to have a more specific finding how that
7 number was derived, and I think actually your findings
8 essentially said what they were, but we provided some
9 more citations to the record that identify that those
10 professional fees, having reviewed the itemization,
11 which is pretty detailed, related to capital extension
12 items.

13 The other argument that the homeowners raised
14 in their brief is they say that they weren't definite
15 and certain enough, those capital items that are
16 referenced in the legal fees. And they are missing the
17 point. The point is that those legal fees were definite
18 and certain. There's a specific amount, it was paid by
19 the park management, we have identified that amount, we
20 have identified what was paid, and the spreadsheet or
21 the billing statement that was submitted in evidence
22 identifies exactly what those were for. We, obviously,
23 asked for more, but we think that what we asked for was
24 warranted by the record. Your Honor made a call, and
25 we've identified what's in the record that we think

1 clearly supports what your Honor came up with.

2 No. 7 is the plans and diagrams, and there
3 again, those can be treated as a capital item, they can
4 be treated as -- or they can be treated as an expense.
5 They weren't treated as an expense for a permanent rent
6 increase, they were treated essentially as a capital
7 item for a temporary rent increase, which is again more
8 favorable for the homeowners. The homeowners' argument
9 in their brief that those are not definite and certain
10 enough again misses the point. They are definite and
11 certain. We provided a specific spreadsheet that
12 identified each and every cost that total up to the
13 amount we're asking for. Your Honor didn't give us
14 everything we asked for but came up with a specific
15 number. We provided some citations to the record that
16 we think well support what your Honor came up with.

17 It's clear for the current park owner to have
18 and possess the CAD drawings and maps related to the
19 park are of value, significant value for the operator on
20 an ongoing basis, and the park operator testified to
21 that, we've indicated in the record where they testified
22 to that, and they found it of value and continue to find
23 it of value for the projects that they've been pursuing
24 in the park. Those amounts are definite and certain
25 because they are identified in the exhibit before your

1 Honor, exactly what those expenses were, so in any event
2 we've provided the citations to the record that we think
3 support that.

4 Item 8 is the supplemental property taxes.
5 That issue isn't before your Honor. That was heard back
6 in 2011. It was vacated by the Board of Supervisors in
7 2012. The property tax issue was remanded to your
8 Honor. We had the first of many remand hearings back in
9 August of 2012, and we addressed the property tax issue.
10 Your Honor made a finding, a clear finding that the park
11 owner was entitled to recover the increased property
12 taxes. The supplemental property taxes were the amount
13 that the County basically billed the park owner for that
14 gap, that period of time before they decided that there
15 was a change of ownership that yielded a permanent
16 property tax increase. The park owner got the bill,
17 they paid that bill, that's all in evidence, it's
18 uncontradicted.

19 Dr. St. John talked about the fact that those
20 costs were specifically incurred and paid by the park
21 owner. They related to property taxes. Your Honor made
22 a finding. Judge Anderle, in his order, specifically
23 found that substantial evidence supported that finding.
24 He did not remand that matter back for further
25 consideration, and I would submit it would be

1 inappropriate to further consider it.

2 But regardless of that fact, it's well
3 supported by the record and so in any event we've
4 presented our proposed findings that that matter was not
5 remanded back to your knowledge and doesn't need further
6 attention.

7 Item No. 11 was the attorneys' fees incurred
8 by the park owner. I would note through the close of
9 the hearing back in 2011, Judge Anderle again on that
10 specifically found that it was within the arbitrator's
11 discretion to make a determination of that amount. Your
12 Honor did make a determination of that amount. Judge
13 Anderle upheld it as having substantial evidence in the
14 record, and that was not remanded back to your Honor,
15 and I think that would be the appropriate finding as
16 well.

17 The homeowners essentially are trying to
18 reargue the entire issue, and I would note that the
19 homeowners in basically attempting to argue that the
20 park management isn't entitled to recover their costs of
21 the proceeding just flat-out contradicts what their own
22 expert said at this hearing in 2011. Dr. Barr said, and
23 this is cited in Judge Anderle's ruling, specifically
24 said he agreed that the park owner was entitled to
25 recover reasonable fees and costs for the proceeding.

1 He acknowledged that. He also agreed that it was
2 appropriate to treat it as a temporary rent increase by
3 taking the total amount awarded and amortizing it over a
4 period of time, obviously because the management paid it
5 on a current basis, they are entitled to recover
6 interest for whatever that amortization period is;
7 otherwise, they wouldn't have a fair return on that
8 money, if they didn't get it right away then. And
9 basically Dr. Barr agreed that the temporary rent
10 increase, the way it was treated by park management, the
11 way it was handled ultimately by your Honor, was
12 appropriate.

13 And that's what happened. Basically that's
14 not a matter to be reargued before this hearing right
15 now, and so I would submit that the finding that we have
16 proposed would be accepted, would be appropriate, based
17 upon Judge Anderle's ruling.

18 That's all I have on that unless your Honor
19 has any questions, in which case I'll be happy to
20 respond.

21 ARBITRATOR: Thank you.

22 Your response.

23 MS. HAMRICK: Thank you, sir.

24 First of all, just a couple of things here.

25 Homeowners believe that this arbitration is rooted in

1 the rent control ordinance and the rules underlying it,
2 so we're just going to go back to that.

3 We understand that there were expert
4 witnesses, we understand that expert witnesses had
5 opinions and input, but we still believe that all of
6 this has to be based on the rent control ordinance.

7 We do understand 1185, we do understand,
8 homeowners understand clearly what a permanent increase
9 is, and we understand that there's a formula in the rent
10 control ordinance which allows for the arbitrator to
11 figure out exactly what that permanent increase can be,
12 what it should be, and what the allowances are that
13 preempt that, on top of the CPI which is allowed every
14 year.

15 We understand 1186. We understand what
16 temporary increases are. There is no such thing as
17 capital items. The rent control ordinance clearly
18 defines capital improvements and capital expenses. It
19 defines exactly what they are and how they can be
20 charged and what criteria must be met for them.

21 I think the real reason we're here today,
22 though, is exactly what Mr. Ballantine stated.
23 Homeowners understand that there's costs, we understand
24 that this is an unusual situation because we actually
25 have, technically, two park owners that are trying to

1 get a fair return on their investment. We have the
2 landowners, the Bell Trust, who have entered into a
3 lease agreement with Lazy Landing, LLC, who is owned by
4 Waterhouse Management. Ken Waterhouse is part of that,
5 and Ken Waterhouse is Waterhouse Management, so he's
6 leasing -- he's contracting his lease to his own
7 management company.

8 So it gets tricky, but because there's
9 actually two owners here, homeowners have got caught in
10 the middle of a lease agreement between Ken Waterhouse
11 and the Bell Family Trust. So some of these things that
12 homeowners don't believe are covered in the rent control
13 ordinance are part of the lease agreement, such as
14 Mr. Ballantine brought up -- property taxes, legal
15 expenses, just a lot of different things that have come
16 to be because of these lease negotiations.

17 But we do understand expenses and we do
18 understand that park owners have the right to the
19 profit. However, Mr. Ballantine neglected to tell you a
20 couple of things on this. One thing he neglected to
21 tell you is the \$62,000 that everybody seems willing to
22 accept was not part of the original 2011 award in any
23 way, so that should not be -- if Judge Anderle ruled on
24 that, it's outside of his scope of what he should have
25 been ruling on.

1 But our biggest concern is not even that --
2 it's quite possible that the park owners deserve some
3 kind of a rent increase, it's that there's no clarity in
4 this. We agree with the Board of Supervisors that there
5 is no line-by-line clarity here. We'd like something
6 that requires a reconciliation of the award that you
7 presented with the actual findings from the rent control
8 ordinance, and I think that's really all we're asking
9 for here, is that you go back to these awards and
10 explain in detail how you've reconciled them with what
11 the rent control ordinance allows for.

12 ARBITRATOR: Thank you.

13 Any rebuttal?

14 MR. BALLANTINE: Yes, your Honor. I'd note
15 Judge Anderle didn't find there was anything about the
16 award issues that -- the award matters that are before
17 your Honor that weren't properly found under the rent
18 control ordinance, he just remanded it back for further
19 findings based on the evidence we've provided you, that
20 information with the evidence that we think underlies
21 each and every of those items that, at least the ones
22 that are in contention.

23 ARBITRATOR: All right.

24 I did have one question. I read your brief
25 and you cited a usuary statute.

1 Mr. Ballantine, do you have any comment on
2 that, sir?

3 MR. BALLANTINE: Yes. We are not a money
4 lender. It's totally misplaced.

5 My comment on that, your Honor, would be that
6 the time to make that argument would have been back in
7 2011, not now. Dr. Barr, their expert, mobile home rent
8 control expert, did not say that usuary was an issue.
9 He didn't raise that because it's not a factor. We
10 don't apply. We are not a lender.

11 The question is, what's a reasonable rate of
12 return for an equity owner of the park? We're not a
13 lender, we're an equity owner of the park, and so the
14 issue is what the park owner is entitled to
15 constitutionally is a fair rate of return essentially on
16 their investment in the park. When we're talking about
17 a capital expense item, that investment in the park is
18 actual cash that's spent on whatever those items happen
19 to be, and that's the rate of return that they're
20 entitled to, and you look at what's the market rate of
21 return.

22 Dr. Barr and Dr. St. John, they had argued
23 back and forth, the park owner, et cetera, as to what
24 the number was. Usuary was never an issue because
25 that's not an issue. The issue is what is a reasonable

1 rate of return, and there was evidence in the record, as
2 Judge Anderle found, that basically that number was
3 supported by substantial evidence.

4 So my final point would be even if usuary were
5 an argument, and it's not, the appropriate time would
6 have had to have been either at the hearing or, at the
7 latest, in the proceedings before Judge Anderle. He
8 found substantial evidence supported that award.

9 Usuary is just not -- legally not a factor,
10 not an issue before your Honor. It's too late to raise
11 it now, but even so, if it were raised back then, it
12 would have been incorrect and the time to bring it up
13 would have been at the hearing with Dr. Barr,
14 Dr. St. John. They could have talked to you about that.

15 So again, with the hearing closed, with no new
16 evidence before your Honor, then there's no way to
17 specifically address it, other than I can tell you as a
18 matter of law, that's wrong.

19 ARBITRATOR: Let's go off the record for a few
20 minutes, please.

21 (Discussion off the record.)

22 ARBITRATOR: I'm going to give each party, if
23 they wish, and they're not mandated to do so, five days
24 to write another post-hearing brief, if you wish,
25 addressing specifically, and nothing more than, the

1 briefs that have already been submitted by the other
2 side. I don't want any new evidence, new arguments.

3 Are there any other comments before we close
4 this hearing?

5 MR. BALLANTINE: The only issue on the timing,
6 your Honor, I'm actually leaving for a trip out of state
7 tomorrow morning for five days. I might be able to do
8 some of it when I'm gone, but it would be virtually
9 impossible for me to file something within five days
10 because of that travel schedule.

11 ARBITRATOR: Okay, hold on a second.

12 Let's go off the record.

13 (Discussion off the record.)

14 ARBITRATOR: How about ten days?

15 MR. BALLANTINE: That's great.

16 ARBITRATOR: The ordinance requires that I
17 have an opinion back 30 days from today, so I'll put my
18 boots on and we'll get it done.

19 MR. BALLANTINE: Thank you.

20 ARBITRATOR: Anything else?

21 Thank you. This hearing is closed.

22 (The hearing adjourned at 9:27 a.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA BARBARA)

I, MARK McCLURE, CSR NO. 12203, a Certified Shorthand Reporter for the County of Santa Barbara, State of California, do hereby certify:

That said hearing was taken down by me in stenotype at the time and place therein named, and thereafter reduced to typewriting by computer-aided transcription under my direction.

I further certify that I am not interested in the event of the action.

WITNESS my hand this _____ day of _____, 2016.

Certified Shorthand Reporter
State of California
CSR No. 12203

- August 10, 2016
In Re: NOMAD VILLAGE MOBILE HOME PARK

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