

IN THE MATTER OR ARBITRATION BETWEEN

NOMAD VILLAGE MOBILE HOMEOWNERS,

Petitioner

and

**OPINION AND AWARD
(Revised on Remand)**

NOMAD VILLAGE MOBILE HOME PARK

Respondent.

ARBITRATOR	Stephen M. Biersmith Attorney at Law
HEARING SITE	County Administration Building County of Santa Barbara
HEARING DATES	September 19 – 20, 2011, February 17 th and August 10 th , 2016, and March 2, 2017
REPRESENTING THE PETITIONER	Ms. Debra Hamrick 813 East Mason Street Santa Barbara, CA. 93103
REPRESENTING THE RESPONDENT	Mr. James Ballantine Attorney at Law 329 East Anapamu Street Santa Barbara, CA. 93101

STATEMENT OF THE ISSUES

Was the notice of increase dated January 26, 2011, demanding a percentage increase of 2.59% of the current base rent and an additional \$161 per space, effective May 1, 2011 from the Nomad Village Management appropriate? If not, what is the appropriate amount of the increase?

PROCEDURAL MATTERS

On February 7, 2017, the Board of Supervisors reviewed the arbitration decision in this matter submitted on August 28, 2016. It remanded the decision back to the arbitrator for

additional findings of fact as to Award Numbers 5, 7, 8, & 13. No additional evidence was considered. Pre-hearing briefs were submitted by both parties.

If either party wishes to have this arbitration decision reviewed, such a “petition for review shall be filed by a party or his representative with the Clerk of the Ordinance no later than the fifteenth judicial day following the date the Clerk mailed the Arbitrator’s decision to the parties” (Rule 23 of the Mobilehome Rent Control Rules for Hearings). Any party wishing to seek a judicial review of the Board’s decision should refer sections 1094.5 and 1094.6 of the *California Code of Civil Procedure*.

ADDITIONAL FINDINGS OF FACT

1. Per Waterhouse’s testimony, the \$50,973 itemized in Exhibit Q represented professional fees and expenses incurred and paid by the Respondent. As correctly acknowledged by a further itemization in the Respondent’s last brief, not all of charges noted in Exhibit Q were related to capital items making a reduction to \$25,000 reasonable and appropriate.
2. The homeowner’s own consultant agreed that professional fees could be amortized and that they were analogous to a capital expense item.
3. All of the Architecture and Engineering fees for services provided by Penfield & Smith, Mechanical Engineering Consultants, JMPE, plan review, and permit fees, as listed in Exhibit J, were properly categorized as capital improvement expenses. Waterhouse testified those plans and drawings purchased by the Respondents had value in evaluating and moving forward with capital improvements for the park. Given the amount of time that has passed since their purchase, some of this work, such as the permits, are most likely stale and now have less utility. A more reasonable amount for the total of such items would be \$40,000.
4. Line 18 of Exhibit C and the expert testimony of Michael St. John regarding the same supported a finding that all temporary increases noted in the document should be amortized at 9% for seven (7) years. The reduction in temporary expenses in these various line items both in this award or in earlier findings were to the amounts only

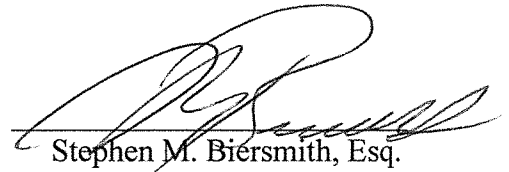
and did not change their original characterization as capital expense and improvement items.

AWARD

1. The notice of increase dated January 26, 2011, demanding a percentage increase of 2.59% of the current base rent and an additional \$161 per space, effective May 1, 2011 from the Nomad Village Management was not appropriate.
2. The CPI increase as calculated and proposed by the Park Owners in its letter dated January 26, 2011 can be charged to the Homeowners.
3. The Homeowners do not have to pay the additional 10% increase in ground rents.
4. The Homeowners are to pay the Park Owners for all real property taxes assessed by the County.
5. All of the granted temporary increases are to be amortized at 9% for seven (7) years.
6. The Homeowners are to pay the \$62,145.55 which were capital improvement expenses incurred prior to the commencement of the arbitration. The Homeowner 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 the commencement of the arbitration.
7. 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.
8. The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements.
9. The Homeowners are to pay \$130,531 for the supplemental tax increase payments.
10. The Homeowners do not need to pay for the uncompensated increases associated with the increased lease payments.
11. 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.
12. The Homeowners are to pay \$110,000 for legal fees associated with the challenge to the rent increase.

13. The Permanent Increase is to be \$25.59 and the Temporary Increase \$39.44 as supported by the attached.

Dated: March 13, 2017



Stephen M. Biernsmith, Esq.
Arbitrator

**NOMAD VILLAGE – RENT SCHEDULE CALCULATIONS Pursuant to Arbitration Award
(Item Numbering Follows Numbering in Arbitration Award)**

1.	n/a			
2.	CPI increases – as noticed			<i>variable</i>
3.	n/a			
4.	Property Tax Increase: Per year	46,070	Per Month per Space	\$25.59
5.	Amortization applied per award (9% for 7 years) see below			
	Amortization rate:	0.09 years	Per Month	Per Space
6.	Capital Improvements	62,145.55	1,000	6.67
7.	Professional Fees	25,000	402	2.68
8.	A&E Fees	40,000	644	4.29
9.	Supplemental Tax Payments	130,531	2,100	14.00
10.	n/a			
11.	Anticipated professional fees relating to Property Tax Appeal		0	0.00
12.	Legal Fees re: space rent increase	110,000	1,770	11.80

RENT INCREASE SCHEDULE SUMMARY:

TOTAL PERMANENT INCREASES

CPI Increase (variable)

Property Tax Increase 25.59

TOTAL TEMPORARY (7-Year) INCREASES 39.44

TOTAL INCREASES AWARDED 65.03

DECLARATION OF SERVICE BY MAIL

I am employed in the County of Ventura, State of California, I am a citizen of the United States, over the age of 18 years and not a party to nor have an interest in the within action. My business address is 5462 Rincon Beach Park, Ventura, California 93001.

On March 13, 2017 I served the within document described as:

OPINION AND AWARD (Revised on Remand)

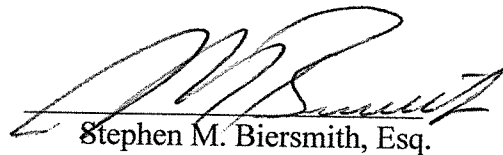
X By placing the true copies in a sealed envelope(s) addressed as follows:

Mr. Don Grady
Clerk of the Ordinance
County of Santa Barbara, Rm. 108
105 East Anapamu Street
Santa Barbara, CA. 93101

X (BY MAIL) I am readily familiar with the normal business practice of my employer for the collection and processing of correspondence and other materials for mailing with the United States Postal Service. In the ordinary course of business, any material designated for mailing with the United States Postal Service and place by me in a designated "OUT" box in the office of my employer is deposited the same day with the United States Postal Service.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 13, 2017 at Ventura, California


Stephen M. Biersmith, Esq.