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ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY MOBILEHOME RENT CONTROL ORDINANCE

IN RE NOMAD VILLAGE MOBILE HOME PARK	RESPONSE BY NOMAD VILLAGE MOBILE HOME PARK FOR TO PETITION FOR REVIEW
	[Stephen Biersmith, Esq., Arbitrator]
	Date: September 19-20 2011 Time: 9:00 A.M. Location: Board of Supervisors Hearing Rm

INTRODUCTION

The homeowners of Nomad Village Mobile Home Park in 2011 filed a petition for arbitration regarding a rent increase issued by Park management resulting from increased operating costs of the Park. Pursuant to the terms of the Santa Barbara County Mobilehome Rent Control Ordinance ("Ordinance") and the Mobilehome Rent Control Rules for Hearing ("Rules") an arbitration hearing was conducted by an Arbitrator appointed by the Board of Supervisors, Stephen Biersmith, Esq., an experienced attorney on the Board's panel of arbitrators.

The Arbitration Hearing was duly noticed and occurred on September 19 and 20, 2011. The homeowners were represented by Attorney Bruce Stanton, and called witnesses and introduced exhibits. Thereafter, the parties stipulated to a briefing schedule and submitted a series of post-hearing briefs. Following the briefing, the Arbitrator prepared a draft award on November 22, 2011, following which time the parties submitted a stipulated series of calculations, which were incorporated into the final Opinion and Award which was issued by the Arbitrator on December 20, 2011 ("Arbitrator's Award"). Thereafter, the homeowners appealed the Arbitrator's Award for review by the Board of Supervisors. As a result of the homeowners' appeal, Park Management elected to appeal a limited issue.

The Rules, Rule 23 (a), provide that the standard for the Board's review of the Arbitrator's decision is to be "prejudicial abuse of discretion." Rule 23 (A) provides that "Abuse of discretion is established where the Arbitrator has

failed to proceed in the manner required by law, the decision is not supported by findings, or the findings are not supported by substantial evidence."

The Rules (Rule 23(b)) require that the Board make its determination based upon the arbitration "record alone" and may also "elect to hear oral argument by the parties, their representatives, and/or their attorneys."

The Record of the arbitration proceedings consists of the following:

The Arbitrator's Award (revised) dated December 20, 2011, including attached Rent Schedule

The Hearing Transcript for September 19-20, 2011

Park management's Exhibits A-T, referenced in the Arbitrator's Award

Homeowner's exhibits 1-8, referenced in the Arbitrator's Award

Joint exhibits 1-2, referenced in the Arbitrator's Award

Post Hearing Briefing by the Parties:

1. OPENING POST-HEARING ARBITRATION BRIEF BY NOMAD VILLAGE MOBILE HOME PARK
2. SUBMISSION OF UPDATED ACCOUNT STATEMENT BY NOMAD VILLAGE MOBILE HOME PARK FOR PROFESSIONAL SERVICES
3. HOMEOWNERS' POST-HEARING OPENING BRIEF
4. CLOSING POST ARBITRATION HEARING BRIEF BY NOMAD VILLAGE MOBILE HOME PARK
5. SUBMISSION OF PUC ORDERS BY NOMAD VILLAGE MOBILE HOME PARK
6. HOMEOWNERS' POST HEARING CLOSING BRIEF

This will constitute Park Management's request that the Record to be reviewed by the Board in connection with this Arbitration Proceeding include the above documents, including the Hearing Transcript.

I

THE HOMEOWNERS' PETITION SHOULD BE REJECTED AS IT IMPROPERLY RELIES ON MATTERS OUTSIDE OF THE RECORD AND FAILS TO ESTABLISH A PREJUDICIAL ABUSE OF DISCRETION

The Rules clearly provide that the Board's determination must be upon the **"record alone."** (Rule 23(b).) Accordingly, it is utterly improper for the homeowners to attempt to proffer any new purported evidence or exhibits, nor may they rely on any claims not appearing in the record. The homeowners attach to their Petition for Review several documents, variously labeled "exhibits" or "attachments" to which they refer in their Petition and on which they purport to base their appeal (any and all attachments to the homeowners' Petition will simply be referred to herein as "attachments"). None of the "attachments" are contained in the record. These "attachments" are not part of the record and the Rules preclude the homeowners from submitting them, and the Board from considering them. These "attachments" are new documents that are entirely irrelevant and improper, that the homeowners, now that their legal counsel has ceased representing them, have chosen to attempt to submit in an effort to reargue their case. These "attachments" **must** be

disregarded.

It should also be noted that the Rules do not provide for the homeowners to submit any further documents or any other written or oral communication to the Board or anyone acting for the Board, in support of their appeal.

The Rules provide that the Board may "elect to hear oral argument by the parties, their representatives, and/or their attorneys." Clearly, any such oral argument may only be after reasonable notice to all parties, and only on the record at a public hearing, at which both parties have an opportunity to be present.

Accordingly, it would be entirely improper for any of the homeowners of Nomad Village to engage in any written or oral communications with the Board outside of any oral arguments at an open meeting that the Board may choose to schedule. Park Management raises this issue because it has become aware, after the fact, of improper secret ex-parte communications by homeowners with persons associated with the Arbitration Proceedings.

II

THE HOMEOWNERS IGNORE THAT THE ARBITRATOR'S AWARD IS SUPPORTED BY THE MNOI-STYLE ANALYSIS DONE PURSUANT TO THE EXPRESS TERMS OF THE ORDINANCE

The homeowners inexplicably claim that the arbitrator "made no finding regarding fair return on investment" and then go through an incomprehensible discussion containing improper,

inapplicable, and irrelevant legal case citations. The homeowners ignore the express terms of the Ordinance, and the evidence in the case. They confuse the fact that the Ordinance specifically provides for an operating income analysis in order to determine whether Park Management is receiving a fair return. The Ordinance, at section 11A-5, specifies the specific manner by which rent increases are to be calculated. It is noteworthy that this analysis is employed for determining the permanent increase based upon the increased operating costs to Park Management.

The Homeowners ignore the fact that the sole fair return analysis performed pursuant to the terms of the Ordinance in evidence in theses proceedings is the analyses submitted by Park Management.

The "NOI" or "fair return" increase set out in the Ordinance, Section 11A-5(i). As spelled out in the Ordinance, this increase is intended to allow a fair return on investment and to cover operating cost increases, and is a permanent increase in space rents. It is based upon significant increases in the Parks' property taxes and Ground Lease costs. Exhibit D, Table 3-A, "MNOI Analysis 2007-2010" and Table 3-B, "MNOI Analysis 1994-2010," follow the methodology set forth in the Ordinance, and provide analytical support for the rent increase.

As Dr. St. John, the Park's consulting economist, explained at the Arbitration Hearing, the Maintenance of Net Operating Income (MNOI) analysis is a system employed under some rent control schemes to determine whether increased operating expenses support a rent increase. (RT1 49-51.) The MNOI

analysis focuses solely on income and expenses, and compares a base year to a subject year in which the increased expenses have been incurred. (RT1 50:6-13.) Dr. St. John testified in some detail that the Santa Barbara County Ordinance specifies an analytical approach to a permanent rent increase that was not a classic MNOI analysis but was a variation on it. (RT1 52-54.)

Dr. St. John presented the MNOI analysis that he prepared analyzing the income and expenses, showing that a rent increase was justified resulting from the increased ground lease and property tax expenses incurred by Park management. (Exhibit D, Tables 3-A and 3-B.) Dr. St. John's MNOI analysis was based upon the financial statements of the Park management. (Exhibit N.)

Dr. St. John testified that he prepared his analysis as what he called a Santa Barbara type of MNOI analysis in conformity with the requirements of the Ordinance. (RT1 88.) Dr. St. John testified that in preparing his analysis, (Exhibit D, Tables 3-A and 3-B, particularly p. 4 of each table) he followed the Ordinance "precisely." (RT1 102:13-24.)

The homeowners' consultant acknowledged that he did not disagree that the MNOI analysis prepared by Dr. St. John (Exhibits D, Tables 3A & B) were prepared in accordance with the requirements of the Ordinance. (RT1 241:20-242:25.)

The homeowners' consultant conceded that he had not prepared any MNOI analysis for Nomad Village Mobilehome Park. (RT1 193:6-16.)

Accordingly, the sole MNOI-type analysis performed pursuant to the specific terms of the Ordinance (Exhibits D, Tables 3A &

B), should properly be relied upon in determining the appropriate rent increase under the Ordinance.

The MNOI analyses for base years 2007 and 1994 at 100% indexing justify a permanent rent increase in the amounts of $57.09 and $57.04, respectively. (Exhibit D, Table 3-A, page 4, cell 1-179 and Table 3-B p. 4, cell 1-179.)

In addition, an MNOI was submitted to support the arbitrator's finding that Park Management was entitled to a rent increase based upon the property tax increase but not the ground lease fee increase. (Exhibit T.) This MNOI analysis supports the permanent increase of $25.59, factoring in the increased property tax but not the increased ground lease fees.

In sum, the sole MNOI analyses submitted support the Arbitrator's Award either if his legal conclusion that the increased ground lease fees should be excluded is accepted or rejected. If it is accepted, then the ground lease fees are excluded from the analysis and Exhibit T supports his award; in the event that they are included, then Exhibit D, Table 3-A supports an award including these expenses in the analysis. In either event, the Arbitrator's Award is supported as a matter of evidence in the record. The homeowner's claims should be rejected.

III

HOMEOWNERS' DISCUSSION OF THE ARBITRATOR'S OPINION AND AWARD

The homeowners appear to attempt to go through portions of the Arbitrator's Award on a numerical basis. As noted above,

the homeowners fail in all cases to establish or even address the applicable legal standard. In addition, the homeowners' discussion is riddled with improper references outside the record. As such, their entire discussion must be disregarded. However, Park Management will respond to some of the points raised, in the same numerical order set forth by the homeowners.

1-2. Ground Lease.

This matter is the subject of Park Management's Petition for Review.

3. Property Taxes.

The homeowners object to the rent increase resulting from increased property taxes, despite the fact that it is clear from the Ordinance that such increased property taxes form a mandatory basis for a rent increase. The homeowners' arguments in part are improperly based upon their "attachments" as well as other factual claims that they make from matters outside of the record, in which they attempt to raise new and misguided arguments. The homeowners are wrong in their arguments and analysis, but that is moot. The homeowners claims from outside the record cannot be considered, and therefore will not be responded to.

Section 11A-5 of the Ordinance, deals with Increases in the Maximum Rent Schedule, and section 11-A(f) provides in pertinent part, with emphases added, as follows:

> (f) **[T]he arbitrator shall consider all relevant factors to the extent evidence thereof is introduced** by either party or produced by either party on request

of the arbitrator.

(1) Such relevant factors may include, but are not limited to, **increases in management's ordinary and necessary maintenance and operating expenses,** insurance and repairs; **increases in property taxes and fees and expenses in connection with operating the park;** capital improvements; capital expenses; increases in services, furnishings, living space, equipment or other amenities; and expenses incidental to the purchase of the park except that evidence as to the amounts of principal and interest on loans and depreciation shall not be considered.

Accordingly, the rent increase based upon increased operating costs due to the property tax increases and ground lease increases are properly the bases for the rent increase.

The uncontroverted evidence at the Arbitration Hearing was that the Park experienced a significant property tax increase, by which the property taxes nearly tripled. Essentially, the assessed value of the property went from $1.94 million in 2008 to $6.35 million the following year. (Exhibit G; RT1 126: 16-25.)

The evidence presented at the Arbitration hearing clearly established the basis for a rent increase under the Ordinance due to the increase in property taxes. Dr. St. John confirmed that in preparing his analysis he reviewed the property tax bills and confirmed that the amounts for property taxes listed in his analysis on which the rent increase is based (Exhibit C) were accurate (RT1 62:1-63:12), and that the listed property tax amounts had been paid by both operators (RT1 64:13-15). Dr. St. John testified that, based upon his thorough review of the Ordinance, a property tax increase is properly considered by the arbitrator in determining an appropriate amount for a rent

increase under the Ordinance. (RT1 54:24-55:3.) The apparent suggestion now by the unrepresented homeowners that the evidence did not show the rent increase in the amount set forth in Dr. St. John's MNOI analysis (exhibit D, Table 3-A) defies comprehension.

The homeowners appear to argue that Park Management is not entitled to recover the increased costs that it has incurred with respect to the property tax increase, because although they do not dispute that park management did not incur the cost, they did not have to incur the cost, but instead could have placed the cost on the land owner. That argument was not raised at the Arbitration hearing and is outside the record. Moreover, the Ordinance makes no such distinction; to the contrary, the Ordinance is **explicit** that Park management is entitled to recover a rent increase for a property tax increase.

The homeowners' own consultant conceded that property taxes are a proper basis for a rent increase in any rent controlled jurisdiction, and did not dispute that a property tax increase is properly a basis for a tax increase under the Ordinance. (See, eg. RT1 221:5-8.)

Clearly under the **express terms of the Ordinance,** increased property taxes are a basis for a rent increase, as section 11A-5(f)(1) of the ordinance specifically provides that "increases in property taxes" is the type of increased operating expense that the Arbitrator "shall consider" in determining a rent increase. The Arbitrator properly considered the property tax increase in basing the award.

The homeowners have not and cannot establish that the

arbitrator's award is a prejudicial abuse of discretion.

4. Amortization Interest Rate

The homeowners appear to object to the interest rate for the temporary increases. The homeowners have failed to establish that the Arbitrator engaged in prejudicial abuse of discretion. Dr. St. John testified that the interest rate set forth in the rent increase notice is based upon his professional judgment. (RT1 70:3-13.) The homeowners' consultant conceded that using the interest rate of 7% or 9% "has very little difference on the outcome." (RT1 181:20-22.) Regardless, the homeowners have not and cannot establish that the Arbitrator's Award constituted a prejudicial abuse of discretion.

5. Reimbursement for Capital Improvements

The homeowners seek reversal of the Arbitrator's Award of reimbursement for expenses related to the capital improvement of the Park. The homeowners' misguided objections are not based on the record, and misstate the Arbitration Award. The homeowners have failed to establish that the Arbitrator engaged in a prejudicial abuse of discretion.

The homeowners object that the capital improvement costs have not yet been incurred, but they do not and cannot dispute that in fact Park management has paid $320,000 into an escrow fund specifically to be used in park infrastructure improvements. They suggest that there is no contractual obligation by Park management to actually pay these funds for

capital improvements. That claim ignores the evidence in the record, but more fundamentally ignores the express findings of the Arbitrator.

The Ordinance makes it clear that Park management is entitled to recover all expenses that it incurs in making capital improvements to the Park as a direct rent increase to the homeowners. (Ordinance, § 11A-6.) Indeed, failure to have such a provision would have rendered the Ordinance unconstitutional.

The homeowners further utterly ignore the clear provisions of the Ordinance that makes clear that the capital expenses that form the basis for a present rent increase may include those costs to be incurred in the future.

Section 11A-6(b)(1) states:

> (b) Capital Expenses.
> (1) The cost of capital Expenses **incurred or proposed**, including reasonable financing costs, may be passed on to homeowners at the time of an annual increase.

The homeowners ignore the undisputed evidence that the Park operator has actually paid $320,000 into the reserve fund to be used for capital improvements to the Park, that all such funds are dedicated to be spent and will be spent on capital improvements to the Park, and that the funds expended will exceed that amount. (Exhibit K; RT2 145:15-147:1, 166:7-22, 179:1-13.) The Park has unequivocally demonstrated that it has already incurred $62,145.55 in costs relating to the capital improvements of the Park. (Exhibits J & K; RT2 189:2-14.)

Moreover, the Park has demonstrated that it has a number of projects planned, which are supported by a number of proposals. (Exhibits M, P.)

The homeowners object to what they claim is replacement of electrical meters and other components of the park electrical system. They base their objections on a legal claim they contend was made against a prior operator, and attach an exhibit, purportedly involving a case with Nomad Village, Inc., which is **not** a party to this proceeding and is **not** Park Management in these proceedings. The fact that the homeowners have patently misrepresented that court case is irrelevant for the purposes of their appeal. The homeowners are basing their argument in their Petition on matters wholly **outside of the record** in the case, and their arguments, and proffered exhibit, **cannot** be considered by the Board in the review of the Arbitrator's decision. Moreover, the profferred order deals solely with expenses related to gas and electric meters, and although the homeowners claim that some of the capital improvement expenses by the Park relate to meters, their claim is false; the homeowners cite nothing in the record that shows that the Park's capital expenses are for such meters. Disturbingly, the homeowners falsely claim that "the capital replacement of the meters" is a charge that the Arbitrator is "requiring the homeowners to pay for." (Petition page 5 (pages are unnumbered) 3rd ¶ under § 5.) Homeowners' flatly misrepresent the express findings of the Arbitrator: "The Park Owner can charge the Homeowners this $320k via a temporary increase, but any amounts which are not itemized as being eligible and/or

LAW OFFICES
AMES P. BALLANTINE

spent by from six months of the date of this award, **including for the capital replacement of the meters**, must be returned and no longer charged to the Homeowners."

The homeowners' objections are not only baseless, they ignore the express ruling of the Arbitrator. In addition, the homeowners claim that no charges relating to the electrical system can form the basis for a rent increase. Not so.

The homeowners completely ignore the 2004 Order Instituting Rulemaking and Investigation issued by the California Public Utilities Commission ("PUC"), in which the PUC concluded that there were a variety of costs incurred by mobilehome parks costs related to electric or natural gas utility service that are either not incurred by the utility when it directly served MHP tenants, or are not reflected in utility rates for direct service, but are incurred by sub-metered MHP owners, and that these are costs may be separately charged to tenants by way of a rent increase. (See Request for Judicial Notice that is part of the record of proceedings.)

Accordingly, the homeowners are flatly wrong in their sweeping statement that no expense related to the electrical system can form the basis of a rent increase. In fact, the expenses to the electrical system involved in this action are those types of expenses that are not incurred by a utility in serving their customers, and include expenses related to the Park common area. The Arbitration Award specifically allowed the capital expenses that can rightfully be charged to homeowners.

The homeowners have not, and cannot, show a prejudicial abuse of discretion by the Arbitrator.

6. Reimbursement for Professional Fees Incurred

The homeowners object to the Arbitrator's Award reimbursing Park management for some of the professional fees that it incurred relating to capital improvements of the Park, by claiming that it is not a capital expense.

Again the homeowners ignore, and indeed, contradict, the record of proceedings.

The homeowners object to the Arbitrator's treatment of the professional fees by amortizing them, **yet their consultant acknowledged that this was a valid approach;** the homeowners further ignore that if the professional fees are not amortized as a temporary rent increase, then they necessarily would be included in the park's expenses for a permanent rent increase. Moreover, the homeowners conceded at the arbitration hearing that the arbitrator has flexibility in the treatment of amortized expenses.

The homeowners' consultant agreed that professional fees could properly be amortized as proposed by the park operator) and that this benefits the homeowners--conceding the applicability of the treatment of such fees as analogous to a capital expense item. (RT1 174:21-175:4.)

Accordingly, the homeowners' opposition to this manner of treatment set forth in their Petition is at odds with the

evidence in these proceedings, and therefore outside of the record and cannot be considered on review.

The Arbitrator was generous to the homeowners in disallowing more than half of the amount incurred by park management, and Park Management accepts the Arbitrator's discretion on this point.

The homeowners have not and cannot establish that the Arbitrator's Award is a prejudicial abuse of discretion.

7. Reimbursement for Professional A&E fees Incurred

The homeowners object to the Arbitrator's Award reimbursing Park Management for $40,000 out of $90,000 incurred for plans and permits. The homeowners claim that there was insufficient evidence, but ignore the fact that there was direct, uncontradicted evidence that the Park Management incurred $90,000 in expenses for the plans and that that these plans were very valuable to the current operator. (RT2 144:1-142:5.) These expenses were detailed in a spreadsheet and included supporting documentation. (Exhibits J and L.) The homeowners improperly refer to matters outside of the record regarding permits, and further ignore the fact that these expenses were primarily for expensive plans, and not permit costs, as outlined in the foregoing exhibits. The Arbitrator was generous to the homeowners in disallowing more than half of the amount incurred by park management, and park management accepts the Arbitrator's discretion on this point.

The homeowners have not and cannot establish that the

Arbitrator's Award is a prejudicial abuse of discretion.

8. Reimbursement for Property Tax Increase Payments

The homeowners object to the Arbitration Award allowing the Park Management to recover the costs incurred in the property tax increase. The sole basis for this claim (other than their misguided that Park Management is not entitled to recover anything for the property tax increase, in direct contradiction to the express terms of the Ordinance) is that Park Management may only recover for "prospective" costs. The homeowners, again, make a contention that is without any legal support, and is **directly contrary** the evidence of their own consultant at the Arbitration Hearing.

The homeowners' consultant did not testify that Park Management could not recover for past expenses, and acknowledged that Park Management said he acknowledged that there were "no absolute lines" as to when a park operator had to notice a rent increase for expenses incurred in the past. (RT1 223:16.) He certainly could cite absolutely nothing in the Ordinance that precluded the Park operator's recovery for past expenses for regulatory lag. Dr. St. John pointed out that it did not make good sense effectively to require the park operator to be subject to frequent fair return proceedings. (RT1 73:3-20.)

Indeed, based upon the significant time and expense involved in these rent control arbitration proceedings (for all sides—Park management, the homeowners, and the County) it simply

does not make sense (for any party) to require excessive proceedings.

The homeowners have not and cannot establish that the Arbitrator's Award is a prejudicial abuse of discretion.

11. Reimbursement for Professional Fees Associated with the Rent Control Proceedings

The homeowners' objection to the Arbitrator's ruling that the park owner is entitled to recover $110,000 in professional fees incurred in connection with the rent control proceedings is also misguided, ignores the record of proceedings, attempts to inject new matters outside of the record, and is contradicted by the homeowners' own testimony at the arbitration hearing.

The homeowners object that the $110,000 is improper because it is not "definite and certain" and "not supported by substantial evidence." The homeowners ignore the fact that the Arbitrator's ruling is supported by the direct, uncontradicted evidence in the record.

The parties stipulated at the hearing that Park management would submit the account statements supporting the professional fees on which the rent increase is based with its opening post arbitration brief. (RT2 207.) Park Management did so, and submitted detailed account statements on which the Arbitrator specifically relied. (Exhibits R,S.) These statements provided evidence that the professional fees incurred by Park Management as of the date of the submission equaled slightly over $110,000, the amount that the arbitrator awarded.

Accordingly, the amount awarded by the Arbitrator was in fact definite and certain, and were actually incurred by Park Management prior to the time of the arbitration award.

The homeowners' consultant agreed that the Park operator was entitled to recover professional fees relating to the rent control proceedings, and that he agreed with the methodology employed here by making it the basis of a temporary rent increase amortized over a period of years. (RT1 235:19-236:8.)

Dr. St. John, the economist testifying for Park Management, testified that in his professional opinion, these expenses were completely appropriately included as a basis for a rent increase, and that they were properly treated as being amortized over a period of years. (See, e.g., RT1 17-25.) He further testified that in his professional opinion, this treatment was proper under the ordinance. (RT1 84:18-23.) He also pointed it out that these expenses could properly be included as operating expenses in an MNOI analysis, but doing so would be using an extraordinary expense as the basis for a permanent increase, so that his approach of treating the expense as temporary and amortizing it over a period of time was favorable to the homeowners. (RT1 86:1-20.)

The homeowners' consultant testified that he agreed with Dr. St. John's approach of amortizing the expenses for these types of fees.

Q. So it's your experience that an application such as this may properly charge residents for the professional fees generated in connection with this application process, correct?

A. For the rent increase application, yes. Yes, that's -- if you have a cost in getting a fair return, that's a reasonable cost.

Q. And typically, it would be done, structurally speaking, the way this exhibit shows, which is rather than make it an operating cost and put it in the NOI formula and roll it into the base rent that never goes away, it's a separate line item pass-through, if you will, correct?

A. Yes. And typically it's amortized because it's not the kind of expense that occurs frequently.

Q. Okay. So you're in agreement with what Dr. St. John was saying about how doing it this way better for the tenants?

A. Yes. Well, it's an amortized expense so it should end.

Q. So you're in agreement with him on that?

A. Yes.

(RT1 174:8-175:4.)

Q. Well, let's talk about that a little. I want to make sure I understand your position on that. I think you've agreed with me that the homeowners are better off if this is essentially treated like a capital expense pass-through because then it becomes a temporary increase and not a permanent rent increase, correct?

A. Right. Well, it should be amortized, it's not a recurring expense.

(RT1 234:15-22.)

Now, with respect to the anticipated professional fees relating to the rent increase, as I understand your position there, you don't necessarily quarrel with the idea that the park owner is entitled to recover professional fees relating to the rent increase?

A. That's right.

Q. Nor do you argue with the methodology employed here, which is to do it as a temporary as opposed to the base for a permanent rent increase?

A. Right, that's correct.

Q. And you don't object to amortizing it over a period of years?

A. No. It shouldn't be because it's not -- whatever you incur, you're not incurring it every year so it shouldn't be added on to the base rent.

(RT1 235:19-236:8.)

The homeowners inexplicably also improperly refer to an Oceanside ordinance for unknown reasons; the cited ordinance, contrary to the Santa Barbara County Ordinance, expressly prohibits a rent increase based upon a challenge to the ordinance or the commission. Again, reliance upon other ordinances is not part of the record of proceedings in this case and cannot be considered as part of the homeowners' Petition. Moreover, the Santa Barbara County contains no such provisions. The instant arbitration proceedings were not any sort of a challenge by Park Management, but instead were initiated by the homeowners. Park Management was forced to incur professional fees as a result of the homeowners' challenge to the rent increase, and the utter refusal by the purported homeowner representatives to negotiate any resolution whatsoever of this matter. (Note, various individual homeowners did negotiate a resolution with park management, the result of which was a rental amount relatively close to the amount ultimately awarded by the arbitrator; these settling homeowners are not part of these rent control proceedings.)

The homeowners have not and cannot establish that the Arbitrator's Award is a prejudicial abuse of discretion.

12. Permanent and Temporary Increases and Exhibit T.

The homeowners' discussion under section 12 is unintelligible. However, they accurately report the amounts allowed by the Arbitrator. A review of the numbers is useful.

The arbitrator allowed the following rent increases:

Permanent rent increase:	$25.59
Temporary rent increase:	$67.09
Total Rent Increase Awarded:	$92.68

The permanent increase as noticed was based upon the Park's increased costs for the property taxes and the ground lease fees. These two separate items can be broken out pursuant to Exhibit D, Table 1, that sets forth the initial rent increase notice, and the Nomad Village Rent Schedule Calculations Pursuant to Award, attached to the Arbitrator's Award, that sets forth the revised amount:

Permanent increase noticed:	$58.16
Amount allowed by Arbitrator For Property Tax increase:	$25.59
Remaining amount-attributable to Ground Lease increase:	$32.57

Similarly, the rent increase notice had a provision for Park Management to recover the costs incurred for both items (property tax and ground lease fees) to the date of the increase

for regulatory lag or "uncompensated increase" as a temporary rent increase. The two items can similarly be broken out as follows:

Temporary increase for uncompensated increase as noticed:	$32.74
Amount allowed by Arbitrator For Property Tax increase:	$14.00
Remaining amount-attributable to Ground Lease increase:	$18.74

Accordingly, Park Management's appeal seeks that the Board further allow, in addition to the amounts allowed by the Arbitrator, the amount sought by the notice of rent increase for reimbursement of the costs regarding the ground lease fees, as follows:

Amount allowed by Arbitrator For Permanent Rent increase:	$25.59
Amount attributable to Ground Lease increase:	$32.57
Total permanent rent increase sought:	$58.16

Amount allowed by Arbitrator For Temporary Rent increase:	$67.09
Amount-attributable to Ground Lease increase:	$18.74
Total temporary rent increase sought:	$85.93

CONCLUSION

The homeowners' petition for review improperly relies on matters occurring outside the record, and should be disregarded in its entirety.

Regardless, as is clear from an examination of the Arbitrator's Award and the actual record by the arbitrator, the

homeowners have not and cannot establish that the arbitrator's award is a prejudicial abuse of discretion on any of the points that they raise. The homeowners appeal should be rejected in its entirety for failure to establish any prejudicial abuse of discretion.

The arbitrator did a commendable job in this proceeding. Park management accepts each and every discretionary determination made by the arbitrator. Park management has a difference of opinion with the arbitrator on the sheerly legal question of whether the ground lease fees incurred by park management are properly considered as a basis for a rent increase.

Accordingly, the homeowners' petition for review should be denied.

Dated: February 6, 2012

JAMES P. BALLANTINE
Attorney for NOMAD VILLAGE MOBILE HOME PARK

DECLARATION OF SERVICE BY PERSONAL DELIVERY

[CCP §§ 1011, 2015.5]

State of California)
)
County of Santa Barbara)

I, LISA M. PAIK, declare:

I am a resident of the State of California and am employed in the County of Santa Barbara. I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, CA 93101.

On February 6, 2012, I served: RESPONSE BY NOMAD VILAGE MOBILE HOME PARK TO PETITION FOR REVIEW on the interested parties in this action by causing to be delivered a true and correct copy thereof addressed as follows:

Clerk of the Board
County of Santa Barbara
105 East Anapamu Street, Fourth Floor
Santa Barbara, California 93101

Margo Wagner
Sharon Friedrichsen
Community Services Department
County of Santa Barbara
105 East Anapamu Street, Suite 105
Santa Barbara, California 93101

I caused to be delivered said document to the addressee as set forth herein.

_X_ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (Federal) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 6, 2012, at Santa Barbara, California.

Lisa M. Paik

DECLARATION OF SERVICE BY U.S. MAIL

I, LISA M. PAIK, declare:

I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, California 93101, and I am a resident of Santa Barbara County, California.

On February 6, 2012, I served the foregoing document described as RESPONSE BY NOMAD VILAGE MOBILE HOME PARK TO PETITION FOR REVIEW on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Debra Hamrick
Nomad Village Homeowners Representative
4326 Calle Real, #33
Santa Barbara, California 93111

I caused such document to be mailed in a sealed envelope, by first-class mail, postage fully prepaid. I am readily familiar with the firm's business practices with respect to the collection and the processing of correspondence, pleadings, and other notices for mailing with the United States Postal Service. In accordance with that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Santa Barbara, California in the ordinary course of business.

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

Executed on February 6, 2012, at Santa Barbara, California.