

Attachment W

Findings

Finding 1: Award No. 4 (Amortization Period and Rate)

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. (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 remanded Awards 5, 6, and 7 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 Awards 5, 6, and 7.

Finding 2: Award No. 5 (Escrow Account and Costs Expended)

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. (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 treated all of the expenses for this Award together and determined that the Homeowners were to pay the \$320,000 subject to certain conditions. The Arbitrator had before him evidence of specific items of incurred costs in the amount of \$62,145.55, allegedly for capital improvements and capital expenses potentially eligible to be passed through to the Homeowners, but the Arbitrator did not make findings specific to the \$62,145.55. The decision of the Arbitrator is not supported by findings as to whether the \$62,145.55 in claimed costs are related to capital improvements and/or capital expenses and thus eligible to be passed on to homeowners. 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 3: Award No. 6 (Professional Fees)

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. (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 professional fees spent on capital improvement item 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 4: Award No. 7 (Architecture and Engineering Fees)

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. (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 "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 5: 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 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 included the

finding of fact that the \$130,531 already spent by the Park Owners on supplemental tax increases can be included in the temporary increase.

County Code Section 11A-5(f)(1) says “the arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either part or produced by either party on request of the arbitrator. [¶] (1) Such relevant factors may include, but are not limited to, ...increases in property taxes and fees and expenses in connection with operating the park...” Thus, the Arbitrator was entitled under the Ordinance to consider the supplemental property tax assessments in determining the rate increase.

At the Arbitration, two experts testified on this issue: Kenneth K. Baar and Michael St. John. The Arbitrator weighed the conflicting evidence and accepted St. John’s opinion to conclude the supplemental tax increase payments were reasonable. St. John testified that “the County isn’t quick, usually, in changing the tax rates, they wait a while and then they eventually change the taxes and then they send our supplemental tax bills ... Then the question is, how long will it be before the park owner begins being compensated for that tax increase? And the answer is, until May 2011. The increases that were imposed, effective May 1, 2011, covered that amount, so from then forward the park owner is whole, but for the period from August 2008 to May 2011, the park owner was obligated to pay these amounts but the residents were not obligated – before this proceeding, or otherwise, wouldn’t be obligated to pay it. But in my view, these are amounts that residents, in the end, have to pay. This is an increase, it’s a legitimate increase, it’s government imposed, it’s not within the park owner’s discretion, it is an extra cost.” St. John also stated “So I think [homeowners’ counsel] might tell us ... you should have petitioned right away. Well, okay, but that would imply that we have to petition kind of for every year, every single time an increase comes up we’re going to have to petition, petition, petition, and these petition processes are quite time consuming, if you don’t know. And so to my mind, it simply does not make good sense to, in effect, command the park owners do an entire NOI fair return petition every year. That doesn’t make good sense, and the way to not do that is to allow park owners to do this kind of fair return hearing periodically, when appropriate, when it feels appropriate, and then to be compensated for – to be compensated after the arbitrator has decided on the justification for the increases in question, to be compensated for the past.”

The Arbitrator included findings of fact and was supported by substantial evidence. The Board of Supervisors determines that the Arbitrator did not abuse his discretion and affirms Award 8.

Finding 6: 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 included findings of fact on which the Arbitrator’s decision was based: “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 Ordinance does not expressly include or exclude legal fees incurred in connection with rent increase notices and proceedings. The Ordinance provides: “the 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 property taxes and fees and expenses in connection with operating the park...” (County Code § 11A-5(f)(1).) Kenneth K. Baar, the homeowners’ expert testified during the arbitration that he did not quarrel with the idea that the Park Owner is entitled to recover professional fees relating to the rent increase, nor did he argue with the methodology employed, but that his sole quarrel is with the amount requested. Baar’s testimony is substantial evidence that legal fees, if reasonable in amount, are appropriately included as a basis for a rent increase as an ordinance and necessary operating expense. Park Owners submitted itemized statements of fees and Baar testified that in his opinion the amount of the fees requested was out of line for a typical rent increase application. The Arbitrator resolved this factual dispute as to the reasonable amount of the fees by determining the reasonable fees to be \$110,000 of the requested \$125,000.

The Arbitrator included findings of fact and was supported by substantial evidence. The Board of Supervisors determines that the Arbitrator did not abuse his discretion and affirms Award 11.

Finding 7: Award No. 12 (Total Permanent and Temporary Increase)

Because the total rent increase is based upon the temporary increases of Awards 5, 6, and 7, 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 5, 6, and 7.