November 14, 2016
Homeowners' Pre-Hearing Brief
November 18, 2016 Rent Increase Arbitration
Nomad Village Homeowners
Nomad Village Mobile Home Park

Homeowners re-allege and reassert their motion for summary judgment.

The operation of Nomad Village Mobile Home Park is governed by Santa Barbara County Ordinance Chapter 11A (Mobilehome Park Rent Control) and the related Rules for Hearing.

NO MEET AND CONFER OCCURRED

Homeowners re-allege and reassert their motion for summary judgment.

Based on motion for summary judgment, the arbitrator is required to deny management's rent increase in total per the clear and express terms of the ordinance.

IT HAS BEEN LESS THAN 12 MONTHS SINCE THE PRIOR INCREASE

Homeowners re-allege and reassert their motion for summary judgment.

Based on motion for summary judgment, the arbitrator is required to deny management's rent increase in total per the clear and express terms of the ordinance.

THERE IS NO BASIS FOR A PERMANENT RENT INCREASE

Management's rent increase letter proffers a so-called MNOI increase as a permanent increase of $52,752.40 per year. The ordinance makes no mention of any so-called MNOI. To the contrary, the ordinance is explicit in its use of a "fair return on investment."

Ord. §11A-1 "Purpose: …the board of supervisors finds and declares it necessary to protect the owners and occupiers of mobilehomes from unreasonable rents while at the same time recognizing the need for mobilehome park owners to receive a fair return on their investment and rent increases sufficient to cover their increased costs."

The California Supreme Court has addressed fair return: "In *Guaranty*, there is language that may be read to erroneously state that the [regulated firm] is constitutionally 'guarantee[d]' a 'fair and reasonable return[,]' and that such a return must necessarily be above the 'break even' level. We will not indulge in such a reading." *(Garamendi, supra, 8 Cal.4th at p. 294, fn. 18.)*…"'[a] regulated [firm] has no constitutional right to a profit.…' Instead, the interest in profits is only one consideration to be weighed against, among other things, the interest in protecting consumers from exploitation." *(Id. at pp. 293-296.)*

The courts have found that no specific percentage rate of return or dollar amount of return on the investment is constitutionally required. What is "fair" varies with the risk of **the investment** and the **amount of capital** on which investors are entitled to a return. (*Duquesne Light Co., supra,* 488 U.S. at p. 310.) Thus, "[t]here is a range of rents which can be charged, all of which could be characterized as allowing a 'just and reasonable' return." (*San Marcos, supra,* 192 Cal.App.3d at p. 1502.) The term "fair return" (or "just and reasonable return" or "fair rate of return"), as used in the context of rent and other price controls, "refers to a constitutional *minimum* within a broad zone of reasonableness." (*Galland, supra,* 24 Cal.4th at p. 1026; see also *Power Comm'n v. Pipeline Co.* (1942) 315 U.S. 575, 585 [lowest reasonable rate is not confiscatory in constitutional sense].) "It is only when rent ceilings are set so low that a landlord cannot stay in business and operate successfully that the constitutional minimum return on investment has been

breached and the rents become confiscatory." (*Galland, supra,* 24 Cal.4th at p. 1026; *Birkenfeld,* at p. 169; *TG Oceanside, supra,* 156 Cal.App.4th at p. 1373.) "Here, there is no contention, nor does the evidence suggest, that if the Commission denied the requested rent increases, the park owners would be in such an unfavorable economic position they would go out of business." (*San Marcos, supra,* 192.)

The only amount in excess of the annual increase that the ordinance allows for fair return on investment is: Ord. §11A-5(i)(1) "…grant one-half of the automatic increase to management as a just and reasonable return on investment. The arbitrator shall have no discretion to award additional amounts as a just and reasonable return on investment."

The so-called MNOI does not contemplate return on investment whatsoever. The so-called MNOI is not used in finance, is not in any financial text, is not taught at any college or university, is not mentioned in the ordinance and has no standard formula. The way management's alleged 'expert" prepares it, it has no standards at all. The alleged expert is slapping this MNOI "analysis" name on what is actually an exercise in misrepresentation. If management's alleged expert had read the ordinance, he would see that retroactive comparisons in a poorly calculated, arithmetically false "analysis" are not even implied.

The alleged expert's "analysis" adjusts 2015 increase in NOI over 2010 from $192,629.89 to $18,074.23 with little or no explanation. The alleged expert's "analysis" is dishonesly calculated for advantage and meets all the elements of fraud. He completely ignores the fact that the arbitrator, through careful analysis of relevant factors, may grant an operating expense increase only for the "immediately preceding twelve months for which said [CPI] index has been

published at the time notice of said increase was given or since the last rent increase…" And he completely ignores the fact that the ordinance expressly forbids any "fair return" permanent increase, including MNOI, other than one-half of the noticed annual increase.

The determination that management is due an additional 10.5% ($52,752.40/$500,000) return, in perpetuity, on its initial $500,000 investment is dishonest on its face.

REIMBURSEMENT FOR THESE SPECIFIC CAPITAL ITEMS WAS ALREADY DISALLOWED AT ARBITRATION

Management included the electrical repairs and road repairs in their May 2011 rent increase and presented evidence at arbitration in September 2011. Both items were ultimately disallowed. Management hand delivered a letter dated March 31, 2016 admitting the capital items were disallowed at arbitration and are now part of the 2016 arbitration.

The ordinance does not contemplate, nor does it allow, the re-presentation of previously disallowed capital expenses or capital improvements. It flies in the face of the clear intent and construction of the ordinance to allow management to continue to re-arbitrate the same subject matter until they receive a desired result. The homeowners and their representatives are being deprived of their time, money and right to quiet enjoyment due to management's continued dishonesty and relentless disregard of the ordinance.

LEGAL FEES ARE NOT A VALID PASSTHROUGH PER THE ORDINANCE

The ordinance is specific as to what expenses may be passed through to the homeowners as a temporary increase. §11A-6(a)(1) "The cost of **capital improvements** incurred or proposed,

including reasonable financing costs, may be passed on to homeowners at the time of an annual increase." §11A-6(b)(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 ordinance contains definitions for each.

Judge Anderle's ruling was clear that reasonable legal fees are an ordinary operating expense, "in certain circumstances," and the appropriate treatment is consideration under §11A-5. "The Ordinance does not expressly include or exclude legal fees incurred in connection with rent increase notices and proceedings…" "(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…" [S.B. County Code, Ch. 11A, §11A-5(f)(1).] His Honor also cited Carson Harbor Village v. City of Carson as an example of ordinances that allow legal fees. In pertinent part, however, the court deciding the Carson case also says: "Attorneys' fees incurred in connection with challenging the Ordinance or actions of the board in court are not allowable operating expenses."

Management's $510,000 "legal fees" are a complete fiction in description and content, and do not agree with the financial information presented. Management attorney James Ballantine prevaricates and equivocates to serve his client, which results in a blatant misrepresentation of the nature of the work in his invoicing. These alleged records show work on continuing health and safety violations, plus related fines and fees, costs that are borne, by California law, solely and exclusively by management. It includes ex parte communications with the previous arbitrator to be charged to the homeowners. It contains communications, unrelated to park operations, with one of management's lenders. It contains communications to county agencies

that forbid their interaction with homeowners on any matter. Management's description as being somehow "caused" by the homeowners exercising their due process rights is intended to deceive the arbitrator, the homeowners and any other interested party who reads it.

In order to consider, per the ordinance, these created costs, the arbitrator must reconcile them to the actual financial information presented. It must also be determined that these fees comply with CIV §798.31. "Fees: A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered." Management has sued the County twice, and threatened a third, since August 2008. Prior management was in place since the 1950s without doing so. Current managements' litigious nature does not constitute "reasonable" under any circumstance.

THE ORDINANCE DOES NOT ALLOW MANAGEMENT TO CHARGE THE HOMEOWNERS INTEREST

As noted above, Ord. §11A-6 provides for the cost of capital projects and "reasonable financing costs" that may be passed on to the homeowners. The "financing costs" are actual borrowings that management may need in order to complete a project, and the ordinance allows management to defray some of those costs. Documentation of borrowings, along with the financing costs for such borrowings, are not included with this noticed increase.

Management is not passing on reasonable financing costs. There are no financing costs for management to defray. Management is charging the homeowners interest as the lender to 150 households. Management has complete control over the terms of duration, interest rate and loan

amount, with the threat of eviction if not paid. Management has sent out eviction notices based on their “lending practices.”

Management’s alleged “expert” calculates the interest in such a way that interest is charged on capital and interest already paid. The outcome is a misrepresentation of the interest rate paid by the homeowners. The actual interest rates are approximately 9.5% for the capital items and approximately 10% for the legal fees. Because the legal fees have never been paid by management, an actual interest rate cannot be calculated.

According to the Federal Deposit Insurance Corporation (FDIC), illegal “predatory lending” typically involves: “Imposing unfair and abusive loan terms on borrowers, often through aggressive sales tactics, taking advantage of a borrower's lack of understanding of complicated transactions, and outright deception.” Simply put, predatory lending becomes a crime in California when the lender manages the loan transaction to extract the maximum value for itself without regard for the borrower's ability to repay the loan.

The entirety of Management’s loan scheme is predatory lending, loan fraud and a violation of the homeowners’ rights under Article XV of the California Constitution, title Usury.

November 14, 2016

Debra Hamrick

Debra Hamrick
Homeowners’ Representative, off-site
813 East Mason Street
Santa Barbara CA 93101
805.730-7721

DECLARATION OF SERVICE BY U.S. MAIL

I, Lindse Davis, declare:

I am, and was, at the time of service hereinafter mentioned, over the age of 18 years and a party to the action described herein. I am a resident of Santa Barbara County, and my home address is 4326 Calle Real, Space 133, Santa Barbara, California 93110.

On NOVEMBER 14, 2016, I served the foregoing document described as HOMEOWNERS' PRE-HEARING BRIEF on the interested parties in this action by emailing a true and correct copy thereof as follows:

James P. Ballantine, Esq.
jpb@ballantinelaw.com

Margo Wagner
mwagner@co.santa-barbara.ca.us

Honorable David W. Long (Ret.)
JudgeLong@cdrmediation.com

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

Executed on November 14, 2016, at Santa Barbara County, California.