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ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY MOBILEHOME RENT CONTROL ORDINANCE

IN RE NOMAD VILLAGE MOBILE HOME PARK	NOMAD VILLAGE MOBILEHOME PARK MANAGEMENT'S ARBITRATION POST HEARING REPLY BRIEF Before the Hon. Judge Long, Arbitrator HEARING DATES: November 18, 2016 February 10, 2017 TIME: 9:00 A.M.

Respondent PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK ("Park Management") hereby submits its Arbitration Post Hearing Reply Brief.

Pursuant to the agreement of the parties and the March 2, 2017 order of the Arbitrator, Park Management was given the opportunity to submit its itemization of legal and professional fees incurred in connection with its rent increase notice and the homeowners' arbitration petition, following the conclusion of the Arbitration Hearing, as part of its post-hearing briefing. Park Management did so, and submitted account statements documenting the legal fees and costs incurred and paid to its legal counsel and professional fees incurred and paid to its consultant and expert witness, Dr. Michael St. John, a regulatory economist specializing in mobilehome rent control issues. The account statements were submitted by Park Management as **Exhibits 56 and 57**, along with a cover declaration by its legal counsel. The homeowners were then given the opportunity to comment on this evidence submitted by Park Management through their closing post hearing brief. Park Management was then given an opportunity to reply to the homeowners commentary on the professional fees, and therefore submits this Reply.

Notably, the homeowners do not effectively challenge **any** of the legal and professional fees submitted by Park Management. The homeowners do not actually challenge or dispute any of the hourly rates or the number of hours charged. The homeowners do not claim that any of the professional fees charged to Park Management as set forth in **Exhibits 56 and 57** were not in fact charged to, and paid by Park Management, nor do the homeowners claim identify **any** of the specific professional time charged as not having been reasonably and necessarily incurred by Park Management in these proceedings. Instead, the homeowners generally object to the fundamental principle that Park Management is to be compensated through a rent increase of their legal and other professional fees incurred, just as the homeowners object to Park Management from recovering any of its expenses incurred in operating the Park. The homeowners do not claim that the amount of legal and professional fees that form the basis of Park Management's rent increase is unreasonable. Instead, the homeowners claim that Park Management is entitled to absolutely nothing. As with the homeowners misinformed or misguided positions on the other issues in these proceedings, the homeowners again

misapprehend, or at least misstate, the law and applicable facts. Moreover, the homeowners completely contradict their own position taken at the 2011 arbitration proceedings; the homeowners are legally estopped from doing so.

The homeowners' Post Hearing Closing Brief fails to delineate the separate categories of professional fees incurred by Park Management that form the basis of the rent increase at issue in these arbitration proceedings, and instead simply amalgamate them all together and make generalized objections. It is useful to consider the separate components of the legal and professional fees incurred by Park Management that form the bases of the noticed rent increase **[Exhibit 2]**:

1. Park Management is seeking a rent increase based upon over $400,000 in fees incurred in defending against the homeowners' prior administrative appeals and litigation in rent proceedings through February, 2016; these proceedings were summarized in Park Management's presentation and the Arbitration and hearing briefs, and select documents from this litigation presented as exhibits at the arbitration (**Exhibits 21** to **44**). These fees and costs are set forth in an itemized summary of account detailing the professional fees and costs incurred, **Exhibit 7** presented at the Arbitration Hearing.

2. Park Management is seeking a rent increase based upon $110,000 in legal and professional fees related to the rent proceedings, including these arbitration proceedings, subsequent to February, 2016. These are itemized in **Exhibits 56** and **57**.

In their Post Hearing Closing Brief, the homeowners ignore and even misstate the applicable legal standard by which Park management is entitled to recover through a rent increase the legal and professional fees it has incurred as a result of the County Rent Control Ordinance and procedures.

The homeowners claim that they did not contract for Park Management's legal services and that under the MRL they cannot be charged for services for which they did not agree. (Homeowners' Post Arbitration Closing Brief, pp. 18-19.) The homeowners' argument misapprehends the basis by which they are responsible for Park Management's professional fees; it is certainly not for services provided to the homeowners, it is to reimburse Park Management

for expenses that it was forced to incur as a result of the administrative and legal proceedings necessary in order to obtain a rent increase.

Park Management pointed out that the California Supreme Court decision in *Galland v. City of Clovis* (2001) 24 Cal.4th 1003 provides that Park Management should be able to recover through a rent increase its legal and administrative expenses incurred in rent proceedings. Dr. St. John pointed out that Park Management would not achieve a fair return in the event that it did not recover its legal and administrative fees and costs at issue in this proceeding through a rent increase. (**Exhibit 47**; RT 2/10/17, pages 62-65.)

The homeowners incorrectly claim that *Galland* "addresses deliberately obstructive and unlawful acts" by the municipality imposing the rent control proceedings and requires that that Park Management have been subjected to "deliberate flouting of the law." (Homeowners' Post Hearing Closing Brief, pages 20-21.) The homeowners' misread or misstate a significant holding of *Galland*, and conflate when a park owner is entitled to an award of damages from a municipality to compensate for its legal and administrative costs incurred in rent proceedings versus recovering such costs in the form of a rent increase. In fact, in *Galland*, the California Supreme Court found that the park owner could recover **damages from the municipality** for its legal and administrative costs incurred in rent proceedings when the municipality has acted against the park owner in a manner that constituted the "deliberate flouting of the law."

> We further consider whether unreasonable costs, in the form of administrative and attorney fees, imposed on landlords seeking rent increases, may themselves be the basis of a section 1983 claim [for damages against the municipality]. We conclude that they may if either of two conditions is present: (1) the costs imposed are part of a government effort to deliberately flout established law, e.g., deliberately obstruct legitimate rent increases; or (2) the landlord suffers confiscation as a result of the imposition of such costs. Because the trial court's method of determining and calculating damages for this type of injury, affirmed by the Court of Appeal, was incorrect, the matter should be remanded to the trial court for reconsideration.

(*Galland v. City of Clovis* (2001) 24 Cal.4th 1003, p. 1009.)

The homeowners further ignore or fail to appreciate that the *Galland* decision went on to hold that even if the Park Owner could not recover damages against the municipality, because its

conduct did not arise to "deliberate flouting of the law," the park owner clearly had the remedy of recovering its legal and administrative costs in the form of a rent increase:

> Finally, we note **that even if Clovis's actions do not rise to a deliberate flouting of the law**, the Gallands are not necessarily without a remedy. As explained above, Clovis cannot in this case arbitrarily exclude the administrative expenses it has imposed on the Gallands in calculating whether they are receiving a fair ROI. Thus, in determining whether a adjustment is appropriate under the rent control regime in Clovis, the city must consider all such expenses. But administrative expenses can be charged directly to Clovis in the form of section 1983 damages only when the city imposes them in deliberate contravention of the law to obstruct the Gallands' constitutionally based property rights.

(*Galland, supra*, p. 1040, emphasis added.)

The Supreme Court made clear that the park owner's legal and administrative costs incurred in seeking rent increases must be considered in determining the park owner's right to a rent increase:

> "... the substantial legal and administrative costs attributable to the rent review process, ... should be properly included as expenses when calculating the proper rent readjustment. Under the fair ROI method used in practice by Clovis, it may not arbitrarily exclude the reasonable expenses of seeking legitimate rent increases."

(*Galland, supra*, pp. 1027-1028.)

The homeowners' post hearing briefing demonstrates why Park Management has been forced to incur significant – indeed, staggering – amounts of legal and professional fees and costs as a result of the homeowners' extraordinary conduct. This case is a very simple case involving essentially the costs of two capital items, roads and common area electric work; the homeowners do not and cannot dispute that Park Management actually incurred these expenses, that the work was reasonable and necessary and that it benefitted the Park and the homeowners. Yet the homeowners persist in objecting to paying one penny of any of these expenses incurred by Park Management, based upon irrelevant claims and misguided legal analyses. Park Management also seeks a rent increase to recover its increased operating costs over time; the Ordinance only allows Park Management to increase its rents annually in the amount of 75% of CPI, so it is no surprise or mystery that the Park's operating expenses exceed its rental income over time, yet the homeowner oppose any recovery by Park Management of these expenses as well.

The homeowners have pursued numerous rent proceedings against Park Management. After the 2011 Rent Arbitration, the Arbitrator awarded a reasonable rent increase of $92.68 out of the $161 original noticed, including a temporary rent increase to compensate Park Management for $100,000 in legal and professional fees incurred in that proceeding (**Arb. Exhibit 18.**)

(The homeowners incorrectly claim that Park Management sought $125,000 and not $110,000 in fees; in fact, Park Management's rent increase estimated the costs of the proceedings at $125,000 in the rent increase notice, but ultimately, in a proceeding like this one, submitted post Arbitration hearing invoices from its attorney and expert witness totaling about $110,000, comprised of $36,759.94 of expert fees and $72,213.50 in legal fees, as set forth in 2011 **Arbitration Exhibits R & S**, referenced in 2016 Arbitration **Exhibit 15**.

Park Management was willing to accept that award. The homeowners, however, pursued an appeal to the Board of Supervisors which did not grant any rent increase, forcing Park Management to obtain a Writ of Mandate overturning the Board decision. For example, the homeowners sued Park Management falsely claiming that Park Management did not have a permit to operate and was not entitled to collect any rent in the Park; the homeowners lost; the Court granted summary judgment in favor of Park Management, specifically finding that it did have a valid permit to operate, yet the homeowners persist in their claims that Park Management did not have a valid permit to operate.

The homeowners show a troubling pattern of ignoring and misstating the record in this case. One example is their incorrect claim that they objected to the admission of Exhibits 46 and 47. The homeowners inexplicably claim in their Post-Hearing Closing Brief:

> Homeowners absolutely objected to management's exhibits 46 and 47 being entered into evidence at the time of submittal. Your Honor undoubtedly remembers that our objection was overruled, as the Exhibits were prepared by Dr. St. John.

(Homeowners' Post-Hearing Closing Brief, p. 2, lines 8-9.)

In fact, the Hearing transcript records that the homeowners clearly did not object to admission of **Exhibits 46** and **47**:

ARBITRATOR: Is 46 being offered now?
MR. BALLANTINE: Yes, your Honor, it is.
ARBITRATOR: Any objection to 46 being received?
(Exhibit 46 was received into evidence.)
MS. HAMRICK: No.
ARBITRATOR: Thank you very much, Ms. Hamrick. You may continue.

(RT 2/10/17 p. 58, lines 3-10.)

ARBITRATOR: Is Exhibit 47 being offered?
MR. BALLANTINE: Yes, it is, your Honor.
ARBITRATOR: Thank you.
Any objection to Exhibit 47 being received, Ms. Hamrick?
MS. HAMRICK: No.
(Exhibit 47 was received into evidence.)

(RT 2/10/17 p. 70, lines 3-10.)

Even more fundamentally, the homeowners are estopped through the doctrines of collateral estoppel and judicial estoppel from disputing that Park Management is entitled to recover its legal and professional fees through a rent increase.

The homeowners' own expert witness, Dr. Kenneth Baar, specifically testified (consistently with the law) on behalf of the Nomad homeowners in the 2011 Arbitration that Park Management was clearly entitled to recover through a temporary rent increase all the legal and professional fees that it incurs related to their rent increases, including in administrative rent control proceedings on these homeowners' petition for arbitration, as well as any subsequent writ of mandate or other legal proceedings related to these rent issues, including through remand. (See **Exhibit 16**, 2011 Arbitration Transcript, RT1 235-236, 243-245.) Park Management discussed and quoted this testimony by Dr. Baar in its post-arbitration brief (see pages 16 to 18.). In response, the homeowners disingenuously attempt to distance themselves from their own expert witness by now claiming that "Dr. Baar gave uninformed, non-specific testimony in that proceeding." Homeowners' Post Arbitration Closing Brief, p. 23.) To the contrary, as is clear from the transcript from the 2011 proceedings (**Exhibit 16**), including as quoted by Judge Anderle in his Order Granting Park Management's Petition for Writ of Mandate (**Exhibit 36**,

page 29), in fact, the testimony of Dr. Baar was very specific and directly applicable to the instant arbitration proceedings, (Exhibit 16, 2011 Rent Arbitration Transcript 235-245), and Dr. Baar is a well-informed expert qualified to testify as to mobilehome rent control provisions and has testified numerous times on behalf of homeowners in mobilehome rent proceedings (Exhibit 16, 1011 Rent Arbitration Transcript RT1 138-144.)

The homeowners also erroneously claim that they may freely dismiss Dr. Baar and thereby ignore entirely his testimony from the prior proceeding, asserting that it is not binding precedent. "Dr. Baar ceased to be homeowners' expert witness long before this proceeding, and the 2011 hearing is not case law, which can be properly quoted until California courts decide otherwise." Again, in their attempt to ignore or change the record of proceedings, the homeowners' misstate the law.

The homeowners are legally estopped from taking a position in these arbitration proceedings that is inconsistent with the position that they took in the prior (2011) arbitration proceedings, including pursuant to the doctrines of judicial estoppel and of collateral estoppel. "Judicial estoppel prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding. The doctrine serves a clear purpose: to protect the integrity of the judicial process...." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.) The doctrine of collateral estoppel (or "issue preclusion") precludes the relitigation in a second proceeding of the same issues that were litigated and decided in a prior proceeding by a same party (or party in privity) who litigated the issue in the prior proceeding. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943; *Jackson v. Yarbray (Best Best & Krieger, LLP)* (2009) 179 Cal.App.4th 75, 93; *Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 346.)

Accordingly, the position of the Nomad homeowners taken in the 2011 Arbitration proceedings that Park Management is entitled to recover its legal and other professional fees in the arbitration and legal proceedings related to the rent continues to be controlling in this case, both because it was legally correct and because it was acknowledged in those proceedings by

their expert witness. Moreover, it should be noted that the homeowners were fully advised by their own expert witness and consultant that the homeowners would be responsible, through a rent increase, of Park Management's legal and other professional fees in the legal proceedings **in advance** of the homeowners instituting those proceedings (i.e. their appeal to the Board of Supervisors resulting in Park Management's writ proceedings and the homeowners writ petition against Park Management). Therefore, Park Management's rent increase to recover those fees cannot come as a surprise to the homeowners. That being said, Park Management acknowledges that the homeowners are entitled to make reasonable comment on the amount of fees that form the basis of the rent increase; however, the homeowners have chosen not to do so. They simply contend that Park Management has no right under the law whatsoever to recover any of their fees and expenses in the legal and administrative proceedings. The homeowners are simply incorrect in pursuing such a claim.

CONCLUSION

For the foregoing reasons, Petitioners have failed to meet their burden of proving that the Rent Increase Notice issued by Park Management of Nomad Village Mobile Home Park was not in accordance with the terms of the Ordinance, and the governing law. Accordingly, the Petition should be denied and Park Management's Rent Increase Notice upheld, in each of the amounts detailed in Exhibit 2.

Dated: May 2, 2017

JAMES P. BALLANTINE
Attorney for Park Management
LAZY LANDING MHP, LLC;
WATERHOUSE MANAGEMENT CORP.

DECLARATION OF SERVICE BY E-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 May 2, 2017, I served the foregoing document described as NOMAD VILLAGE MOBILEHOME PARK MANAGEMENT'S ARBITRATION POST HEARING REPLY BRIEF on the interested parties in this action by e-mailing as follows:

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I caused such document to be e-mailed to the above e-mail addresses.

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

Executed on May 2, 2017, at Santa Barbara, California.

Lisa M Paik