

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In The Matter Of:

JAN WHITE,

Appellant.

Docket No. 06-2016-AGO-00003

**FINAL ORDER**

Agency: Attorney General's Office  
Program: Manufactured Housing Unit  
Agency No. 460180

**1. ISSUES**

- 1.1. Whether Serene Terrace Mobile Home Park has not violated Chapter 59.20 RCW as set out in the Notice of Non-Violation (Complaint No. 460180) issued May 16, 2016?

**2. ORDER SUMMARY**

- 2.1. Serene Terrace Mobile Home Park has not violated Chapter 59.20 RCW as set out in the Notice of Non-Violation (Complaint No. 460180) issued May 16, 2016.

**3. HEARING**

- 3.1. Hearing Date: January 27, 2017
- 3.2. Administrative Law Judge: Jane Cantor Shefler
- 3.3. Appellant: Jan White, *pro se*.
  - 3.3.1. Witness: Jan White
- 3.4. Agency: Office of the Attorney General/Manufactured Housing Dispute Resolution Program (AGO or MHDRP)
  - 3.4.1. Representative: Jennifer Steele, Assistant Attorney General
  - 3.4.2. Witnesses:
    - 3.4.2.1. Matthew Befort, AGO Senior Investigator
    - 3.4.2.2. Kirk Mulfinger, Owner, Hampton West Properties

- 3.5. Exhibits: Exhibits 1 through 10 were admitted and made part of the record. Court Exhibits, identified below, were admitted and made part of the record:

C-1: Notice of Non-Violation, MHDRP Complaint No. 460180, dated May 13, 2016, 5 pages

C-2: White Letter of Appeal, dated May 27, 2016, 1 page

#### **4. FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

##### ***Jurisdiction***

- 4.1. In January 2015, Jan White filed a complaint with the Office of the Attorney General's Manufactured Housing Dispute Resolution Program ("MHDRP"). Ex. 1
- 4.2. On May 13, 2016, the MHDRP issued a Notice of Non-Violation. Ex. C-1
- 4.3. On or around May 27, 2016, Ms. White appealed the Notice of Non-Violation. Ex. C-2.

##### ***Serene Terrace Mobile Home Park***

- 4.4. Serene Terrace Mobile Home Park ("Serene Terrace") is located in Lynnwood, Washington. It is managed, but not owned by, Hampton West Properties, a real estate brokerage and property management firm. *Testimony of Kirk Mulfinger* ("Mulfinger Testimony").
- 4.5. Ms. White is a long-time resident of Serene Terrace, leasing the lot on which her mobile home is situated. She owns the mobile home. Ex. 2.

##### ***Tree Removal***

- 4.6. Ms. White's submitted a complaint to the MHDRP after she experienced a home invasion robbery on January 13, 2015. Her mobile home could not be properly secured due to problems caused by a large tree growing nearby. The tree had become overgrown and Ms. White asserted it had damaged the porch and stairway leading up to the porch. Because the supporting structures were out of alignment, she could not properly close and secure the door. Ex. 1.
- 4.7. Ms. White complained that the tree had become a safety hazard, producing "tons of pine needles and sap on the roof and ants." Ex. 1.

- 4.8. Ms. White had repeatedly requested that the tree be removed, but the arborist employed by Serene Terrace did not classify the tree as a hazard. *Mulfinger Testimony*.
- 4.9. Other tenants also had problems caused by the mature trees in the park. For example, a branch had fallen on a tenant's home. *Mulfinger Testimony*. Serene Terrace decided to remove several mature trees which were hazardous or were likely to be hazardous in the future. As part of this program, in October 2015, the tree near Ms. White's home was removed. Ex. 4. After the tree was removed, Serene Terrace employed a stump grinding service to grind and remove the stump. *Mulfinger Testimony*, Ex. 5.
- 4.10. Serene Terrace employed a contractor to repair damage to Ms. White's porch and front door. The stairs and porch were leveled and debris removed from under the mobile home. The door was also repaired so that it opened and closed properly and could be latched. Ex. 6; *Mulfinger Testimony*.
- 4.11. The roots of the tree are still in the ground and continue to grow, producing saplings. According to Ms. White, the roots continue to cause damage to the porch stairs and areas underneath the mobile home. *Jan White Testimony* ("White Testimony").

### ***Pest Control***

- 4.12. Ms. White has ants in her home. In her complaint, she stated that she "did not know when the last time since the grounds have been treated for pests." Ex. 1.
- 4.13. As part of its regular maintenance of Serene Terrace, Hampton West contracts with Sprague Pest Solutions to perform monthly servicing of the common areas. Sprague maintains exterior bait stations for rodents, sprays for insects and performs other pest control measures, including keeping the landscaping clean. Ex. 3.
- 4.14. Over the years, Serene Terrace has not been able to identify a common source for ants. *Mulfinger Testimony*. During his investigation of Ms. White's complaint, Matthew Befort, AGO Senior Investigator, noted that ants were present in her mobile home, but he too could not identify a particular source of the ants. *Testimony of Matthew Befort (Befort Testimony)*.
- 4.15. Serene Terrace does not provide any pest control services directly to its tenants. If a tenant experiences ants or other pests in her mobile home, the tenant is responsible for eradication. *Mulfinger Testimony*.

### **Utility Lines**

- 4.16. Although Ms. White did not complain about the placement of the telephone cables in her initial complaint to MHDRP, this apparently became an issue during the course of the investigation. Court Ex. 2; Ex. 1.
- 4.17. Telephone service at Serene Terrace is provided by Frontier. Frontier owns and maintains the cable lines servicing the individual mobile homes. Throughout the park, some, but not all, of these lines are buried. The ones servicing Ms. White's mobile home are not. Ex. 9 – 10; *Mulfinger Testimony*. The cables to her mobile home are in an area near the home that does not have any foot traffic.
- 4.18. Hampton West has repeatedly asked Frontier to bury the cable servicing Ms. White's mobile home, but they have refused to do so. *Mulfinger Testimony*.
- 4.19. In an effort to address Ms. White's concerns, Serene Terrance erected a pole near the mobile home. A portion of the cable was elevated off the ground and placed on the pole. See, Court Ex. 2. Some of the cable is still on the ground because of the way it enters the mobile home. The placement of the cable on the pole was not sanctioned or approved by Frontier and Frontier continues to refuse to bury the cable or otherwise fully remove it from the ground. *Mulfinger Testimony; White Testimony*.

### **MHDRP Investigation**

- 4.20. Following Ms. White's complaint to MHDRP, the Attorney General's Office initiated an investigation. Investigator Matthew Befort made two trips to Serene Terrace, meeting with Ms. White each time. He also spoke with Ms. White numerous occasions by telephone. He interviewed Mr. Mulfinger and the on-site park office manager. He took numerous photographs. *Befort Testimony*, Ex. 8 – 10. He obtained and reviewed documents provided by Ms. White and Mr. Mulfinger.
- 4.21. As a result of Mr. Befort's investigation, on May 13, 2016, the MHDRP of the Attorney General's Office issued a Notice of Non-Violation, which found that Serene Terrace was not in violation of the Manufactured/Mobile Home Landlord-Tenant Act, chapter 59.20 RCW. The Notice of Non-Violation found that any issues concerning the tree were moot because the tree had been removed.
- 4.22. The Notice of Non-Violation also found that there was no evidence of an ant infestation in any common area or on the common premises. Because Serene Terrace makes reasonable efforts to exterminate ants, the park is not in violation of RCW 59.20.130(5).

- 4.23. The Notice of Non-Violation found that Serene Terrace was not in violation of RCW 59.20.130(6) because the utility and cable lines to Ms. White's home are in good working order and do not appear to cause any hazard.

## **5. CONCLUSIONS OF LAW**

Based upon the facts above, I make the following conclusions:

### ***Jurisdiction***

- 5.1. I have jurisdiction over the parties and subject matter herein under chapters 59.20, 59.30, and 34.05 RCW.

### ***MHLTA***

- 5.2. Chapter 59.20 RCW, entitled the Manufactured/Mobile Home Landlord-Tenant Act ("MHLTA"), governs the relationship between landlords and tenants in manufactured/mobile home communities.
- 5.3. RCW 59.20.030(10) defines a "mobile home park" as "any real property which is rented or held out for rent to others for the placement of two or more mobile homes . . . for the primary purpose of production of income. . ."
- 5.4. RCW 59.20.030(4) defines a "landlord" as the "owner of a mobile home park."
- 5.5. RCW 59.20.030(18) defines a "tenant" as any person "who rents a mobile home lot."
- 5.6. An aggrieved party has the right to file a complaint with the attorney general alleging a violation of chapter 59.20 RCW. RCW 59.30.040(1). After receiving a complaint under this chapter, the attorney general shall initiate the MHDRP by investigating the alleged violations at its discretion and, if appropriate, facilitating negotiations between the complainant and the respondent. RCW 59.30.040(1).
- 5.7. Ms. White owns and resides in a mobile home located on space rented from Serene Terrace. She is a tenant under RCW 59.20.030(18).

### ***Standard of Proof***

- 5.8. Administrative appeals of notices of non-violation issued by the attorney general are governed by RCW 59.30.040(8) – (10). If an administrative hearing is initiated, the administrative law judge shall "decide whether the evidence supports the attorney general finding by a preponderance of the evidence." RCW 59.30.040(10)(b). "Preponderance of the evidence means that evidence

sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” *Mendoza v. Dept. of Agriculture*, 2006 Wash.App.LEXIS 2363 (Ct. App.Wa.II, No. 34262-6-II) citing *Mohr v. Grant*, 153 Wn.2d 812, 822, 108 P.3d 768 (2005).

### **Removal of Tree**

5.9. The Notice of Non-Violation includes a finding that any issues concerning the tree are moot because the tree was removed before the Notice was issued.

5.10. RCW 59.20.130 governs the duties of a landlord of a mobile home park. A landlord is obligated to maintain the common premises:

(3) Keep any shared or common premises reasonably clean, sanitary, and safe from defects to reduce hazards of fire or accident;

(4) Keep all common premises of the mobile home park, and vacant mobile home lots, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition.

RCW 59.20.130(2) – (4).

5.11. “A case is moot if ‘it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief.’” *Washington State Communication Access Project v. Regal Cinemas, Inc.*, 173 Wn. App. 174, 203, 293 P.3d 413 (2013) (quoting *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005)). The voluntary cessation does not moot a case or controversy unless ‘subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” *Id.* at 204 (quoting *Parents Involved in Cmty. Sch. v. Seattle School District No. 1*, 551 U.S. 701, 719, 127 S.Ct. 2738, 168 L.Ed. 2d 508 (2007) [correction in original]).

5.12. Here, the tree that Ms. White considered a hazard to her home was removed by Serene Terrace prior to the issuance of the Non-Violation Notice. The resulting stump was also removed. Although not obligated to do so, Serene Terrace arranged and paid for certain repairs to the steps and porch leading up to Ms. White’s mobile home, as well as repairs to the door. Even so, Ms. White is dissatisfied with the efforts made by Serene Terrace. She has a continuing concern that the remaining roots of the tree continue to grow and produce saplings near her home. However, when Serene Terrace removed the primary

source of concern, the tree and stump, it met its obligations under RCW 59.20.130. Tree saplings are not "noxious or detrimental to the health of the tenants" nor potentially injurious or unsightly. At the time the Non-Violation Notice was issued, there were no remaining issues concerning whether the tree had been properly maintained or whether it caused damage to Ms. White's home. Ms. White's complaint concerning the tree is moot.

### ***Pest Control***

- 5.13. RCW 59.20.130(5) requires landlords to:

Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common premises or whenever infestation occurs in the interior of a mobile home, manufactured home, or park model as a result of infestation existing on the common premises ...

- 5.14. Although ants may be annoying, they are not vermin or other pests dangerous to the health and safety of a tenant. Ms. White alleged that the ants were coming into her home via the tree branches. Yet, the ants continued to be present after the tree was removed. A common source for the ants was not identified during the course of the investigation.
- 5.15. Serene Terrace employs a pest control company to provide monthly service of the park. The service includes spraying insecticides, maintaining rodent bait stations and clean-up of areas which might attract or harbor pests. By providing this monthly service, Serene Terrace makes reasonable efforts to control pests within the common areas of the park. Serene Terrace is in compliance with RCW 59.20.130(5).

### ***Utility Cables***

- 5.16. RCW 59.20.130(6) requires landlords to:

Maintain and protect all utilities provided to the mobile home, manufactured home, or park model in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home, manufactured home, or park model utilities "hook-ups" connect to those provided by the landlord or utility company;

- 5.17. Here, the telephone or cables lines servicing Ms. White's home are in good working order, as required. Serene Terrace has made efforts to address her concerns that the cables are not buried by erecting a pole and elevating a portion

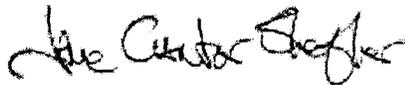
of the cables off the ground. However, Serene Terrace cannot bury the cables without the permission of the Frontier, who owns them. The placement of the cables near Ms. White's home does not create a hazard. Serene Terrace has met its obligations under RCW 59.20.130(6) by ensuring that the cables are in good working condition.

## 6. ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Attorney General Office's Notice of Non-Violation issued May 13, 2016, is **AFFIRMED**.
- 6.2. Serene Mobile Home Park has not violated Chapter 59.20 RCW, as set out in the Notice of Non-Violation issued May 13, 2016.

Issued from Tacoma, Washington, on the date of mailing.



Jane Cantor Shefler  
Administrative Law Judge  
Office of Administrative Hearings

## APPEAL RIGHTS

The Parties have 30 days to appeal to a Superior Court.<sup>1</sup> Appeals are governed by RCW 34.05.510 *et seq.*<sup>2</sup>

### **Petition for Reconsideration:**

Within 10 days of the service of this order, any party may file a petition for reconsideration with the Office of Administrative Hearings at 949 Market Street, Suite 500, Tacoma, WA 98402. The petition for reconsideration must state the specific grounds upon which relief is requested.<sup>3</sup>

The petition for reconsideration will not stay the effectiveness of this order.<sup>4</sup>

If the petition for reconsideration is timely and properly filed, the time for filing a petition for judicial review does not commence until after the Office of Administrative Hearings disposes of the petition for reconsideration.<sup>5</sup> The Office of Administrative Hearings must dispose of the petition for reconsideration within twenty (20) days or issue a written notice specifying the date upon which it will act. The petition for reconsideration is deemed denied of the Office of Administrative Hearings does not act with twenty (20) days.<sup>6</sup>

The disposition of the petition for reconsideration shall be by written order either denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.<sup>7</sup>

A party is not required to file a petition for reconsideration before filing a petition for judicial review.<sup>8</sup>

An order denying reconsideration is not subject to judicial review.<sup>9</sup>

### **Petition for Judicial Review:**

You may file a petition for judicial review with the Superior Court within thirty (30) days.<sup>10</sup> You may file the petition in the Superior Court of Thurston County, of the

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<sup>1</sup> RCW 34.05.542.

<sup>2</sup> RCW 59.30.040(10).

<sup>3</sup> RCW 34.05.470(1); WAC 10-08-215.

<sup>4</sup> RCW 24.05.470(2).

<sup>5</sup> RCW 34.05.470(3).

<sup>6</sup> *Id.*

<sup>7</sup> RCW 34.05.470(4).

<sup>8</sup> RCW 34.05.470(5).

<sup>9</sup> *Id.*

<sup>10</sup> RCW 34.05.542(2).

county where you reside, or of the county where your property affected by the decision is located.<sup>11</sup> The petition for judicial review must be served on all parties of record within thirty (30) days of mailing of the final order. Service of the petition for judicial review on opposing parties is completed when deposited in the U.S. Mail, as evidenced by the postmark.<sup>12</sup>

The petition for judicial review must include the following: (1) the name and mailing address of the petitioner; (2) the name and mailing address of the petitioner's attorney, if any; (3) the name and mailing address of the agency whose action is at issue; (4) identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action; (5) identification of persons who were parties in any adjudicative proceedings that led to the agency action; (6) facts that demonstrate that the petitioner is entitled to obtain judicial review; (7) the petitioner's reasons for believing that relief should be granted; and (8) a request for relief, specifying the type and extent of relief requested.<sup>13</sup>

CERTIFICATE OF MAILING IS ATTACHED

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<sup>11</sup> RCW 34.05.514(1).

<sup>12</sup> RCW 34.05.542(4).

<sup>13</sup> RCW 34.05.546.

**CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 06-2016-AGO-00003**

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

<p>Jan White 14322 Admiralty Way, Unit 2 Lynnwood, WA 98087 <b>Appellant</b></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Jennifer Steele Assistant Attorney General 800 Fifth Avenue, Ste. 2000 MS: TB-14 Seattle, WA 98104 <b>Agency Representative</b></p>	<p><input type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Kirk Mulfinger Hampton West Properties 227 Bellevue Way NE, Ste. 65 Bellevue, WA 98004 <b>Interested Party</b></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Monday, February 13, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Melanie Barnhill  
Legal Assistant

