

**STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF THE ATTORNEY GENERAL
MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM**

In Re Complaint of:

Edward & Barbara Allen,

Appellant.

Docket No. 2009-AGO-0006

MHDRP Complaint No. 344733

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

Hearing: On Thursday, November 19, 2009, Administrative Law Judge Elmer Canfield of the Office of Administrative Hearings conducted an administrative hearing in the above-entitled matter upon due and proper notice to all interested parties. The hearing was held by telephone.

Persons Present: The complainant/appellant appeared and was represented by Matthew R. Brady of the Northwest Justice Project. The Office of the Attorney General Manufactured Housing Dispute Resolution Program appeared and was represented by Jason Bernstein, assistant attorney general. Intervenor Everett RV Park - Toshi Owa appeared and was represented by Rob Trickler, attorney at law. Testimony was presented from Edward Allen, complainant/appellant; Toshi Owa, owner of Everett RV Park; Tim Schindele, MHDRP investigator; and Stacy Caley, neighbor.

STATEMENT OF THE CASE

On August 19, 2009, the Office of the Attorney General Manufactured Housing Dispute Resolution Program (MHDRP) issued a Notice of Non-violation In Re: Complaint No. 344733 - Edward and Barbara Allen. This is a proceeding under Chapter 59.30 RCW, the Manufactured Housing Dispute Resolution Program. The complaint, filed pursuant to RCW 59.30.040, alleges a violation of Chapter 59.20 RCW, the Manufactured/Mobile Home Landlord-Tenant Act. Specifically, the complainant requests that the Everett RV Park should be required to reimburse complainant for alleged overpaid electricity charges. The Manufactured Housing Dispute Resolution Program issued its Notice of Non-violation ruling that it does not have jurisdiction since the Everett RV Park is not a Mobile Home Park and does not fall under the jurisdiction of the MHDRP and thus, there is no violation by the Everett RV Park. The complainant appealed said Notice of Non-violation.

FINDINGS OF FACT

1. On July 15, 2009, Edward Allen (Appellant) filed a complaint with the Manufactured Housing Dispute Resolution Program (MHDRP), alleging that the Everett RV Park violated the Manufactured Mobile Home Landlord-Tenant Act (MHLTA).
2. The MHDRP conducted a preliminary investigation and determined that it did not have jurisdiction since the Everett RV Park is not a Mobile Home Park and does not fall under the jurisdiction of the MHDRP. The MHDRP issued a Notice of Non-Violation on August 19, 2009 from which the complainant filed an appeal.
3. The MHDRP commenced an investigation following the filing of the complaint. The investigator did a site visit and noted that there were no manufactured homes or mobile homes at the Everett RV Park and that none of the RVs were permanently installed. As noted in the investigative report, Exhibit 8, none of the RVs were permanently installed; they were on wheels, including the appellant's home and appeared to be capable of being driven away or towed "without major effort." The Appellant's trailer had its towing tongue still attached. None of the homes in the park had any skirting around them. Some, including the appellant's home, had blocks and leveling devices. There is no mail delivery to the individual RV sites, but rather mail is delivered to the RV Office. In addition to daily and weekly guests, the investigator noted there were some long-term guests, but that "there are no semi-permanently or permanently installed manufactured homes, mobile homes, park models or RVs in the park..." All of the homes were furnished with typical RV Park hook-ups which are easily disconnected. There were no permanent structures, such as storage sheds on any of the RV sites; the Appellant has a portable wooden porch with stairs, but no permanent structures.
4. The Everett RV Park is, as the name implies, a park for RVs. The park has been owned and operated by Toshi Owa since 1996. Mr. Owa does not allow leases, but rents spaces at his RV Park on a daily, weekly and monthly basis. The RV Park has restrooms, showers and laundry facilities for its guests. Check-out time is 11:00 a.m. Monthly spaces are limited during the summer months; during the busier vacation time in the summer, the park charges higher summer rates. Mr. Owa does not allow permanent structures. He has always intended the park to be a short-term facility, though he did not actually set a maximum length of stay – he thought that might be construed as a lease. He has allowed the daily, weekly and monthly rentals to renew and a few of the guests have stayed as long as two to three years. Mr. Owa points to a lack of agency guidelines and that he did not have a clear understanding of just what regulations apply to RV Parks – this has also been an issue when he has needed to ask guests to leave the RV Park. To clarify these matters, the Everett RV Park has recently added language to its Rental Agreement that the park is not a mobile home park or manufactured home park and is not to be used as a primary residence, but is "seasonal only", see Exhibit 41, page 3.

5. Since it expects guests to readily move their RVs as needed or as requested, the Everett RV Park restricts the age of RVs (the rationale is that the newer RVs will be in better operating condition and better able to readily move upon notice). In fact, when the park made it clear to the Appellant that he had to leave the park, the Appellant was able to do so within a matter of hours that same day. The Appellant agreed that his trailer is "fairly easy to move": on the morning of August 24, 2009, the Appellant agreed to move – he disconnected the hook-ups, rolled up hoses, made arrangements for another spot to park the trailer and arranged for a truck to arrive at 1:00 p.m. and towed the trailer to the new spot.

6. There are no permanently installed RVs at the Everett RV Park. The Everett RV Park's owner understands that permanent installations are those wherein the wheels and towing device (tongue) are taken off and the home is put on a foundation, with skirting placed around it. The permanent installation would use permanent types of utility hook-ups, i.e., rigid pipe, as opposed to the flexible hoses used in temporary hook-ups. Mr. Owa provides 15 RV spaces with an electrical box for RVs to plug into, a water faucet for RVs to screw on a garden-type hose and a sewer drain into which the RVs direct their flexible sewer hoses. Mr. Owa notes that skilled professionals set up permanent installations, that a city permit is required for permanent installations and that the permanent installations must undergo an inspection by the State, none of which apply to the Everett RV Park operation, where there are no permanently installed RVs.

7. The Appellant's home is a 36 foot - 5th wheel RV trailer with three expanding tilt-outs. It has a kitchen and restroom. The trailer has holding tanks, though the Appellant did not rely on the tanks, since the trailer was hooked-up to the Everett RV Park facilities. The Appellant uses the trailer as a residence. The trailer is eight feet wide and is capable of being towed on the road without need of a permit, pilot car or special routes. The Appellant decided to stay at the Everett RV Park because of cost and because it was close to where the Appellant's wife works. The Appellant stayed at the Everett RV Park for approximately two years on a month-to-month rental until being asked to leave – the Appellant had intended to stay for an indeterminate time up to that point. The Appellant's RV trailer is not a mobile home or a manufactured home, however the Appellant argues that it should be considered to be a "park model" under the MHLTA - the Appellant points to the intent of the tenant as the controlling factor.

8. The MHDRP investigator studied park models as part of his investigation. The park models are 14 feet wide and are quite high. Park models can't just be hooked up and towed down the road. Permits are required to move park models; special routes and pilot cars are involved. Park models do not have waste holding tanks. The RVs at the Everett RV Park are distinguishable from park models, see pictures of the Appellant's RV versus the park models, Exhibit 9, page 5, versus Exhibit 11, pages 3 - 6. As set out above, RVs can just be towed down the road without need for permits, special routes and pilot cars.

CONCLUSIONS OF LAW

1. The undersigned has jurisdiction over the parties and subject matter herein pursuant to Chapter 59.30 RCW, Chapter 59.20 RCW, Chapter 34.05 RCW and Chapter 10-08 WAC.
2. Pursuant to RCW 59.30.030, the Attorney General is authorized to administer a Manufactured/Mobile Home Dispute Resolution Program to provide manufactured/mobile home community tenants and Landlords with a process to resolve disputes regarding alleged violations of the Manufactured/Mobile Home Landlord Tenant Act.
3. The Attorney General is to investigate the alleged violations and make a written determination on whether or not a violation of Chapter 59.20 RCW has occurred. If it finds that a violation has not occurred, the Attorney General issues a Notice of Non-violation from which a complainant may request an Administrative Hearing before an Administrative Law Judge under Chapter 34.05 RCW. The Administrative Law Judge appointed under Chapter 34.12 RCW hears and receives pertinent evidence and testimony and decides whether the evidence supports the Attorney General finding by a preponderance of the evidence. See RCW 50.30.040.
4. The MHDRP is limited to alleged violations of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), Chapter 59.20 RCW. The MHDRP does not have jurisdiction in other types of landlord-tenant matters.
5. In the case at hand, the Appellant rented a space for his trailer on a month-to-month rental at the Everett RV Park. The Appellant's position is that its trailer should be considered to be a "park model" under the MHLTA and that the Everett RV Park should be considered to be a mobile home park and that the MHDRP should have jurisdiction over this complaint.
6. "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means:

"any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy", see RCW 59.20.030(10).
7. "Park model" is defined in the MHLTA as "a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence." RCW 59.20.030(14). The Act does not define the phrase "intended for permanent or semi-permanent installation."

8. "Recreational vehicle" is defined as:

"a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot", see RCW 59.20.030(17).

9. A "tenant" under the MHLTA is "any person, except a transient, who rents a mobile home lot", RCW 59.20.030(18).

10. A "mobile home lot" under the Act, means:

"a portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model", See RCW 59.20.030(9).

11. The Everett RV Park rents RV spaces on a daily, weekly and monthly basis. It did not want to create a lease arrangement, thus it did not set a maximum stay. The park owner intends the park to be a short-term facility and does not allow any permanent installations. A few of the guests have been at the RV Park for up to two to three years on a month-to-month rental.

12. The Appellant argues that we should instead focus on the intent of the tenant – that if at least two guests at the Everett RV Park use their RVs as a primary residence and intend to stay permanently or semi-permanently, that their RVs should be considered to be park models, thereby converting the RV Park to a mobile home park and thus subject to the jurisdiction of the MHDRP. Is the MHDRP to poll each and every RV park tenant?

13. As mentioned above, the definition of park model does not specify whose intent is to be looked at. Another intent to be mindful of is the manufacturer's intent. The manufacturer's intent may well be that park models are for permanent or semi-permanent installation and are to be used as a primary residence - what is the manufacturer's intent with respect to each of its products?

14. The various parties have differing positions and intent. There are still ambiguities when considering the above-listed definitions. The undersigned Administrative Law Judge adopts the stated intent of the Legislature. The Legislature created the MHDRP (Chapter 59.30 RCW) to protect the unique factors in the manufactured/mobile home community, to wit:

"Once occupancy has commenced, the difficulty and expense in moving and relocating a manufactured/mobile home can affect the operation of

market forces and lead to an inequality of the bargaining position of the parties." [Highlight added]

15. There is clearly a distinction between moving RVs versus moving manufactured/mobile homes. As pointed out by the Legislature, there is much difficulty and expense in moving and relocating a manufactured/mobile home versus moving an RV. The Legislature did not intend to include RV-type homes in the Manufactured Housing Dispute Resolution Program. The Appellant's argument that its trailer home should be considered to be a park model and within the jurisdiction of the MHDRP is rejected. The Appellant's trailer was moveable with little difficulty and expense. It was not permanently or semi-permanently installed, but rather was moveable within a short time upon disconnecting and rolling up some hoses and towing to another RV spot without the need of a permit, special routes or pilot cars or professional tear-down and set-up people. This is not the type of home the MHDRP was intended to cover.

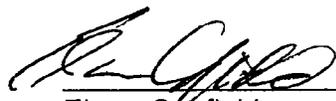
16. The Appellant's trailer is not a mobile home, manufactured home or park model. The Appellant was not a tenant under the MHLTA. The Everett RV Park is not a mobile home park under the MHDRP, Chapter 59.30 RCW. The undersigned Administrative Law Judge concludes that the preponderance of the evidence supports the Notice of Non-violation issued in this matter. The MHDRP does not have jurisdiction.

17. As the Appellant is aware, the MHDRP does not limit or preclude parties from taking legal action on their own, but as ruled in this order, the MHDRP does not have jurisdiction over this complaint.

ORDER

The August 19, 2009 Notice of Non-Violation re: Complaint Number 344733 – Edward and Barbara Allen, is Affirmed. The preponderance of the evidence supports the Attorney General finding that the MHDRP does not have jurisdiction and thus, the Everett RV Park is not in violation of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA).

Dated and Mailed at Olympia, Washington on this 11th day of December, 2009.



Elmer Canfield
Administrative Law Judge
Office of Administrative Hearings
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Olympia, WA 98507-9046

NOTICE OF APPEAL RIGHTS

This order is the final agency order of the Attorney General Manufactured Housing Dispute Resolution Program and may be appealed to the Superior Court under Chapter 34.05 RCW. See RCW 59.30.040(10)(c). Such petition for judicial review must be filed within thirty (30) days of the mailing date of this order. The petition for review must be served on the agency, the office of the attorney general, and on all parties of record. RCW 34.05.514 and RCW 34.05.542.

Certificate of Service

I assert that true and exact copies of the **Findings of Fact, Conclusions of Law and Order** were mailed by Certified Mail to the following parties on the 11th day of December, 2009 at Olympia, Washington.


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