

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

In the Matter of:

RAINIER VISTA MOBILE HOME  
PARK,

Appellant.

OAH Docket No. 2013-AGO-0002

Agency No. #390053

FINAL ORDER

## I. INTRODUCTION

1.1. This hearing comes before the Office of Administrative Hearings under the provisions of the Manufactured Housing Dispute Resolution Program ("MHDRP"). RCW 59.30.040.

1.2. On June 4, 2013, MHDRP's Motion for Summary Judgment was granted in part ("Order Granting Partial Summary Judgment") and the Appellant's Motion for Summary Judgment was denied.

1.2.1. The Order Granting Partial Summary Judgment affirmed MHDRP's Notice of Violation that Rainier Vista Mobile Home Park ("Rainier") violated RCW 59.20.070(6) when Rainier overcharged tenants for the cost of water.

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1.2.2. The amount of the overcharge remained the only issue to be decided at the hearing.

## II. ISSUE PRESENTED

2.1. From 2010 through October 2012, what is the amount of the overcharge paid by the tenants to Rainier as a utility fee for water, when Rainier collected more money from the tenants than the amount that Rainier paid to the City of Lacey for the cost of water.

## III. ORDER SUMMARY

3.1. From 2010 through October 2012, the amount of the overcharge paid by the tenants to Rainier as a utility fee for water when Rainier collected more

money from the tenants than the amount that Rainier paid to the City of Lacey for the cost of water is \$35,240.00.

3.1.1. In 2010, the amount of the overcharge was \$6,404.42.

3.1.2. In 2011, the amount of the overcharge was \$15,590.92.

3.1.3. In 2012 (from January through October), the amount of the overcharge was \$13,244.66.

3.2. The Notice of Violation for the violation of RCW 59.20.070(6) and the overcharge of \$6,404.42 for 2010; \$15,590.92 for 2011; and \$13,244.66 for January through October 2012, for a total of \$35,240.00, are AFFIRMED.

The reimbursements are to be calculated and distributed to tenants who were overcharged by Rainier for the cost of water as follows:

3.2.1. For 2010: The actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$891.51 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2010.

3.2.2. For 2011: The actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$1,000.19 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2011.

3.2.3. For the period of January 2012 through October 2012: The actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$986.21 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2012.

#### IV. HEARING

4.1. **Hearing Date:** June 18, 2013.

4.2. **Administrative Law Judge:** Leslie Birnbaum.

4.3. **Appellant:** Rainier Vista Mobile Home Park.

4.3.1. **Representative:** Walt Olsen, Attorney, Olsen Law Firm.

4.3.2. **Witnesses:** Frank Evans, Owner, Rainier; Sean Evans, Manager of Maintenance, Rainier.

4.4. **Agency:** MHDRP, Consumer Protection Division, Office of the Attorney General.

4.4.1. **Representative:** Jennifer Steele, Assistant Attorney General.

4.4.2. **Observer:** Mary Harper, Legal Assistant; Chad Crummer, Investigations Manager, Office of the Attorney General.

4.5. **Court Reporter:** Lori Stefano, Capitol Pacific Reporting.

4.6. **Evidence:** The parties stipulated to the admission of Exhibits 1 - 9 and A - J. Exhibits 1 - 9 and A - J were admitted into the record. See also 4.8: Record Relied Upon.

4.7. The record closed on July 26, 2013.

4.8. **Record Relied Upon:** In addition to the exhibits (Exhibits 1 - 9 and A - J) admitted during the hearing, I relied upon the following: the Testimony of Frank Evans; the Testimony of Sean Evans; the Stipulation of the Parties, dated June 13, 2013; the Complaint, filed June 29, 2011; Notice of Violation, dated December 11, 2012; MHDRP's Motion for Summary Judgment and attachments; Appellant's Motion for Summary Judgment and attachments; MHDRP's Response and attachments; Appellant's Response and attachments; MHDRP's Reply and attachments; Appellant's Reply and attachments; Appellant's Hearing Brief; MHDRP's Objection to Exhibit K; MHDRP's Mathematical Calculations For Distributing Overcharges Back To Tenants and attachments Exhibit A and Exhibit B (Rainier Vista 2010, 2011, 2012 Water Restitution); Appellant's Declaration Re: Supplemental Stipulation by the Office of Administrative Hearings; and the oral arguments of the parties.<sup>1</sup>

## V. POST-HEARING RECORD

### Documents Received Post-Hearing

5.1. On June 18, 2013, the Administrative Law Judge left the record open for the following documents:

June 25, 2013 - for filing Proposed Exhibit K;

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<sup>1</sup> The Appellant submitted unsigned Stipulations (First Amended Stipulation of Facts and Second Stipulation) as attachments, which were reviewed but not considered.

July 2, 2013 - for filing objections to Proposed Exhibit K;  
July 18, 2013 - for filing Proposed Exhibit 10;  
July 25, 2013 - for filing objections to Proposed Exhibit 10.

5.2. On June 20, 2013, I mailed a letter to the parties that included the schedule for the submission of post-hearing documents and the close of record for each submission.

5.3. On July 2, 2013, the Appellant filed Exhibit K and Appellant's Errata to Exhibit K. Exhibit K was filed five business days after the June 25, 2013 deadline, and was not admitted into the record.

5.4. On July 9, 2013, MHDRP filed a letter of objection to Exhibit K.

5.5. On July 18, 2013, MHDRP filed a document entitled, "Mathematical Calculations For Distributing Overcharges Back To Tenants" ("Calculations"), and attachments Exhibit A and Exhibit B [Rainier Vista 2010, 2011, 2012 Water Restitution].

5.6. On July 18, 2013, the Appellant filed Declaration Re-: Supplemental Stipulation by the Office of Administrative Hearings and attachments. The Declaration stated that the parties were unable to stipulate to additional facts as recommended by the Administrative Law Judge.

5.7. No objections were received on or before July 25, 2013, pertaining to documents filed on July 18, 2013. These documents were reviewed and considered as Pleadings in the record. See Hearing 4.8 and Footnote No. 1.

## VI. FINDINGS OF FACTS

I find the following facts under the preponderance of the evidence standard:

### Jurisdiction

6.1. On December 11, 2012, MHDRP issued a Notice of Violation, Complaint 390053 ("Violation") to Rainier. Appellant's Exhibit A, pp. 1 - 8.

6.2. In the Notice, MHDRP alleged that Rainier violated RCW 59.20.070(6) by charging tenants utility fees in excess of the actual utility cost, such that Rainier overcharged tenants for the cost of water. The Violation stated, "Rainier has violated RCW 59.20.070(6) by charging a utility fee in excess of the actual utility cost." Appellant's Exhibit A, p. 1. The Violation directed the Appellant take corrective action as follows:

1. Rainier must, within thirty (30) days from receipt of this Notice, reimburse tenants the amount it overcharged for water for the period of 2010, 2011, and part of 2012: \$35,240. Rainier may not pass this expense on to tenants.
2. Rainier must, within forty-five (45) days from receipt of this Notice, submit to the MHDRP copies of the reimbursement checks it distributes to tenants that show the amount refunded.
3. Rainier must, six (6) months following receipt of this Notice, submit to the MHDRP copies of the water bill from the City of Lacey and copies of the invoices Rainier submits to its tenants for water.
4. Rainier must not charge tenants more than the actual utility cost of water.

Exhibit A, p. 3.

6.3. On December 26, 2012, Rainier filed a Notice of Appeal of Notice of Violation Pursuant to RCW 59.30.040 regarding MHDRP Complaint 390053.

#### Stipulations

6.4. On June 13, 2013, the Parties entered into a Stipulation of Facts. The parties stipulated that they would only consider the number of mobile home unit lots that were occupied for six months or more for 2010, 2011 and 2012 (January through October). The Parties stipulated that this number would be considered in the Parties' tally of mobile home units lots for the year at issue<sup>2</sup>. The Stipulation also included the following:

#### 2010

- 6.4.1 The City of Lacey billed Rainier \$106,090.06 for water.
- 6.4.2 Rainier billed tenants a total of \$112,494.48 for water.
- 6.4.3 There were 119 occupied mobile home unit lots at Rainier that had been occupied for six months or more.

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<sup>2</sup> Rainier does not document the number of occupants of each lot consistently. Testimony of Frank Evans. At times, a manager observes "more people" living on a lot and sends a note saying, "add or subtract" from the original number of occupants. *Id.* The 'years at issue' refer to 12 months in 2010 and 2011, and 10 months in 2012 (January through October 2012).

## 2011

- 6.4.4 The City of Lacey billed Rainier \$116,022.36 for water.
- 6.4.5 Rainier billed tenants \$131,613.28 for water.
- 6.4.6 There were 116 occupied mobile home unit lots at Rainier that had been occupied for six months or more.

## 2012

- 6.4.7 From January through October 2012, the City of Lacey billed Rainier \$124,262.34 for water.
- 6.4.8 From January through October 2012, Rainier billed tenants \$137,507.00 for water.
- 6.4.9 From January through October 2012, there were 126 occupied mobile home unit lots at Rainier that had been occupied for six months or more.

Stipulation, dated June 13, 2013, pp. 1 - 2.

## Background

- 6.5 Rainier is a mobile home park with 151 lots for mobile home tenants. Declaration of Frank Evans ("Evans Decl."), p. 1; Testimony of Frank Evans.
- 6.6 From 1991, Rainier has been owned and operated by Frank Evans. Testimony of Frank Evans. Frank Evans has a limited liability corporation that operates Rainier. Testimony of Frank Evans. Mr. Evans' son, Sean Evans, is a member of the corporation and the "rent" manager. Testimony of Sean Evans.
- 6.7 Sean Evans works with the site managers, who manage the park on a daily basis. Testimony of Sean Evans.
- 6.8 The Appellant has had long-standing issues with tenants regarding the accurate reporting of the number of occupants for each lot. Testimony of Frank Evans. Rainier's estimated lot occupancy number was based on the site manager's observation. *Id.* When the site manager repeatedly noticed more cars at a particular lot, or if the site manager did not recognize a person staying at a lot, the site manager noted an increase in the number of occupants of that lot. Declaration of Chad Crummer ("Crummer Decl."), p. 2.

### Overcharge: Documents Received

6.9 The Office of Administrative Hearings received a document from MHDRP that used calculations to determine the amounts that the Appellant overcharged tenants for water. Calculations, pp. 1 - 5.

6.10 The Appellant submitted an unsigned First Amended Stipulation of Facts and an unsigned Second Stipulation. First Amended Stipulation of Facts; Second Stipulation; See Footnote No. 1. The Appellant submitted a Declaration stating that the parties were unable to stipulate to additional facts. Appellant's Declaration Re: Supplemental Stipulation Sought by the Office of Administrative Hearings, July 18, 2013.

### Overcharge: Testimonial Evidence and Sufficiency of Evidence

6.11 The Appellant presented testimony to support identifiable expenses that would offset the overcharge. During the hearing, I had ample opportunity to hear the testimony of the witnesses, review the evidence presented by both sides, and to assess the sufficiency of the evidence on this issue. As part of that assessment, I considered the exhibits admitted into the record, as well as the testimony presented by the Appellant. Because the Appellant presented estimates and incomplete documentation at the time of hearing, which had not been produced before and was not confirmed by the testimony, I find that the Appellant did not present sufficient evidence to support identifiable expenses for the cost of water that would offset the overcharge. The basis for the determination is as follows:

6.11.1 The City of Lacey supplies water to Rainier. Rainier has one water meter; tenant lots do not have individual meters. Testimony of Frank Evans. The City of Lacey has worked with Rainier to repair on-site water leaks. *Id*; Testimony of Sean Evans.

6.11.2 Rainier's managers spent time working on the maintenance and repair of the water system. Testimony of Sean Evans. Rainier did not keep records of the managers' time doing work related to the water system. *Id*.

6.11.3 In 2010, Rainier installed new valves on some of the water pipes. Testimony of Frank Evans. At the time of the hearing, Rainier did not know the cost of the valves. *Id*. Because the vendor transaction listing provided in Appellant's Exhibit I includes meters, lids, risers, and boxes costs for the septic system/plumbing, the costs for those items are not identifiable costs

of water.<sup>3</sup> Exhibit I, pp. 1 - 3. As a result, it is not credible that these items pertain exclusively to Rainier's actual cost of water.

6.11.4 Between 2010 and 2012, Rainier bought a number of "boxes" to protect the water pipes. Testimony of Frank Evans. This also involved the purchase of risers and lids for the boxes. *Id.*<sup>4</sup>

6.11.5 In 2011, Rainier paid an individual (Joe Grandinetti) \$850.00 to do "some work" that involved repairing water leaks at Rainier and another mobile home park. Testimony of Frank Evans. Rainier paid Grandinetti with "petty cash" but did not keep records of the cash transaction, and did not specify the work that occurred at Rainier. *Id.*

6.11.6 Rainier kept a digital and paper file of receipts for valves, lids and boxes (risers) for water repairs but did not produce them at (or before) the hearing. Testimony of Sean Evans.

6.11.7 Rainier paid its bills by check, money order, and cash. *Id.* However, the managers issued and kept receipts only for items paid by check and money order. The managers did not keep receipts for items paid in cash. *Id.*

6.11.8 At the time of the hearing, Rainier did not produce documentation of identifiable costs related to the cost of water. Rainier did not timely produce documentation of identifiable costs related to the water service prior to the deadline for post hearing submissions.

6.11.9 The actual cost of water from the City of Lacey did not include the cost of sewer/septic services. Exhibit 3, pp. 1 -7; Exhibit 4, pp. 1 -14; Exhibit 5, pp. 1 - 11.

Although the Appellant presented testimony that they incurred expenses related to the cost of water, they provided estimates of expenses and were unable to establish identifiable costs. Because of the above factors, I find that the Appellant did not provide sufficient evidence of identifiable expenses for the cost of water that offset the overcharge.

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<sup>3</sup> These were 'mixed' or overlapping costs because the costs for water were not separated from the costs of septic/plumbing.

<sup>4</sup> The Parties agreed that the City of Lacey provided the only water service to Rainier. Therefore, the documents that listed "Petunia," referred to a provider of sewer services, and did not pertain to Rainier's actual cost of water. Exhibits C, p. 2; D, p. 1; J, pp. 1 - 3. Water and sewer/septic services were independent services, provided by separate entities. Exhibit D, pp. 1 - 7.

## Investigation and Calculation of Overcharge

6.12 On June 29, 2011, MHDRP received a complaint from a tenant that Rainier was overcharging for the cost of water. Exhibit 1, pp. 1 - 4.

6.13 From the end of June 2011 through 2012, MHDRP investigated the complaint and calculated the amount that Rainier overcharged tenants for the period of January 2010 through October 2012. Crummer Decl., pp. 1 - 3.

6.14 From January 2010 through October 2012, Rainier charged tenants a monthly fee for water at the beginning of each month. Crummer Decl. p. 2; Exhibit C1, pp. 1 - 405.

6.15 MHDRP used a formula to calculate the cost of water for each tenant, which was based on the cost of the water purchased from the City of Lacey, divided by the number of tenant lots (occupied). Crummer Decl., pp. 2 - 3.

6.16 The amount Rainier overcharged tenants for the cost of water is calculated as follows: the total amount Rainier billed tenants for the cost of water minus the total amount charged by City of Lacey for the cost of water for each year during the period at issue. Calculations, pp. 2 - 3.

6.17 In 2010, the amount that Rainier overcharged tenants is: \$112,494.48 (amount billed by Rainier) - \$106,090.06 (amount billed by City of Lacey) = \$6,404.42.

6.18 In 2011, the amount Rainier overcharged tenants is:  
6.5. \$131,613.28 (amount billed by Rainier) - \$116,022.36 (amount billed by City of Lacey) = \$15,590.92.

6.19 In 2012, the amount Rainier overcharged tenants is:  
\$137,507.00 (amount billed by Rainier) - \$124,262.34 (amount billed by City of Lacey) = \$13,244.66.<sup>5</sup>

6.20 In 2010, there were 119 mobile home unit (tenant) lots that were occupied for six months or longer. The amount that Rainier should have charged for the

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<sup>5</sup> MHDRP calculated the amount that Rainier overcharged tenants in 2012 to be \$13,244.66. Calculations, p. 4. \$137,244.66 - \$124,262.34 = \$12,982.32. MHDRP used the amount of \$137,244.66 as the amount that Rainier billed tenants in 2012; however, the parties stipulated that Rainier billed tenants \$137,507.00. See Stipulation dated June 13, 2013, p. 2. I used the amount of \$137,507.00 when calculating the overcharge because the parties did not stipulate to the amount of \$137,244.66.

cost of water for each tenant lot is \$891.51.<sup>6</sup> The calculation is: \$106,090.06 (City of Lacey cost of water) ÷ 119 (number of tenant lots) = \$891.51 (the cost of water for one tenant lot).

6.21 In 2011, there were 116 mobile home unit (tenant) lots that were occupied for six months or longer. The amount that Rainier should have charged for the cost of water for each tenant lot is \$1,000.19. The calculation is: \$116,022.36 (City of Lacey cost of water) ÷ 116 (number of tenant lots) = \$1,000.19 (the cost of water for one tenant lot).

6.22 In 2012, there were 126 mobile home unit (tenant) lots that were occupied for six months or longer. The amount that Rainier should have charged for the cost of water for each tenant lot is \$986.21. The calculation is: \$137,507.00 (City of Lacey cost of water) ÷ 126 (number of tenant lots) = \$986.21 (the cost of water for one tenant lot).

6.23 In 2010, Rainier charged 62 tenant lots more than \$891.51 for the cost of water. Calculations, Exhibit A, pp. 9 - 12.

6.24 In 2011, Rainier charged 60 tenant lots more than \$1,000.19 for the cost of water.<sup>7</sup> Calculations, Exhibit A, pp. 5 - 8.

6.25 In 2012, Rainier charged 75 tenant lots more than \$986.21 for the cost of water. Calculations, Exhibit A, pp. 1 - 4.

6.26 In 2010, Rainier overcharged 62 tenant lots that are owed a reimbursement. Each tenant who was overcharged is owed a reimbursement. Each tenant's reimbursement is calculated as follows: the actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$891.51 (the amount that Rainier should have charged each tenant for the cost of water) = the

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<sup>6</sup> The amount that Rainier should have charged for the cost of water for each tenant lot is the same as the City of Lacey's cost of water, which was previously determined to be the actual cost of water. See Order Granting Partial Summary Judgment. As such, in 2010 the amount of \$891.51 is the actual cost of water for each tenant for 2010. Similarly, in 2011, the amount of \$1,000.19 is the actual cost of water for each tenant for 2011. And, in 2012, the amount of \$986.21 is the actual cost of water for each tenant for 2012 (January – October). See Findings of Fact 6.20 - 6.22.

<sup>7</sup> Tenant # 111, Dahl, and Tenant # 145, Hodge, paid \$1,130.64 and \$1,884.40 for the cost of water in 2011; however, these tenants' names did not appear in highlighted font in Exhibit A did not appear to be included in MHDRP's total number of tenants who paid more than \$1,000.19 for the cost of water during that year. Calculations, Exhibit A, pp. 7 - 8. A page by page numerical count provided a total of 60 tenants who paid more than \$1,000.19 for the cost of water in 2011. Calculations, Exhibit A, pp. 5 - 8.

amount of the reimbursement for that tenant for 2010. See Findings of Fact 6.20; Calculations, Exhibit A, pp. 9 - 12.<sup>8</sup>

6.27 In 2011, Rainier overcharged 60 tenant lots that are owed a reimbursement. Each tenant who was overcharged is owed a reimbursement. Each tenant's reimbursement is calculated as follows: the actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$1,000.19 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2011. See Findings of Fact 6.21; Calculations, Exhibit A, pp.5 - 8.

6.28 In 2012, Rainier overcharged 75 tenant lots that are owed a reimbursement. Each tenant who was overcharged is owed a reimbursement. Each tenant's reimbursement is calculated as follows: the actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$986.21 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2012. See Findings of Fact 6.22; Calculations, Exhibit A, pp. 19 - 4.

6.29 On December 12, 2012, MHDRP issued a Notice of Violation to Rainier, alleging that Rainier violated RCW 59.20.070(6) by charging tenants utility fees in excess of the actual utility cost of water, such that from 2010 through October 2012, Rainier overcharged tenants \$35,240.00 for the cost of water. Exhibit A.

## VII. CONCLUSIONS OF LAW

Based upon the foregoing, I make the following Conclusions of Law:

### Jurisdiction

7.1. I have jurisdiction over the parties and subject matter under RCW 59.30.040 and chapter 34.05 RCW.

### The Violation Determined that an Overcharge Occurred and Reimbursement is Required

7.2. On June 4, 2013, I found as a matter of law, Rainier violated RCW 59.20.070(6) from 2010 through 2012, by charging tenants a utility fee for water in excess of the actual utility costs for water, and granted partial summary judgment in favor of MHDRP, affirming the Violation. The hearing addressed only the amount of the overcharge.

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<sup>8</sup> MHDRP's Calculations, Exhibit A, included a list of tenants and the amount each tenant paid to Rainier for the cost of water for each year at issue. Calculations, Exhibit A, pp. 1 - 12.

7.3. A mobile home park landlord is prohibited from charging “to any tenant the utility fee in excess of actual utility costs or intentionally cause termination or interruption of any tenant’s utility services, including water, heat, electricity, or gas, except when an interruption of a reasonable duration is required to make necessary repairs.” RCW 59.20.070(6) [emphasis added].

7.4. A landlord, such as Rainier, can charge for utilities, “so long as they were limited to the actual cost.” *McGahuey, et al v. Hwang*, 104 Wn. App. 176, 183, 15 P.3d 672 (2001)<sup>9</sup> [emphasis added]. From 2010 through October 2012, Rainier did not maintain complete records of all repairs and maintenance relating to water service for the park, did not keep records for items or services that were paid in cash, and did not maintain separate records for each mobile home park owned by the owners. Because the Appellant did not provide sufficient evidence of identifiable expenses for the cost of water that offset the overcharge, I find that the actual cost of water is limited to the cost of water provided by the City of Lacey.

7.5. Since Rainier was unable to track each tenant’s water use, Rainier required tenants to pay a pro rata share of the water service, which was based on Rainier’s costs, (which included the City of Lacey’s cost in addition to other costs) as well as an estimate of the number of occupants of each tenant lot. Consequently, the amount paid by each tenant did not represent the actual cost of water, and some tenants were overcharged. Calculations, Exhibit A, pp. 1 - 12. Calculations are necessary to determine the reimbursements owed to each tenant for the amount that Rainier overcharged that tenant for the period at issue. Findings of Fact 6.26 - 6. 28.

7.6. For calendar year 2010, each of the 62 tenants that Rainier overcharged for the cost of water is owed a reimbursement. The reimbursement for each tenant is calculated as follows: the actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$891.51 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2010. See Findings of Fact 6.26.

7.7. For calendar year 2011, each of the 60 tenants that Rainier overcharged for the cost of water is owed a reimbursement. The reimbursement for each tenant is calculated as follows: the actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$1,000.19 (the amount that Rainier

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<sup>9</sup> In *McGahuey*, the Complainants filed a complaint, which contested utility and vehicle fees, and resulted in a federal court-ordered remedy whereby the mobile home park landlord was required to install individual water meters at the complainants’ mobile homes. *McGahuey*, 104 Wn. App. at 178, 184.

should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2011. See Findings of Fact 6.27.

7.8. For the months of January 2012 through October 2012, each of the 75 tenants that Rainier overcharged for the cost of water is owed a reimbursement. The reimbursement for each tenant is calculated as follows: the actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$986.21 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2012. See Findings of the Fact 6.28.

7.9. Because the Appellant's failed to provide sufficient evidence of identifiable expenses that offset the Appellant's overcharge, the Violation and the overcharge from 2010 of \$6,404.42; 2011 of \$15,590.92; and 2012 (January through October) of 13,244.66, for a total of \$35,240.00 and should be AFFIRMED.

#### Distribution of Overcharge Reimbursements

7.10. MHDRP has the authority to issue the Violation and specify the corrective action. The Administrative Law Judge has the authority to affirm the Violation, and address the overcharge, which should apply to all of the tenants who occupied lots for six months or longer and were overcharged for the cost of water. As a result, the Violation and the overcharge of \$6,404,4 for 2010; \$15,590.92 for 2011 and \$13,244.66 for January through October 2012, for a total of \$35,240.00 should be AFFIRMED. The distribution of the reimbursement to each tenant who was overcharged for the cost of water should be calculated as described above in Conclusions of Law 7.6 - 7.8.

### VIII. ORDER

IT IS ORDERED:

8.1 The Notice of Violation for the violation of RCW 59.20.070(6) and the overcharge of \$6,404.42 for 2010; \$15,590.92 for 2011; and \$13,244.66 for January through October 2012, for a total of \$35,240.00 are AFFIRMED.

8.1.1 The reimbursements are to be calculated and distributed to tenants who were overcharged by Rainier for the cost of water as follows:

8.1.2. For 2010: The actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$891.51 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2010.

8.1.3 For 2011: The actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$1,000.19 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2011.

8.1.4 For the period of January 2012 through October 2012: The actual amount paid by the tenant for the cost of water (actual amount charged by Rainier) - \$986.21 (the amount that Rainier should have charged each tenant for the cost of water) = the amount of the reimbursement for that tenant for 2012.

**Signed and Issued** at Tacoma, Washington, on August 19, 2013.



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Leslie Birnbaum  
Administrative Law Judge  
Office of Administrative Hearings

#### APPEAL RIGHTS

This order is the final agency order of the Office of the Attorney General's 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.

RCW 34.05.542 states:

(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

(3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, but the time is extended during any period that the petitioner did not know and was under no duty to discover or could not reasonably have discovered that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.

(4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.

(5) Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition.

(6) For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record.

RCW 34.05.542.

**CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2013-AGO-0002**

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

<p>Frank W. Evans Owner Rainier Vista Mobile Home Park PO Box 82750 Kenmore WA 98028-0750 <b><i>Appellant</i></b></p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input checked="" type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
<p>Walter H. Olsen Attorney at Law Olsen Law Firm PLLC 205 S Meridian Puyallup WA 98371-5915 Fax: (253) 200-2289 <b><i>Appellant Representative</i></b></p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input checked="" type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
<p>Jennifer S. Steele Assistant Attorney General Office of the Attorney General 800 5th Ave Ste 2000 Seattle, WA 98104-3188 Fax: (206) 389-2800 <b><i>Agency Representative</i></b></p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input checked="" type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
<p>Lucila Santiago 8530 Steilacoom Rd SE Unit 53 Olympia WA 98513-1790 <b><i>Interested Party</i></b></p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input checked="" type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>

Date: Monday, August 19, 2013

OFFICE OF ADMINISTRATIVE HEARINGS

By:   
\_\_\_\_\_  
Audrey C. Chambers  
Legal Secretary