

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

ORDER DENYING MOTION FOR
CLARIFICATION AND
RECONSIDERATION

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I. INTRODUCTION

ATTORNEY GENERAL OFFICE

SEATTLE

1.1 This case 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 April 30, 2013, the Office of Administrative Hearings heard oral arguments on the parties' Summary Judgment Motions.

1.3 On June 4, 2013, the Office of Administrative Hearings issued an Order Granting Partial Summary Judgment for MHDRP's Motion for Summary Judgment and Order Denying Appellant's Motion for Summary Judgment ("Order Granting Partial Summary Judgment"). As a result of the Order Granting Partial Summary Judgment, one issue (the amount of the overcharge) remained to be decided at the hearing on the merits.

1.4 On June 10, 2013, the Appellant, Rainier Vista Mobile Home Park ("Rainier") timely filed a Motion for Reconsideration.

1.5 On June 12, 2013, the Office of Administrative Hearings issued an Order Denying Appellant's Motion for Reconsideration.

1.6 On June 18, 2013, the parties participated in a hearing on the merits of the remaining issue in the case.

1.7 On August 19, 2013, the Office of Administrative Hearings issued a Final Order.

1.8 On August 29, 2013, Rainier filed a timely Motion for Clarification and Reconsideration of Final Order and its Legal Conclusions, arising from Attorney General's Incorrect Statutory Interpretation of RCW 59.20.070(6), which Resulted in its Partial Investigation and Incomplete Administrative Record ("Motion").

1.9 On September 9, 2013, MHDRP filed a Response in Opposition to Rainier's Motion for Reconsideration ("Opposition").

II. ORDER SUMMARY

2.1. Rainier's Motion is DENIED.

III. ISSUES OF THE CASE

3.1. On February 11, 2013, the Parties participated in a Prehearing Conference. I issued a Prehearing Conference Order, which included the following statement of the issue for the hearing:

Whether the Appellant violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20.070(6) and RCW 59.30.040(4)(b), as alleged in MHDRP Complaint No. 390053, by charging tenants a utility fee in excess of the actual utility cost, such that the Appellant allegedly overcharged tenants \$35,240.00 from 2010 through 2012.

3.2. On June 4, 2013, the Office of Administrative Hearings issued an Order Granting Partial Summary Judgment. The Order listed the two issues as follows:

Whether Rainier violated RCW 59.20.070(6) from 2010 through 2012, by charging its tenants a utility fee for water in excess of the actual utility costs for water, such that Rainier collected more money from tenants than the amount that Rainier paid to the City of Lacey for the cost.

Whether MHDRP lacked jurisdiction to investigate the Complaint, issue the Notice of Violation, and assess a penalty, fine and/or overcharge under RCW 50.20.030.

3.3. As a result of the Order Granting Partial Summary Judgment, one issue remained to be decided at the hearing on the merits. The issue is stated as follows:

From 2010 through October 2012, what is the amount of the overcharge paid to 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?

3.4. On June 18, 2013, the Office of Administrative Hearings conducted a hearing on the merits on the remaining issue. See Section 3.3 above.

IV. ISSUES RAISED IN RAINIER'S MOTION

- 4.1 Rainier raised the following issues in its Motion¹:
- A. Does RCW 59.30.040(3) afford the Attorney General the discretion to reject the Landlord's request to at least investigate the Landlord's 'actual utility cost' to distribute water from a public meter to each individual lot in a mobile home park under RCW 59.20.070(6)?
 - B. Does RCW 59.20.070(3) allow the Attorney General to limit or expand the scope of its investigation to other parties and alleged statutory violations and evidence that was never asserted in the tenant's Complaint or investigated by the Attorney General?
 - C. Under RCW 59.20.070(6) are 'actual utility costs' to provide 'water service' pursuant to the Complainant's lease limited to what Rainier Vista paid the City of Lacey to deliver water to Rainier Vista's master meter?
 - D. Is it the Attorney General's legal burden to investigate all 'actual utility costs' or does it have discretion to limit its investigation to what Rainier Vista paid the City of Lacey to deliver water to its master meter?
 - E. Is it arbitrary or speculative to pro rate Rainier Vista's 'actual utility costs' by occupant, rather than by lot, based on the number of additional occupants which the Complainant identifies in her Lease, and the Lease required that Complainant correctly identify the number of additional occupants?
 - F. Does the Attorney General have jurisdiction and discretion to accept a Complaint by one tenant seeking an individual remedy, and extend that remedy to all tenants at Rainier Vista?

¹ Rainier's issues A - F do not reflect the issues that are subject of this appeal. The actual issues of the appeal are stated in Section 3: Issues of the Case.

V. DISCUSSION

Response to Issue A

5.1 The issue of whether "RCW 59.30.040(3) afford[s] the Attorney General the discretion to reject the Landlord's request to at least investigate the Landlord's 'actual utility cost' to distribute water from a public meter to each individual lot in a mobile home park under RCW 59.20.070(6)" concerns the nature of MHDRP's investigation, which was not relevant to the issue of the appeal. The issue regarding MHDRP's jurisdiction to investigate the Complaint, issue the Notice of Violation and assess a penalty, fine and/or overcharge under RCW 50.20.030 was fully addressed during the proceedings. See Order Granting Partial Summary Judgment, pp. 10 - 11; Motion for Reconsideration, dated June 12, 2013, pp. 2 - 3.

5.2 In the Order Granting Partial Summary Judgment, I stated that the issue of whether the Attorney General's investigation was arbitrary and capricious was not raised at the prehearing conference and it was not included in the Prehearing Conference Order. Thus, Issue A was beyond the scope of the appeal. Order Granting Partial Summary Judgment, Footnote 1, p. 2.

5.3 The issue for hearing was agreed upon by the parties as it was stated in the Prehearing Conference Order and as it appears in Section 3.1. It was a narrow issue that was limited to a specific [alleged] statutory violation regarding whether Appellant violated the MHLTA, RCW 59.20.070(6) and RCW 59.30.040(4)(b), as alleged in MHDRP Complaint No. 390053, by charging tenants a utility fee in excess of the actual utility cost. The parties had 10 days to object to the Prehearing Conference Order; no objections were filed. The only issue that referenced the investigation appears in Section 3.2 and was fully addressed during the proceedings. See 5.1. above.

Response to Issue B

5.4 The issue of whether "RCW 59.20.070(3) allows the Attorney General to limit or expand the scope of its investigation to other parties and alleged statutory violations and evidence that was never asserted in the tenant's Complaint or investigated by the Attorney General" was fully addressed during the proceedings. Order Granting Partial Summary Judgment, pp. 10 - 11. In addition, this issue concerns the scope of MHDRP's investigation and is not relevant to the subject of this appeal. See 5.1 - 5.3 above.

Response to Issue C

5.5 The issue regarding whether “under RCW 59.20.070(6), the ‘actual utility costs’ to provide ‘water service’ pursuant to the Complainant’s lease [were] limited to what Rainier Vista paid the City of Lacey to deliver water to Rainier Vista’s master meter,” was not subject of this appeal. This case involved a violation of MHLTA. The terms of the Complainant’s lease were not relevant to the appeal. In addition, no issues regarding the Complainant’s lease were included in the Prehearing Conference Order.

5.6 To the extent that this issue raises the question of whether other identifiable costs related to Rainier’s water service should be included as ‘actual utility costs,’ this issue was fully addressed during the proceedings. See Order Granting Partial Summary Judgment, pp. 11 - 12; Final Order, pp. 7, 8, 12.

Response to Issue D

5.7 The issues raised by Rainier regarding MHDRP’s investigation, including the “Attorney General’s legal burden to investigate all ‘actual utility costs,’” or “does it [MHDRP] have discretion to limit its investigation to what Rainier Vista paid the City of Lacey to deliver water to its master meter,” are not relevant to the appeal. See Section 5.1 - 5.3 above. As stated above, it is the violation of MHLTA, and not the investigation, that is the subject of the appeal.

Response to Issue E

5.8 The issue regarding whether it is “arbitrary or speculative to pro rate Rainier Vista’s ‘actual utility costs’ by occupant, rather than by lot, based on the number of additional occupants which the Complainant identifies in her Lease, and the Lease required that Complainant correctly identify the number of additional occupants” was fully addressed at the proceedings. See Order Granting Partial Summary Judgment, pp. 6, 11, 12; Final Order, pp. 5, 12. Furthermore, Rainier did not have a consistent method of verifying the number of occupants of each lot and did not keep occupancy records. In addition, tenants did not consistently report the number of occupants of their lots. As a result, I agreed with MHDRP’s reliance on the number of tenant lots (which relied on available data) as opposed to the number of occupants for each lot (which relied on estimations).

Response to Issue F

5.9 The issue regarding whether “the Attorney General has jurisdiction and discretion to accept a Complaint by one tenant seeking an individual remedy, and

extend that remedy to all tenants at Rainier Vista” was fully addressed at the proceedings. See Order Granting Partial Summary Judgment, pp. 10 - 11.

Other Arguments Raised in Motion

5.10 In the Motion, Rainier also restated one of the issues as “whether the Attorney General incorrectly interpreted RCW 59.20.070(6) to prohibit the landlord from charging the Complainant any more for water service than what the Landlord paid the City of Lacey for that water.” See Motion, p. 2. The Attorney General’s interpretation of a statute was not relevant and was not included in any of the issues for the hearing. The issue of whether Rainier violated MHLTA is central to this case, not the Attorney General’s interpretation of RCW 49.20.070(6).

5.11 In the Motion, Rainier argues, “the facts alleged by the Attorney General in its Notice of Violation do not violate RCW 59.20.070(6), because it does not consider any actual utility cost other than the water bill. The Order does not resolve this legal issue, and the Landlord requests that it does.” See Motion, p. 2. The issue regarding “any actual utility cost other than the water bill” was fully addressed during the proceedings. See Final Order, pp. 7, 8, 12, 13. Motion Granting Partial Summary Judgment, pp. 6, 7, 11 - 13.

5.12 In the Motion, Rainier argues that “neither the Attorney General nor any court has the discretion to refuse to investigate and consider material fact.” RCW 59.30.040(3). Motion, p. 3. Rainier also states “discretion” modifies the Attorney General’s decision to either accept a Complaint or commence dispute resolution, and does not afford the Attorney General any discretion or deference to: (1) interpret whether ‘actual utility costs’ include all costs or just the water bill when considering RCW 59.20.070(6); or (2) whether the Attorney General can adopt a park-wide class remedy for a Complaint submitted by one tenant.” Motion, pp. 3 - 4.

RCW 59.30.040(3) states:

After receiving a complaint under this chapter, the attorney general shall initiate the manufactured/mobile home dispute resolution program by investigating the alleged violations at its discretion and, if appropriate, facilitating negotiations between the complainant and the respondent.

RCW 59.30.040(3) [emphasis added].

I disagree with Rainier’s interpretation of RCW 59.30.040(3) and see no statutory basis for limiting or modifying the Attorney General’s discretion with respect to MHDRP’s investigation(s). The express language of the statutory phrase, “the

attorney general shall initiate the manufactured/mobile home dispute resolution program by investigating the alleged violations at its discretion,” is unambiguous and clear. RCW 59.30.040(3). There is no indication in RCW 59.30.040(3) that “discretion” modifies a decision to “accept a complaint or commence dispute resolution.” Motion, pp. 3 - 4. Instead, the Legislature used mandatory language to indicate that the Attorney General “shall initiate” the dispute resolution program “by investigating the alleged violations at its discretion.” RCW 59.30.040(3).

Mandatory language also appears in RCW 59.30.030(3)(d) in connection with dispute resolution activities and investigations. RCW 59.30.030(3)(d) states:

(3) The attorney general under the manufactured/mobile home dispute resolution program shall:

(d) Perform dispute resolution activities, including investigations, negotiations, determinations of violations, and imposition of fines or other penalties as described in RCW 59.30.040.

RCW 59.30.030(3)(d).

5.13 Rainier’s argument that MHDRP “refused” to investigate “material facts” is not persuasive because an investigation occurred and a Notice of Violation was issued. Here, Rainier disagreed with the violation and argued that other costs should have been included as ‘actual utility costs’ for water. The nature of the disagreement is mischaracterized as MHDRP’s refusal to investigate. Ultimately, the parties disagreed about identifiable “actual utility costs.” The issue of ‘actual utility costs’ was fully addressed during the proceedings. See Section 5.6.

5.14 As stated above, the issues raised by Rainier were fully addressed during the proceedings or are otherwise not relevant to the subject of the appeal. Therefore, Rainier’s Motion should be DENIED.

VI. ORDER

IT IS ORDERED:

6.1 Rainier's Motion is DENIED.

Signed and Issued at Tacoma, Washington, on October 9, 2013.



Leslie Birnbaum
Administrative Law Judge
Office of Administrative Hearings

Superior Court Review

You have the right to appeal the Final Order, issued August 19, 2013, to Superior Court within thirty calendar days of the mailing date of the Order Denying Clarification and Reconsideration. RCW 34.05.470(3); 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 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input 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 <i>Appellant Representative</i></p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input 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 <i>Agency Representative</i></p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input 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 <i>Interested Party</i></p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input 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: October 9, 2013

OFFICE OF ADMINISTRATIVE HEARINGS

By: 
Audrey C. Chambers
Legal Secretary