

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

**In Re:**

**Docket No. 2010-AGO-0002  
MHDRP No: 316894**

**Kenneth Binkley,**

**FINAL ORDER GRANTING:**

**Appellant.**

**ATTORNEY GENERAL'S MOTION FOR  
PARTIAL DISMISSAL OF APPEAL OF  
K. BINKLEY; and,**

**ATTORNEY GENERAL'S MOTION FOR  
SUMMARY JUDGMENT**

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**I. INTRODUCTION**

1.1 This case comes before the Office of Administrative Hearings (OAH) and Administrative Law Judge Steven C. Smith, pursuant to the provisions of the Manufactured Housing Dispute Resolution Program (MHDRP); RCW 59.30.040(10).

1.2 The MHDRP, through the Attorney General (AG) has moved for partial dismissal and summary judgment of the Amended Notice of Appeal (Amended NOA) herein by Kenneth Binkley (Appellant) of the AG's March 11, 2010 Notice of Violation issued against Salmon Shores RV Park (Salmon Shores).

1.3 The MHDRP was represented by Assistant Attorney General Pedro Bernal IV.

1.4 Salmon Shores was represented by Attorney At Law Derec Young.

1.5 The Appellant was pro se throughout the proceedings.

1.6 In granting this Final Order, the undersigned considered the Appellant's Request for Dispute Resolution (the complaint), his NOA and Amended NOA, the motions of the AG, the Appellant's response to the AG's motions, the remainder of the case file, the oral arguments of the parties, and the concessions of the Appellant as to the remedies he sought and the accuracy of the mathematical calculations of the monetary remedy ordered by the AG in favor of the Appellant.

## II. ISSUES

- 2.1 Whether the MHDRP is entitled to partial dismissal of the Amended NOA as a matter of law.
- 2.2 Whether the MHDRP is entitled to summary judgment of the Amended NOA as a matter of law.

## III. FACTS AS A MATTER OF LAW

- 3.1 On May 11, 2008, Appellant, a tenant of Salmon Shores, filed a Request for Dispute Resolution (the complaint) with the MHDRP pursuant to RCW 59.30.040. The complaint alleged that Salmon Shores, as Appellant's landlord, had over charged Appellant \$120.00 for his electrical use by charging in excess of the rate charged Salmon Shores by the electrical utility; a violation of RCW 59.20.070(6).
- 3.2 The Appellant's complaint was filed solely pursuant to RCW 59.20.070: "A landlord shall not: ... (6) Charge to any tenant a 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."
- 3.3 Although the Appellant made reference to the *possibility* of future retaliation by Salmon Shores related to his electricity overcharge complaint, his complaint did not allege any actual retaliation by Salmon Shores.
- 3.4 After informal attempts to resolve the matter, the MHDRP elected, pursuant to RCW 59.30.040, to open a formal investigation of the allegation of the complaint; electrical overcharge of the Appellant.
- 3.5 On March 11, 2010, the MHDRP through the AG and the MHDRP's Program Manager, issued Notice of Violation (NOV) by which the MHDRP found that Salmon Shores had overcharged the Appellant for electricity in the net amount of \$122.55. Through its NOV, the MHDRP ordered Salmon Shores to take the following corrective action within 15 business days following receipt of the NOV:
  - (1) Remit to Appellant \$122.55.
  - (2) Void the billing and late fees for utilities charged to Appellant from April, 2008 until March, 2009, stated by Salmon Shores to be in the approximate amount of \$149.00.
- 3.6 The NOV also ordered that if Salmon Shores did not timely comply with the foregoing order, then Salmon Shores would be subject to a fine of \$100 per day for the first 15 days, and \$250 per day thereafter.
- 3.7 Following issuance of the NOV, the Appellant timely appealed the NOV (Original

NOA); Salmon Shores did not appeal. Therefore, as to Salmon Shores, the NOV became final and binding.

- 3.8 Pursuant to Appellant's Original NOA, the matter was set for a Pre-Hearing Conference (PHC) to be held May 5, 2010. At that hearing, the undersigned determined that the appeal was defective, but potentially curable. In light of the Appellant's status as pro se, he was given significant time (20 days) to consider and file an Amended NOA. The Appellant timely filed his Amended NOA, pursuant to which, each party had an opportunity to respond. In his Amended NOA, the Appellant set out nine specifications for relief:
- 3.8.1 "1) An order requiring Salmon Shores RV park to register as a manufactured home park with the Washington State Department of Licensing as required by RCW 59.20. and to pay all back taxes."
  - 3.8.2 "2) An order requiring the Attorney General's Office to monitor Salmon Shores RV Park to insure compliance with applicable codes, rules, regulations and/or statutes relating to manufactured home parks."
  - 3.8.3 "3) An order requiring the Attorney General's Office to take appropriate actions based on their findings related to this allegation and complaint."
  - 3.8.4 "4) An order requiring Salmon Shores RV Park to post educational posters and make available brochures relating to the ... manufacture home landlord-tenant act and the rights and obligations of both the landlord and the tenants."
  - 3.8.5 "5) An order requiring Salmon Shores RV Park to provide all tenants with monthly statements and electrical invoices with clear and complete information on outstanding charges owed, invoices paid, and electrical invoices, clearly stating beginning and ending kilowatt hour readings, total kilowatt hours used each month, and the UTC tariff rate charges per kilowatt hour."
  - 3.8.6 "6) An order requiring the Utilities and Transportation Commission to investigate the illegal reselling of electricity by Salmon Shores RV Park and whether or not Salmon Shores RV Park has been illegally operating as electrical utility as was determined by Mr. LaMonica's investigation."
  - 3.8.7 "7) An order requiring Salmon Shores RV Park to bill their tenants for only the electricity used and recorded by a meter's at each tenant's site."
  - 3.8.8 "8) An order requiring Salmon Shores to repay me all the money I have overpaid for electricity and to void the overbilling charges and other fees from April, 2008 to date."
  - 3.8.9 "9) Any other relief deemed appropriate by this court."

- 3.9 The AG responded in part by filing motions for partial dismissal and summary judgment pursuant to WAC 10-08-135. The Appellant responded in opposition to the AG's Motions. A second PHC was held July 8, 2010.
- 3.10 At the second PHC, all parties were given an opportunity to present oral argument regarding the AG's motions, and the Appellant was given an opportunity to identify any material issue of fact to be decided at hearing. The Appellant presented no evidence (under oath declaration of witness, etc.) of an issue of material fact in dispute. The Appellant acknowledged that the relief he sought by his complaint, specifically, reimbursement for his alleged electrical overcharge, had been ordered by the MHDRP and the AG, and that the amount ordered was mathematically correct.
- 3.11 The AG's foregoing motions were taken under submission. Hearing was orally set for August 11 and 12, 2010, with intervening dates set for related prehearing activities, including exchanging and filing witness lists, exhibits, and further motions, all of which was to be completed by July 30, 2010.
- 3.12 By July 30, 2010, no party had filed additional motions or exhibits which affected the outcome of the AG's instant motions; partial dismissal and summary judgment.

#### **IV. CONCLUSIONS OF LAW**

- 4.1 The OAH has limited jurisdiction of the appeal in this matter pursuant to RCW 59.30.040(10), to "Decide whether the evidence supports the attorney general finding by a preponderance of the evidence."
- 4.2 The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW.
- 4.3 WAC 10-08-135 provides that a motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See, *Weatherbee v. Gustafson*, 64 Wn. App. 128, 822 P.2d 1257 (1992).
- 4.4 Based on the foregoing facts:
- 4.5 The Appellant's complaint was filed solely pursuant to RCW 59.20.070: "A landlord shall not: ... (6) Charge to any tenant a 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." To the extent that his Amended NOA and response to the motions of the AG, suggest other issues, those issues are not before OAH, as they were not part of the original complaint, they received no determination and order by the MHDRP Director or AG, and there is no method of appeal for issues

never alleged or decided.

- 4.6 The Appellant's Amended NOA request for relief number 1 that OAH issue "an order requiring Salmon Shores RV park to register as a manufactured home park with the Washington State Department of Licensing as required by RCW 59.20. and to pay all back taxes" is outside the scope of the Appellant's complaint and of OAH jurisdiction. (RCW 59.30.040(10).)
- 4.7 The Appellant's Amended NOA request for relief number 2 that OAH issue "an order requiring the Attorney General's Office to monitor Salmon Shores RV Park to insure compliance with applicable codes, rules, regulations and/or statutes relating to manufactured home parks," is outside the scope of the Appellant's complaint and of OAH jurisdiction. (RCW 59.30.040(10).)
- 4.8 The Appellant's Amended NOA request for relief number 3 that OAH issue "an order requiring the Attorney General's Office to take appropriate actions based on their findings related to this allegation and complaint," is ambiguous. Insofar as it was intended to mean that OAH issue an affirmative order instructing the AG to take specific enforcement action, such remedy is outside the jurisdiction of OAH. (RCW 59.30.040(10).) Further, the undisputed evidence is that the AG and the MHDRP took the action that the Appellant sought specifically, they investigated the complaint and issued an order favoring the Appellant as to the relief sought in his complaint.
- 4.9 The Appellant's Amended NOA request for relief number 4 that OAH issue "an order requiring Salmon Shores RV Park to post educational posters and make available brochures relating to the ... manufactured home landlord-tenant act and the rights and obligations of both the landlord and the tenants," is outside the scope of the Appellant's complaint and of OAH jurisdiction. (RCW 59.30.040(10).)
- 4.10 The Appellant's Amended NOA request for relief number 5 that OAH issue "an order requiring Salmon Shores RV Park to provide all tenants with monthly statements and electrical invoices with clear and complete information on outstanding charges owed, invoices paid, and electrical invoices, clearly stating beginning and ending kilowatt hour readings, total kilowatt hours used each month, and the UTC tariff rate charges per kilowatt hour," is outside the scope of the Appellant's complaint and of OAH jurisdiction. (RCW 59.30.040(10).)
- 4.11 The Appellant's Amended NOA request for relief number 6 that OAH issue "an order requiring the Utilities and Transportation Commission to investigate the illegal reselling of electricity by Salmon Shores RV Park and whether or not Salmon Shores RV Park has been illegally operating as an electrical utility as was determined by Mr. LaMonica's investigation," is outside the scope of the Appellant's complaint and of OAH jurisdiction. (RCW 59.30.040(10).) Further, the Utilities and Transportation Commission is not a party to this case.
- 4.12 The Appellant's Amended NOA request for relief number 7 that OAH issue "an order requiring Salmon Shores RV Park to bill their tenants for only the electricity used and

recorded by a meter at each tenant's site," is outside the scope of the Appellant's complaint and of OAH jurisdiction. (RCW 59.30.040(10).)

- 4.13 The Appellant's Amended NOA request for relief number 8 that OAH issue "an order requiring Salmon Shores to repay me all the money I have overpaid for electricity and to void the overbilling charges and other fees from April, 2008 to date," is moot as this was the original relief sought by the Appellant in his complaint and awarded to the Appellant by way of the MHDRP NOV issued against Salmon Shores. That NOV is now final against Salmon Shores. Should Salmon Shores fail to comply with the NOV, the Appellant and the AG will doubtless have further remedies they can seek against Salmon Shores; but, enforcement of the terms of the NOV are not issues before OAH and do not provide OAH with jurisdiction to hear this appeal.
- 4.14 The Appellant's Amended NOA request for relief number 9 that OAH issue "any other relief deemed appropriate by this court," seeks no specific relief and raises no genuine issue of material fact.
- 4.15 The Appellant has raised no issue of material fact to the only issue in this case within the jurisdiction of OAH; specifically, "whether the evidence supports the attorney general finding by a preponderance of the evidence." (RCW 59.30.040(10).) Here, the attorney general found that Salmon Shores had overcharged the Appellant in the amount that the Appellant alleged in his complaint. The Appellant agreed at hearing on the AG's motions that the AG and MHDRP properly calculated the amount of overcharge and ordered Salmon Shores to pay the Appellant accordingly: further, the NOV provided steep penalties against Salmon Shores for non-compliance. There is nothing left to be considered pursuant to the Appellant's complaint.
- 4.16 Based on the foregoing Facts and Conclusions of Law: the MHDRP is entitled to partial dismissal of the Amended NOA as a matter of law; and, the MHDRP is entitled to summary judgment of the Amended NOA as a matter of law.

### ORDER

#### **Now Therefore, IT IS ORDERED:**

1. Specifications for relief 1, 2, 3, 4, 5, 6, and 7 of the Appellant's Amended Notice of Appeal are hereby dismissed as outside the scope of the Appellant's complaint and outside the scope of OAH jurisdiction.
2. Specification for relief 8 of the Appellant's Amended Notice of Appeal is dismissed as moot; the relief sought by the Appellant's complaint was ordered by in the Notice of Violation issued against Salmon Shores RV Park.
3. Specification for relief 9, of the Appellant's Amended Notice of Appeal, and to the extent that a reviewing authority might deem specification 8 as not moot, raise no genuine issues of material fact; therefore, the MHDRP is hereby granted summary

judgment against the Appellant as to both specifications.

**Dated and Mailed** August 2, 2010 at Olympia, Washington.



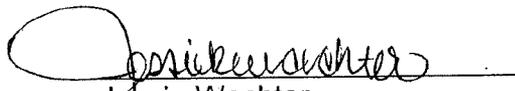
Steven Smith  
Administrative Law Judge  
Office of Administrative Hearings  
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### NOTICE OF APPEAL RIGHTS

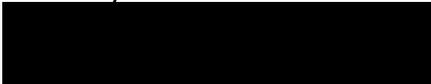
This order is the final agency order of the Attorney General Manufactured Housing Dispute Resolution Program and may be appealed to the Superior Court under Chapter 34.05 RCW. See RCW 59.30.040(10)(c). Such petition for judicial review must be filed within thirty (30) days of the mailing date of this 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 foregoing Order were mailed to the following parties, postage prepaid on the 2<sup>nd</sup> day of August, 2010 at Olympia, Washington.



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Office Assistant

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