

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

**RECEIVED**  
MAY 19 2014  
CONSUMER PROTECTION DIVISION  
SEATTLE

**In the Matter of:**

**SILVER CREEK MEADOWS,**

**Appellant.<sup>1</sup>**

(Iopu Sepetaio, Complainant)

**OAH Docket No. 2013-AGO-0003**

**MHDRP Complaint No. 411320**

**AMENDED<sup>2</sup> FINDINGS OF FACT,  
CONCLUSIONS OF LAW & FINAL  
ORDER**

**1. ISSUES**

1.1. Issue One: Did Appellant Silver Creek Meadows enter into a valid contract with Appellant's tenant and Complainant Iopu Sepetaio to settle Appellant's unlawful detainer action against Mr. Sepetaio for consideration that included reasonable attorney fees to be paid by Mr. Sepetaio to Appellant; or, in the absence of a valid settlement contract, did Appellant charge Mr. Sepetaio attorney fees contrary to the provisions of Mr. Sepetaio's written lease agreement in violation of RCW 59.20.060?

1.2. Issue Two: If Issue One is decided against Appellant, what is the appropriate penalty (sanction) under Washington law?

**2. SUMMARY OF DETERMINATION OF ISSUES**

2.1. Summary of Determination of Issue One: Appellant Silver Creek Meadows entered into a valid settlement contract with Appellant's tenant and Complainant

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<sup>1</sup> / This case caption has been administratively corrected to reflect Silver Creek Meadows' status as Appellant and Complainant's status as non-party witness.

<sup>2</sup> / Amendment corrects typographical errors at paragraphs 5.12, 6.10 and 6.14.

Iopu Sepetaio to settle Appellant's unlawful detainer action against Mr. Sepetaio for consideration that included reasonable attorneys fees to be paid by Mr. Sepetaio to Appellant. The settlement agreement between Appellant and Mr. Sepetaio did not violate RCW 59.20.060, or any other potentially relevant section of Chapter 59.20 RCW.

2.2. Summary of Determination of Issue Two: By reason of the determination of Issue One, Appellant is subject to no penalty or sanction.

2.3. The determination by the Manufactured Housing Dispute Resolution Program of violation of Washington law by Appellant Silver Creek Meadows is REVERSED and it's Notice of Violation issued against Appellant is DISMISSED.

### 3. HEARING

3.1. Hearing Date: March 11, 2014

3.2. Location: In-Person Hearing at Office of Department of Labor & Industries, 500 Pacific Avenue, Suite 400, Bremerton, WA 98337.

3.3. Administrative Law Judge: Steven C. Smith

3.4. Appellant: Silver Creek Meadows

3.4.1. Representative: Walter H. Olsen, Jr. and Olsen Law Firm PLLC

3.5. Agency: Office of the Attorney General, Consumer Protection Division,  
Manufactured Housing Dispute Resolution Program (MHDRP)

3.5.1. Representative: Robert W. Ferguson, Attorney General by Jennifer S.  
Steele, Assistant Attorney General

3.6. Witnesses:

3.6.1. Iopu "Job" Sepetaio

3.6.2. Deborah "Debbi" Goetz

3.7. Exhibits:

3.7.1. Exhibits 1 through 8 were admitted without objection on behalf of Agency.

3.7.2. Exhibits A through J were admitted without objection on behalf of Appellant.

3.8. Other:

3.8.1. The proceeding was open to the public and was attended by observer Courtland Goetz.

3.8.2. The evidentiary hearing was electronically recorded. At the conclusion of the evidentiary phase of the hearing, the record was left open at the election of the parties to submit their respective closing arguments and legal authorities in writing. The evidentiary hearing record closed April 14, 2014.

4. STATEMENT OF THE CASE

4.1. This case was filed by MHDRP with the Office of Administrative Hearings (OAH) on February 7, 2013, in response to Appellant's January 28, 2013 written request for an administrative appeal hearing to contest the January 14, 2013 Notice of Violation (NOV) issued against Appellant by MHDRP.

4.2. The NOV alleged in substance that Appellant violated Washington law (RCW 59.20.110) by improperly charging Complainant Iopu Sepetaio legal fees in the amount of \$342.25 in connection with settlement of an unlawful detainer action

against Mr. Sepetaio when Appellant was not a prevailing party because the action was settled. Therefore, Appellant allegedly was required to refund the legal fees charged to Mr. Sepetaio within 15 days following the NOV, failing which, Appellant would also be subject to the imposition of a \$75.00 per day fine until the legal fees were refunded to Mr. Sepetaio.

4.3. In due course, this case came before me for telephonic prehearing conference, followed by cross-motions for summary judgment, and evidentiary hearing (see, 3.1 above).

4.4. As regards the cross-motions for summary judgment, on November 18, 2013, I issued my *Interlocutory Order: 1. Denying Agency's Motion for Summary Judgment; and, 2. Granting in Part and Denying in Part, Appellant's Motion for Summary Judgment* (Interlocutory Order of Partial Summary Judgment; incorporated herein by reference).

## 5. FINDINGS OF FACT

Except as to those facts indicated below as "Undisputed Facts" based on my Interlocutory Order of Partial Summary Judgment, I find the following facts by a preponderance of the evidence:

### *Jurisdiction*

5.1. All factual statements made hereinabove at paragraphs 4.1-4.4 are hereat incorporated by reference.

## *Substantive Facts*

5.2. Undisputed Fact: At all times relevant herein, Appellant Silver Creek Meadows was a manufactured home community located in Bremerton, Washington at which Mr. Sepetaio rented Lot No. 20 under a written rental agreement that allowed for the placement of Mr. Sepetaio's mobile home and various related amenities. (Interlocutory Order of Partial Summary Judgment, ¶ 5.1)

5.3. Undisputed Fact: Under the terms of the rental agreement a base rent in the amount of \$522.00 per month was due on or before the first day of each month, and late if not paid by the fifth day of the month. (Interlocutory Order of Partial Summary Judgment, ¶ 5.2)

5.4. Undisputed Fact: On May 6, 2012, Mr. Sepetaio tendered a check in payment of the rent for May, 2012. That check was returned by the bank on which it was written for "insufficient funds." On May 14, 2012, due to the insufficient funds check and Mr. Sepetaio's failure to redeem the check with proper funds, Mr. Sepetaio was served with a five-day notice to pay rent and/or other charges or to vacate the lot (Notice). The Notice stated that the total amount due from Mr. Sepetaio was \$703.89. Mr. Sepetaio did not pay rent or vacate within five days following service of the Notice. (Interlocutory Order of Partial Summary Judgment, ¶ 5.3)

5.5. Undisputed Fact: Also on May 14, 2012, Mr. Sepetaio reportedly assured Appellant's management ("Debi Goetz") that he would bring his rent current by June 1, 2012. (Interlocutory Order of Partial Summary Judgment, ¶ 5.4)

5.6. Undisputed Fact: On May 21, 2012, Mr. Sepetaio was notified by written letter that Appellant was commencing legal action for eviction and that attorney fees would accrue. (Interlocutory Order of Partial Summary Judgment, ¶ 5.5)

5.7. Undisputed Fact: On May 25, 2012, Mr. Sepetaio was served with an Eviction Summons and Complaint for Unlawful Detainer. (Interlocutory Order of Partial Summary Judgment, ¶ 5.6)

5.8. Undisputed Fact: On June 1, 2012, Mr. Sepetaio paid the past due rent for May, 2012, a \$75.00 late fee, a \$25.00 "NSF" fee, rent for June, 2012 and the legal fees charge of \$342.25. (Interlocutory Order of Partial Summary Judgment, ¶ 5.7)

5.9. At the time Mr. Sepetaio paid the attorneys fees which are the subject of this administrative appeal, he was aware that he had not timely paid his rent as required under his written rental agreement, that Appellant had initiated an Unlawful Detainer action against him and his wife and sought remedies including eviction and attorneys fees. Mr. Sepetaio did not want himself or his wife to be evicted. (Testimony of Sepetaio; Exhibit 5, 6 & 8; testimony of Goetz)

5.10. On June 1, 2012, when Mr. Sepetaio attempted to pay his past due rent, he was told, in substance by Ms. Goetz, that he would have to pay the attorneys fees to date (\$342.25) resulting from the Unlawful Detainer action or the lawsuit would continue. He understood and he paid the attorneys fees. By paying the attorneys fees, it was Mr. Sepetaio's reasonable anticipation and intent that the Unlawful Detainer action would cease. This was the material reason

Mr. Sepetaio paid the attorneys fees in addition to the other sums. (Testimony of Sepetaio; testimony of Goetz)

5.11. At the time Appellant accepted the rent, late fee, "NSF" fee and attorneys fees related to the Unlawful Detainer action from Mr. Sepetaio, it was Appellant's reasonable understanding and intent that it must immediately cease its Unlawful Detainer action process and forego eviction of the Sepetaio's.

5.12. Although the terms of their agreement to end (that is, settle) the Unlawful Detainer action were not written, nor were the terms of their agreement well-articulated, by reason of the combination of their respective statements, (Appellant's through Ms. Goetz, the on-site manager), and their conduct (payment of the attorneys fees by Mr. Sepetaio, acceptance of the attorneys fees by Appellant through Ms. Goetz, and no further eviction action by Appellant), the evidence was persuasive that each side understood and intended the material terms of their agreement; specifically, payment of attorneys fees in exchange for the end of the lawsuit and elimination of the possibility of eviction.

5.13. Despite the foregoing facts, MHDRP contended that no agreement was reached, based on testimony of Ms. Goetz and Mr. Sepetaio, because neither believed there to have been a "settlement agreement". Ms. Goetz denied authority to enter a settlement, and Mr. Sepetaio similarly testified.

5.14. However, while the evidence was unclear as to the scope of Ms. Goetz' authority on behalf of Appellant, and equally unclear as to the precise language

of the conversation between Ms. Goetz and Mr. Sepetaio on June 1, 2012, the conduct of Ms. Goetz and Mr. Sepetaio and the combination of their testimony at the evidentiary hearing, was persuasive that: Ms. Goetz, as the on-site manager, was authorized and well understood that she was to collect attorneys fees from Mr. Sepetaio, along with the rent and other fees, or he would still face eviction; and, Mr. Sepetaio well understood and intended that his payment of attorneys fees, rent and other fees would stop the eviction process. Any testimony to the contrary by Ms. Goetz or Mr. Sepetaio was unpersuasive.

5.15. Further, there was no evidence that Mr. Sepetaio, of whom MHDRP contended ignorance of the terms and import of the agreement at the time it was made, ever attempted to rescind the agreement once he became aware of its terms. That is, although through MHDRP Mr. Sepetaio attempted to recover the attorneys fees which he paid to Appellant, there was no evidence that Mr. Sepetaio wanted Appellant to revive and resume the Unlawful Detainer action. In short, there simply was no evidence entitled to any weight that Mr. Sepetaio did not intend to buy cessation of the Unlawful Detainer action through the payment of attorney fees. Accordingly, the contention of MHDRP failed.

## 6. CONCLUSIONS OF LAW

Based on the above facts and the legal conclusions in my Interlocutory Order of Partial Summary Judgment (Law of the Case), I make the following conclusions of law:



### *Jurisdiction*

6.1. On January 14, 2013, MHDRP issued its Notice of Violation (NOV) against Appellant which is the subject of this administrative appeal. This case was then filed by MHDRP with the Office of Administrative Hearings (OAH) on February 7, 2013, in response to Appellant's January 28, 2013 written request for an administrative appeal hearing to contest the NOV. Therefore, the Office of Administrative Hearings has jurisdiction in this case under the provisions of RCW 59.30.040(8) and RCW 34.05.413.

### *Final Order*

6.2. The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed directly to the superior court under chapter 34.05 RCW. RCW 59.30.040(10)(c).

### *Standard and Burden of Proof*

6.3. The standard of proof in this case is "preponderance of the evidence"; and, the burden of proof is upon the Attorney General. RCW 59.30.040 (10)(b).

### *No Prohibition Under Chapter 59.20 RCW Against Settlement to Include Attorney Fees*

6.4. The Attorney General contended, in substance, as a matter of law, whether a settlement agreement was reached between the tenant and Appellant is irrelevant in this case because RCW 59.20.110 states, "In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs," and thereby prohibits fees to a party who is not a "prevailing" party. Therefore, the Attorney General argued that because the eviction dispute never

reached a judicial determination, there was no prevailing party; hence, Appellant violated chapter 59.20 RCW by requiring Sepetaio to pay attorney fees. Appellant has contended to the contrary. (Interlocutory Order of Partial Summary Judgment, ¶ 6.9)

6.5. Law of the Case: On its face, RCW 59.20.110 makes no such limitation on the parties' freedom to settle their own lawsuit on terms they agree. It is not proscriptive; rather, RCW 59.20.110 is a legislative mandate; it compels a court to award reasonable attorney fees and costs to a prevailing party, if sought. This point is best understood when viewed in light of RCW 59.20.040 which makes RCW 59.18.410 (Residential Landlord-Tenant Act unlawful detainer law) applicable to Manufactured/Mobile Home Landlord-Tenant Act unlawful detainer actions. RCW 59.18.410 states that "the court *may* award statutory costs and reasonable attorneys fees." Without RCW 59.20.110, an attorneys fee award would remain wholly discretionary in MMHLTA eviction cases. With RCW 59.20.110, reasonable attorneys fees must be awarded. (Interlocutory Order of Partial Summary Judgment, ¶ 6.10)

6.6. Law of the Case: In the absence of the Attorney General providing any binding authority to the contrary, I conclude that Appellant and Mr. Sepetaio were free to reach a settlement agreement in this matter, without any prohibition as to attorney fees, other than the statutorily self-evident restriction of reasonableness. (Interlocutory Order of Partial Summary Judgment, ¶ 6.11)

*Appellant and Complainant/Tenant Iopu Sepetaio Entered A Valid Settlement Agreement of Appellant's Unlawful Detainer Lawsuit Against Mr. Sepetaio*

6.7. Based on the foregoing Findings of Fact, Appellant and its tenant, Mr. Sepetaio (on behalf of himself and his family) knowingly and intentionally settled Appellant's Unlawful Detainer lawsuit against the Sepetaio's. They did so by combination of oral communication and conduct; specifically, Appellant's on-site manager Ms. Goetz informed Mr. Sepetaio that in addition to his past-due rent, he owed both administrative and attorneys fees. Mr. Sepetaio understood that without paying the attorneys fees, the Unlawful Detainer action would continue against himself and his family with the possible outcome of eviction. He chose to pay the attorneys fees. By accepting the rent, administrative and attorneys fees, Appellant intended and understood that it must end the Unlawful Detainer process. These terms were material to both sides of the agreement.

6.8. Thus, there was, at minimum, an implied offer from Appellant's on-site manager (pay rent and administrative and attorneys fees for cessation of the eviction process) and simultaneous implied acceptance and performance by Mr. Sepetaio (by payment of all of said sums) supported by lawful consideration. This amounted to a common-law contract of settlement. No other terms were discussed or implied, because no other terms were material.

6.9. The reasonableness of the amount of the attorneys fees was not challenged; they are, therefore, deemed to have been reasonable.

6.10. However, MHDRP contended that because there was no written settlement agreement, Washington Superior Court Civil Rule CR 2A precluded any possibility of the subject settlement agreement being enforced. Therefore, MHDRP further contended that by reason of its unenforceability, there was no valid settlement agreement; so, Appellant, by requiring and accepting payment of the attorneys fees, violated Chapter 59.20 RCW because those attorneys fees were not part of the original rental agreement with the Sepetaio's. (MHDRP Written Closing Argument) Respectfully, MHDRP was in error.

6.11. CR 2A states: No agreement or consent between parties or attorneys in respect to the proceedings in the cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same."

6.12. CR 2A does not purport to make an oral settlement agreement unlawful or void. Rather, it merely proscribes court enforceability of disputed terms of a settlement agreement in a pending lawsuit. It is hornbook law and requires no citation to authority that a contract remains such, even if unenforceable, unless it's unenforceability is due to being unlawful or void. Therefore, the settlement agreement of the parties would remain a settlement agreement even if not eligible for enforcement under CR 2A.

6.13. However, CR 2A has no applicability to this case because the parties do not seek court enforcement of their settlement agreement. Rather, MHDRP, on

behalf of Mr. Sepetaio, seeks return of the attorneys fees, the payment of which at once operated as both acceptance of the offer of settlement and performance by Mr. Sepetaio. Thus, Appellant has nothing under the settlement agreement for which to seek enforcement against Mr. Sepetaio. Also, there was no evidence that after the attorneys fees had been paid the Unlawful Detainer and eviction process continued. Thus, Mr. Sepetaio has nothing under the settlement agreement for which to seek enforcement against Appellant. Therefore, CR 2A is inapplicable.

6.14. Finally, as recently reaffirmed by the Washington Supreme Court, CR 2A acts as a supplement but does not supplant the common law of contracts in settlements. *Condon v. Condon*, 177 Wn.2d space 150, 162 (2013).

6.15. In in sum, the parties intended, entered, and performed their settlement agreement; CR 2A does not change that.

*Appellant Did Not Violate RCW 59.20.060*

6.16. Based on the above-discussed conclusions of law, Appellant and Mr. Sepetaio were free to enter an agreement to settle their landlord-tenant dispute (the Unlawful Detainer action) including the mutual exchange of consideration of attorney's fees for cessation of the lawsuit process, notwithstanding RCW 59.20.060.

6.17. Having concluded above that, based on the foregoing Findings of Fact, Appellant and Mr. Sepetaio indeed entered such a settlement agreement, I further conclude that Appellant did not violate RCW 59.20.060, or any other

potentially relevant section of chapter 59.20 RCW by reason of Appellant's request for, or receipt of, attorney's fees in exchange for cessation of the subject lawsuit. Therefore, Appellant is subject to no penalty or sanction under the Notice of Violation issued against it by MHDRP.

6.18. Accordingly, the determination by MHDRP of violation of law by Appellant shall be reversed and its Notice of Violation dismissed.

## 7. FINAL ORDER

### IT IS HEREBY ORDERED:

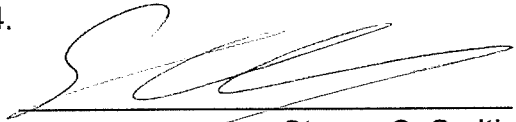
7.1. Office of Administrative Hearings has jurisdiction over this administrative appeal.

7.2. Appellant Silver Creek Meadows entered into a valid settlement contract with Appellant's tenant and Complainant Iopu Sepetaio to settle Appellant's unlawful detainer action against Mr. Sepetaio for consideration that included reasonable attorneys fees to be paid by Mr. Sepetaio to Appellant. The settlement agreement between Appellant and Mr. Sepetaio did not violate RCW 59.20.060, or any other potentially relevant section of chapter 59.20 RCW.

7.3. By reason of the foregoing order (§ 7.2), Appellant is subject to no penalty or sanction.

7.4. The determination by the Manufactured Housing Dispute Resolution Program of violation of Washington law by Appellant Silver Creek Meadows is REVERSED and its Notice of Violation issued against Appellant is DISMISSED.

Issued from Tacoma, Washington, on May 16, 2014.



Steven C. Smith  
Administrative Law Judge  
Office of Administrative Hearings

## FURTHER APPEAL RIGHTS

### APPEAL RIGHTS AFTER EVIDENTIARY HEARING:

Petition for Reconsideration of Final Order under RCW 34.05.470: A Final Order has been issued in this matter. Within ten days of service on you of this Final Order, you may file a written petition for reconsideration of this Final Order with the Washington Office of Administrative Hearings Administrative Law Judge who issued it. In your petition for reconsideration, you must state the specific grounds upon which you request relief. (RCW 34.05.470 & WAC 10-08-215)

On the same day that you file your petition for reconsideration with the Administrative Law Judge, you must serve your petition for reconsideration on all other parties to this matter and their legal counsel identified on the Certificate of Service attached to this Final Order. (WAC 10-08-110)

Service of this Final Order is effective when deposited in the US Mail. Filing of your motion will be effective when your motion is actually received by Office of Administrative Hearings during normal business hours. (WAC 10-08-110)

Your petition for reconsideration will not automatically "stay" (that is, stop or interrupt) the effectiveness of this Final Order.

You also have the right to petition the Washington Superior Court for judicial review of this Final Order. (See below, "Petition for Superior Court Review") If your petition for reconsideration is timely and correctly filed, then the time for filing your petition for Superior Court judicial review will not start until the Administrative Law Judge has acted on your petition for reconsideration (for example, the judge has granted, denied, or provided the parties with written notice of some other proceeding or date regarding your petition for reconsideration), or until twenty days have passed following the date your petition for reconsideration is filed and the Administrative Law Judge has not acted on it. (RCW 34.05.470)

If, within twenty days from the date your petition for reconsideration is filed, the Administrative Law Judge has not acted on it, your petition for reconsideration automatically will be deemed to have been denied and the time for filing your petition for judicial review will begin immediately. (RCW 34.05.470)

You cannot seek Superior Court judicial review of denial of your petition for reconsideration, whether the denial resulted from a written order issued by the Administrative Law Judge or from the Administrative Law Judge not acting within twenty days from the date your petition for reconsideration was filed. (RCW 34.05.470)

You are not required to file a petition for reconsideration of this Final Order with the Administrative Law Judge as a condition of seeking Superior Court judicial review. You have the option to immediately file a petition for Superior Court review. (RCW 34.05.470)

Petition for Superior Court Review of this Final Order:

You may file a petition judicial review of this Final Order with the Washington Superior Court not later than thirty days after this Final Order has been served on you (unless the filing time is extended pending any petition for reconsideration you may have filed with the Administrative Law Judge who issued the Final Order- see above). (RCW 34.05.542)

You may start your Superior Court judicial review process by timely paying the fee required under RCW 36.18.020 and timely filing a petition in the Washington Superior Court, at your option of (a) Thurston county, (b) your County of residence or principal place of business in Washington, or (c) in any Washington county where the property owned by you and affected by this Final Order is located." (RCW 34.05.514)

On the same day that you file your petition for Superior Court judicial review with the Washington Superior Court, you must serve it on all other parties to this matter and their legal counsel identified on the Certificate of Service attached to this Final Order. (WAC 10-08-110) & RCW 34.05.542).

Service of a copy by mail upon the other parties of record and the office of the attorney general, as indicated on the Certificate of Service attached to this Final Order, shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark. 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; WAC 10-08-110)



**Certificate of Service – OAH Docket No. 2013-AGO-0003**

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

<b>Walter H. Olsen, Jr.</b> <b>Attorney at Law</b> <b>Olsen Law Firm PLLC</b> <b>205 South Meridian</b> <b>Puyallup, WA 98371</b>	<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"/> 1st Class, postage prepaid, Certified mail, return receipt
<b>Iopu Sepetaio</b> <b>PO Box 343</b> <b>Port Orchard, WA 98366</b>	<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"/> 1st Class, postage prepaid, Certified mail, return receipt
<b>Jennifer Steele</b> <b>Assistant Attorney General</b> <b>Manufactured Housing</b> <b>Dispute Resolution Program</b> <b>Office of the Attorney General</b> <b>800 Fifth Avenue Suite 2000</b> <b>Seattle, WA 98104-3188</b>	<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"/> 1st Class, postage prepaid, Certified mail, return receipt

Date: May 16, 2014

  
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Authorized Representative  
Office of Administrative Hearings



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FOR THE OFFICE OF THE ATTORNEY GENERAL  
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(Iopu Sepetaio, Complainant)

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**FINDINGS OF FACT, CONCLUSIONS  
OF LAW & FINAL ORDER**

**1. ISSUES**

1.1. Issue One: Did Appellant Silver Creek Meadows enter into a valid contract with Appellant's tenant and Complainant Iopu Sepetaio to settle Appellant's unlawful detainer action against Mr. Sepetaio for consideration that included reasonable attorney fees to be paid by Mr. Sepetaio to Appellant; or, in the absence of a valid settlement contract, did Appellant charge Mr. Sepetaio attorney fees contrary to the provisions of Mr. Sepetaio's written lease agreement in violation of RCW 59.20.060?

1.2. Issue Two: If Issue One is decided against Appellant, what is the appropriate penalty (sanction) under Washington law?

**2. SUMMARY OF DETERMINATION OF ISSUES**

2.1. Summary of Determination of Issue One: Appellant Silver Creek Meadows entered into a valid settlement contract with Appellant's tenant and Complainant Iopu

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Sepetaio to settle Appellant's unlawful detainer action against Mr. Sepetaio for consideration that included reasonable attorneys fees to be paid by Mr. Sepetaio to Appellant. The settlement agreement between Appellant and Mr. Sepetaio did not violate RCW 59.20.060, or any other potentially relevant section of Chapter 59.20 RCW.

2.2. Summary of Determination of Issue Two: By reason of the determination of Issue One, Appellant is subject to no penalty or sanction.

2.3. The determination by the Manufactured Housing Dispute Resolution Program of violation of Washington law by Appellant Silver Creek Meadows is REVERSED and it's Notice of Violation issued against Appellant is DISMISSED.

### 3. HEARING

3.1. Hearing Date: March 11, 2014

3.2. Location: In-Person Hearing at Office of Department of Labor & Industries, 500 Pacific Avenue, Suite 400, Bremerton, WA 98337.

3.3. Administrative Law Judge: Steven C. Smith

3.4. Appellant: Silver Creek Meadows

3.4.1. Representative: Walter H. Olsen, Jr. and Olsen Law Firm PLLC

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3.7.1. Exhibits 1 through 8 were admitted without objection on behalf of Agency.

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3.8.1. The proceeding was open to the public and was attended by observer Courtland Goetz.

3.8.2. The evidentiary hearing was electronically recorded. At the conclusion of the evidentiary phase of the hearing, the record was left open at the election of the parties to submit their respective closing arguments and legal authorities in writing. The evidentiary hearing record closed April 14, 2014.

4. STATEMENT OF THE CASE

4.1. This case was filed by MHDRP with the Office of Administrative Hearings (OAH) on February 7, 2013, in response to Appellant's January 28, 2013 written request for an administrative appeal hearing to contest the January 14, 2013 Notice of Violation (NOV) issued against Appellant by MHDRP.

4.2. The NOV alleged in substance that Appellant violated Washington law (RCW 59.20.110) by improperly charging Complainant Iopu Sepetaio legal fees in the amount of \$342.25 in connection with settlement of an unlawful detainer action against Mr. Sepetaio when Appellant was not a prevailing party because the action was settled. Therefore, Appellant allegedly was required to refund the

legal fees charged to Mr. Sepetaio within 15 days following the NOV, failing which, Appellant would also be subject to the imposition of a \$75.00 per day fine until the legal fees were refunded to Mr. Sepetaio.

4.3. In due course, this case came before me for telephonic prehearing conference, followed by cross-motions for summary judgment, and evidentiary hearing (see, 3.1 above).

4.4. As regards the cross-motions for summary judgment, on November 18, 2013, I issued my *Interlocutory Order: 1. Denying Agency's Motion for Summary Judgment; and, 2. Granting in Part and Denying in Part, Appellant's Motion for Summary Judgment* (Interlocutory Order of Partial Summary Judgment; incorporated herein by reference).

## 5. FINDINGS OF FACT

Except as to those facts indicated below as "Undisputed Facts" based on my Interlocutory Order of Partial Summary Judgment, I find the following facts by a preponderance of the evidence:

### *Jurisdiction*

5.1. All factual statements made hereinabove at paragraphs 4.1-4.4 are hereat incorporated by reference.

### *Substantive Facts*

5.2. Undisputed Fact: At all times relevant herein, Appellant Silver Creek Meadows was a manufactured home community located in Bremerton, Washington at which Mr. Sepetaio rented Lot No. 20 under a written rental agreement that

allowed for the placement of Mr. Sepetaio's mobile home and various related amenities. (Interlocutory Order of Partial Summary Judgment, ¶ 5.1)

5.3. Undisputed Fact: Under the terms of the rental agreement a base rent in the amount of \$522.00 per month was due on or before the first day of each month, and late if not paid by the fifth day of the month. (Interlocutory Order of Partial Summary Judgment, ¶ 5.2)

5.4. Undisputed Fact: On May 6, 2012, Mr. Sepetaio tendered a check in payment of the rent for May, 2012. That check was returned by the bank on which it was written for "insufficient funds." On May 14, 2012, due to the insufficient funds check and Mr. Sepetaio's failure to redeem the check with proper funds, Mr. Sepetaio was served with a five-day notice to pay rent and/or other charges or to vacate the lot (Notice). The Notice stated that the total amount due from Mr. Sepetaio was \$703.89. Mr. Sepetaio did not pay rent or vacate within five days following service of the Notice. (Interlocutory Order of Partial Summary Judgment, ¶ 5.3)

5.5. Undisputed Fact: Also on May 14, 2012, Mr. Sepetaio reportedly assured Appellant's management ("Debi Goetz") that he would bring his rent current by June 1, 2012. (Interlocutory Order of Partial Summary Judgment, ¶ 5.4)

5.6. Undisputed Fact: On May 21, 2012, Mr. Sepetaio was notified by written letter that Appellant was commencing legal action for eviction and that attorney fees would accrue. (Interlocutory Order of Partial Summary Judgment, ¶ 5.5)

5.7. Undisputed Fact: On May 25, 2012, Mr. Sepetaio was served with an Eviction Summons and Complaint for Unlawful Detainer. (Interlocutory Order of Partial Summary Judgment, ¶ 5.6)

5.8. Undisputed Fact: On June 1, 2012, Mr. Sepetaio paid the past due rent for May, 2012, a \$75.00 late fee, a \$25.00 "NSF" fee, rent for June, 2012 and the legal fees charge of \$342.25. (Interlocutory Order of Partial Summary Judgment, ¶ 5.7)

5.9. At the time Mr. Sepetaio paid the attorneys fees which are the subject of this administrative appeal, he was aware that he had not timely paid his rent as required under his written rental agreement, that Appellant had initiated an Unlawful Detainer action against him and his wife and sought remedies including eviction and attorneys fees. Mr. Sepetaio did not want himself or his wife to be evicted. (Testimony of Sepetaio; Exhibit 5, 6 & 8; testimony of Goetz)

5.10. On June 1, 2012, when Mr. Sepetaio attempted to pay his past due rent, he was told, in substance by Ms. Goetz, that he would have to pay the attorneys fees to date (\$342.25) resulting from the Unlawful Detainer action or the lawsuit would continue. He understood and he paid the attorneys fees. By paying the attorneys fees, it was Mr. Sepetaio's reasonable anticipation and intent that the Unlawful Detainer action would cease. This was the material reason Mr. Sepetaio paid the attorneys fees in addition to the other sums. (Testimony of Sepetaio; testimony of Goetz)



5.11. At the time Appellant accepted the rent, late fee, "NSF" fee and attorneys fees related to the Unlawful Detainer action from Mr. Sepetaio, it was Appellant's reasonable understanding and intent that it must immediately cease its Unlawful Detainer action process and forego eviction of the Sepetaio's.

5.12. Although the terms of their agreement to end (that is, settle) the Unlawful Detainer action were not written, nor were the terms of their agreement well-articulated, the combination of their respective statements (Appellant's through Ms. Goetz, the on-site manager) and their conduct (payment of the attorneys fees by Mr. Sepetaio, acceptance of the attorneys fees by Appellant through Ms. Goetz, and no further eviction action by Appellant) the evidence was persuasive that each side understood and intended the material terms of their agreement; specifically, payment of attorneys fees in exchange for the end of the lawsuit and elimination of the possibility of eviction.

5.13. Despite the foregoing facts, MHDRP contended that no agreement was reached based on testimony of Ms. Goetz and Mr. Sepetaio because neither believed there to have been a "settlement agreement". Ms. Goetz denied authority to enter a settlement, and Mr. Sepetaio similarly testified.

5.14. However, while the evidence was unclear as to the scope of Ms. Goetz' authority on behalf of Appellant, and equally unclear as to the precise language of the conversation between Ms. Goetz and Mr. Sepetaio on June 1, 2012, the conduct of Ms. Goetz and Mr. Sepetaio and the combination of their testimony at the evidentiary hearing, was persuasive that: Ms. Goetz, as the on-site manager,

was authorized and well understood that she was to collect attorneys fees from Mr. Sepetaio, along with the rent and other fees, or he would still face eviction; and, Mr. Sepetaio well understood and intended that his payment of attorneys fees, rent and other fees would stop the eviction process. Any testimony to the contrary by Ms. Goetz or Mr. Sepetaio was unpersuasive.

5.15. Further, there was no evidence that Mr. Sepetaio, of whom MHDRP contended ignorance of the terms and import of the agreement at the time it was made, ever attempted to rescind the agreement once he became aware of its terms. That is, although through MHDRP Mr. Sepetaio attempted to recover the attorneys fees which he paid to Appellant, there was no evidence that Mr. Sepetaio wanted Appellant to revive and resume the Unlawful Detainer action. In short, there simply was no evidence entitled to any weight that Mr. Sepetaio did not intend to buy cessation of the Unlawful Detainer action through the payment of attorney fees. Accordingly, the contention of MHDRP failed.

## 6. CONCLUSIONS OF LAW

Based on the above facts and the legal conclusions in my Interlocutory Order of Partial Summary Judgment (Law of the Case), I make the following conclusions of law:

### *Jurisdiction*

6.1. On January 14, 2013, MHDRP issued its Notice of Violation (NOV) against Appellant which is the subject of this administrative appeal. This case was then filed by MHDRP with the Office of Administrative Hearings (OAH) on February 7, 2013; in response to Appellant's January 28, 2013 written request for an

administrative appeal hearing to contest the NOV. Therefore, the Office of Administrative Hearings has jurisdiction in this case under the provisions of RCW 59.30.040(8) and RCW 34.05.413.

#### *Final Order*

6.2. The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed directly to the superior court under chapter 34.05 RCW. RCW 59.30.040(10)(c).

#### *Standard and Burden of Proof*

6.3. The standard of proof in this case is “preponderance of the evidence”; and, the burden of proof is upon the Attorney General. RCW 59.30.040 (10)(b).

#### *No Prohibition Under Chapter 59.20 RCW Against Settlement to Include Attorney Fees*

6.4. The Attorney General contended, in substance, as a matter of law, whether a settlement agreement was reached between the tenant and Appellant is irrelevant in this case because RCW 59.20.110 states, “In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney’s fees and costs,” and thereby prohibits fees to a party who is not a “prevailing” party. Therefore, the Attorney General argued that because the eviction dispute never reached a judicial determination, there was no prevailing party; hence, Appellant violated chapter 59.20 RCW by requiring Sepetaio to pay attorney fees. Appellant has contended to the contrary. (Interlocutory Order of Partial Summary Judgment, ¶ 6.9)

6.5. Law of the Case: On its face, RCW 59.20.110 makes no such limitation on the parties' freedom to settle their own lawsuit on terms they agree. It is not proscriptive; rather, RCW 59.20.110 is a legislative mandate; it compels a court to award reasonable attorney fees and costs to a prevailing party, if sought. This point is best understood when viewed in light of RCW 59.20.040 which makes RCW 59.18.410 (Residential Landlord-Tenant Act unlawful detainer law) applicable to Manufactured/Mobile Home Landlord-Tenant Act unlawful detainer actions. RCW 59.18.410 states that "the court *may* award statutory costs and reasonable attorneys fees." Without RCW 59.20.110, an attorneys fee award would remain wholly discretionary in MMHLTA eviction cases. With RCW 59.20.110, reasonable attorneys fees must be awarded. (Interlocutory Order of Partial Summary Judgment, ¶ 6.10)

6.6. Law of the Case: In the absence of the Attorney General providing any binding authority to the contrary, I conclude that Appellant and Mr. Sepetaio were free to reach a settlement agreement in this matter, without any prohibition as to attorney fees, other than the statutorily self-evident restriction of reasonableness. (Interlocutory Order of Partial Summary Judgment, ¶ 6.11)

*Appellant and Complainant/Tenant Iopu Sepetaio Entered A Valid Settlement Agreement of Appellant's Unlawful Detainer Lawsuit Against Mr. Sepetaio*

6.7. Based on the foregoing Findings of Fact, Appellant and its tenant, Mr. Sepetaio (on behalf of himself and his family) knowingly and intentionally settled Appellant's Unlawful Detainer lawsuit against the Sepetaio's. They did so by combination of

oral communication and conduct; specifically, Appellant's on-site manager Ms. Goetz informed Mr. Sepetaio that in addition to his past-due rent, he owed both administrative and attorneys fees. Mr. Sepetaio understood that without paying the attorneys fees, the Unlawful Detainer action would continue against himself and his family with the possible outcome of eviction. He chose to pay the attorneys fees. By accepting the rent, administrative and attorneys fees, Appellant intended and understood that it must end the Unlawful Detainer process. These terms were material to both sides of the agreement.

6.8. Thus, there was, at minimum, an implied offer from Appellant's on-site manager (pay rent and administrative and attorneys fees for cessation of the eviction process), and simultaneous implied acceptance and performance by Mr. Sepetaio (by payment of all of said sums) supported by lawful consideration. This amounted to a common-law contract of settlement. No other terms were discussed or implied, because no other terms were material.

6.9. The reasonableness of the amount of the attorneys fees was not challenged; they are therefore deemed to have been reasonable.

6.10. However, MHDRP contends that because there was no written settlement agreement, Washington Superior Court Civil Rule CR 2A preclude any possibility of the subject settlement agreement being enforced. Therefore, MHDRP further contends that by reason of its unenforceability, there was no valid settlement agreement, so Appellant, by requiring and accepting payment of the attorneys fees violated Chapter 59.20 RCW because those attorneys fees were not part of the

original rental agreement with the Sepetaio's. (MHDRP Written Closing Argument)

Respectfully, MHDRP is an error.

- 6.11. CR 2A states: No agreement or consent between parties or attorneys in respect to the proceedings in the cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same."
- 6.12. CR 2A does not purport to make an oral settlement agreement unlawful or void. Rather, it merely proscribes court enforceability of disputed terms of a settlement agreement in a pending lawsuit. It is hornbook law and requires no citation to authority that a contract remains such even if unenforceable, unless it's unenforceability is due to being unlawful or void. Therefore, the settlement agreement of the parties would remain a settlement agreement even if not eligible for enforcement under CR 2A.
- 6.13. However, CR 2A has no applicability to this case because the parties do not seek court enforcement of their settlement agreement. Rather, MHDRP, on behalf of Mr. Sepetaio, seeks return of the attorneys fees, the payment of which at once operated as both acceptance of the offer of settlement and performance by Mr. Sepetaio. Thus, Appellant has nothing under the settlement agreement for which to seek enforcement against Mr. Sepetaio. Also, there was no evidence that after the attorneys fees had been paid the Unlawful Detainer and eviction process

continued. Thus, Mr. Sepetaio has nothing under the settlement agreement for which to seek enforcement against appellant. Therefore, CR 2A is inapplicable.

6.14. Finally, as recently reaffirmed by the Washington Supreme Court, CR 2A acts as a supplement but does not supplant the common law of contracts in settlements. 177 Wn.2d space 150, 162 (2013).

6.15. In in sum, the parties intended, entered, and performed their settlement agreement; CR 2A does not change that.

*Appellant Did Not Violate RCW 59.20.060*

6.16. Based on the above-discussed conclusions of law, Appellant and Mr. Sepetaio were free to enter an agreement to settle their landlord-tenant dispute (the Unlawful Detainer action) including the mutual exchange of consideration of attorney's fees for cessation of the lawsuit process, notwithstanding RCW 59.20.060.

6.17. Having concluded above that, based on the foregoing Findings of Fact, Appellant and Mr. Sepetaio indeed entered such a settlement agreement, I further conclude that Appellant did not violate RCW 59.20.060, or any other potentially relevant section of chapter 59.20 RCW by reason of Appellant's request for, or receipt of, attorney's fees in exchange for cessation of the subject lawsuit. Therefore, Appellant is subject to no penalty or sanction under the Notice of Violation issued against it by MHDRP.

6.18. Accordingly, the determination by MHDRP of violation of law by Appellant shall be reversed and its Notice of Violation dismissed.

## 7. FINAL ORDER

### IT IS HEREBY ORDERED THAT:

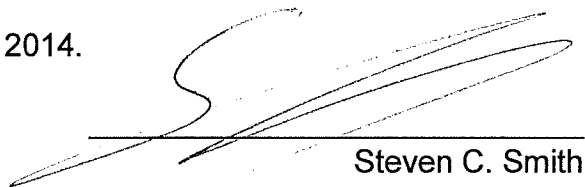
7.1. Office of Administrative Hearings has jurisdiction over this administrative appeal.

7.2. Appellant Silver Creek Meadows entered into a valid settlement contract with Appellant's tenant and Complainant Iopu Sepetaio to settle Appellant's unlawful detainer action against Mr. Sepetaio for consideration that included reasonable attorneys fees to be paid by Mr. Sepetaio to Appellant. The settlement agreement between Appellant and Mr. Sepetaio did not violate RCW 59.20.060, or any other potentially relevant section of chapter 59.20 RCW.

7.3. By reason of the foregoing order (§ 7.2), Appellant is subject to no penalty or sanction.

7.4. The determination by the Manufactured Housing Dispute Resolution Program of violation of Washington law by Appellant Silver Creek Meadows is REVERSED and it's Notice of Violation issued against Appellant is DISMISSED.

Issued from Tacoma, Washington, on May 15, 2014.



Steven C. Smith  
Administrative Law Judge  
Office of Administrative Hearings

## FURTHER APPEAL RIGHTS

### APPEAL RIGHTS AFTER EVIDENTIARY HEARING:

Petition for Reconsideration of Final Order under RCW 34.05.470: A Final Order has been issued in this matter. Within ten days of service on you of this Final Order, you may file a written petition for reconsideration of this Final Order with the Washington



Office of Administrative Hearings Administrative Law Judge who issued it. In your petition for reconsideration, you must state the specific grounds upon which you request relief. (RCW 34.05.470 & WAC 10-08-215)

On the same day that you file your petition for reconsideration with the Administrative Law Judge, you must serve your petition for reconsideration on all other parties to this matter and their legal counsel identified on the Certificate of Service attached to this Final Order. (WAC 10-08-110)

Service of this Final Order is effective when deposited in the US Mail. Filing of your motion will be effective when your motion is actually received by Office of Administrative Hearings during normal business hours. (WAC 10-08-110)

Your petition for reconsideration will not automatically "stay" (that is, stop or interrupt) the effectiveness of this Final Order.

You also have the right to petition the Washington Superior Court for judicial review of this Final Order. (See below, "Petition for Superior Court Review") If your petition for reconsideration is timely and correctly filed, then the time for filing your petition for Superior Court judicial review will not start until the Administrative Law Judge has acted on your petition for reconsideration (for example, the judge has granted, denied, or provided the parties with written notice of some other proceeding or date regarding your petition for reconsideration), or until twenty days have passed following the date your petition for reconsideration is filed and the Administrative Law Judge has not acted on it. (RCW 34.05.470)

If, within twenty days from the date your petition for reconsideration is filed, the Administrative Law Judge has not acted on it, your petition for reconsideration automatically will be deemed to have been denied and the time for filing your petition for judicial review will begin immediately. (RCW 34.05.470)

You cannot seek Superior Court judicial review of denial of your petition for reconsideration, whether the denial resulted from a written order issued by the Administrative Law Judge or from the Administrative Law Judge not acting within twenty days from the date your petition for reconsideration was filed. (RCW 34.05.470)

You are not required to file a petition for reconsideration of this Final Order with the Administrative Law Judge as a condition of seeking Superior Court judicial review. You have the option to immediately file a petition for Superior Court review. (RCW 34.05.470)

Petition for Superior Court Review of this Final Order:

You may file a petition judicial review of this Final Order with the Washington Superior Court not later than thirty days after this Final Order has been served on you (unless the filing time is extended pending any petition for reconsideration you may have filed with the Administrative Law Judge who issued the Final Order- see above). (RCW 34.05.542)

You may start your Superior Court judicial review process by timely paying the fee required under RCW 36.18.020 and timely filing a petition in the Washington Superior Court, at your option of (a) Thurston county, (b) your County of residence or principal place of business in Washington, or (c) in any Washington county where the property owned by you and affected by this Final Order is located." (RCW 34.05.514)

On the same day that you file your petition for Superior Court judicial review with the Washington Superior Court, you must serve it on all other parties to this matter and their legal counsel identified on the Certificate of Service attached to this Final Order. (WAC 10-08-110) & RCW 34.05.542).

Service of a copy by mail upon the other parties of record and the office of the attorney general, as indicated on the Certificate of Service attached to this Final Order, shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark. 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; WAC 10-08-110)

**Certificate of Service – OAH Docket No. 2013-AGO-0003**

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

<b>Walter H. Olsen, Jr.</b> <b>Attorney at Law</b> <b>Olsen Law Firm PLLC</b> <b>205 South Meridian</b> <b>Puyallup, WA 98371</b>	<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"/> 1st Class, postage prepaid, Certified mail, return receipt
<b>Iopu Sepetaio</b> <b>PO Box 343</b> <b>Port Orchard, WA 98366</b>	<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"/> 1st Class, postage prepaid, Certified mail, return receipt
<b>Jennifer Steele</b> <b>Assistant Attorney General</b> <b>Manufactured Housing</b> <b>Dispute Resolution Program</b> <b>Office of the Attorney General</b> <b>800 Fifth Avenue Suite 2000</b> <b>Seattle, WA 98104-3188</b>	<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"/> 1st Class, postage prepaid, Certified mail, return receipt

Date: May 15, 2014

  
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Authorized Representative  
Office of Administrative Hearings

