

STATE OF MAINE
MANUFACTURED HOUSING BOARD

In Re: Birchtree Meadows Mobile	)	
Home Park/Michael T. Kearns	)	DECISION AND ORDER
	)	
Complaint Number 2016-MFG-11847	)	

I. PROCEDURAL HISTORY

Pursuant to the authority found in 5 M.R.S. §§ 9051 to 9064 and 10 M.R.S. §§ 8003(5-A) and 9009, the Maine Manufactured Housing Board (“Board”) met in public session at its offices in Gardiner, Maine, on August 3, 2016. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds existed for the Board to take disciplinary action against licensee Birchtree Meadows Mobile Home Park/Michael T. Kearns.

A Notice of Hearing was issued on June 15, 2016, setting the hearing date for August 3, 2016. On July 26, 2016, a telephonic prehearing conference was convened, attended by Michael Kearns and Assistant Attorney General Christopher Mann, and a Conference Order issued on the same date setting the deadline for the filing of final witness and exhibit lists.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Acting Chair Theresa Desfosses, Albert Hodsdon III, John Palmer, Carol Roberts, and Harvey Wallingford. The Board determined that there were no conflicts of interest or bias that would require any presiding Board member to recuse himself or herself from participating in the proceeding. The Board took notice of its statutes and rules. Mr. Kearns did not appear at the hearing.¹ Christopher Mann, Esq., Assistant Attorney General, represented the State of Maine. Rebekah J. Smith, Esq., served as Presiding Officer.

¹ The Licensee is not presently in the civil service within the meaning of the Servicemembers Civil Relief Act. (State Exh. #9.)

State Exhibits #1 to #9 were admitted without objection and are identified as follows:

State Exhibit #1: Notice of Hearing dated June 15, 2016
State Exhibit #2: Notice of Complaint dated January 5, 2016
State Exhibit #3: Board Staff Notes from November 25, 2015, through January 5, 2016
State Exhibit #4: Email from Robert Peasley, Emera Maine, to Board Inspector dated November 25, 2016
State Exhibit #5: Notice of Violation and Order of Correction dated August 17, 2015
State Exhibit #6: Board Inspector Report dated August 10, 2015
State Exhibit #7: ALMS Licensing History Screen Print
State Exhibit #8: Board Rules Chapter 850(9) and 860(3) and 10 M.R.S. § 8003(5) and (5-A)
State Exhibit #9: Servicemembers Civil Relief Act Affidavit dated August 3, 2016

The State made an opening statement. The State presented Jessica Parlin, Manufactured Housing Inspector, and Robert LeClair, Executive Director of the Manufactured Housing Program, as witnesses. The State made a closing statement. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the alleged violations of Board statutes and rules by Birchtree Meadows Mobile Home Park and Michael T. Kearns.

II. FINDINGS OF FACT

1. Birchtree Meadows Mobile Home Park has been licensed as a manufactured housing community since 1993. (State Exh. #7.) Michael T. Kearns has been the owner of the community since 2009. (Administrative File.) The community's most recent license expired on March 31, 2016. (State Exh. #7.)
2. On August 17, 2015, the Board issued a Notice of Violation and Order of Correction to the Licensee for multiple violations found at an August 10, 2015, inspection of Birchtree Meadows Mobile Home Park. (State Exh. #5.) The Notice of Violation identified the following violations of Board Rules:
 - a) Chapter 850, Section 5: Electrical – service on lot #12 had unprotected cables
 - b) Chapter 850, Section 6: Life/safety – not all homes were clearly marked for identification

- c) Chapter 850, Section 9: Nuisance – Lot #? (across from Lot #5) – junked rug beside front stairs
- d) Chapter 850, Section 9: Nuisance – Lot #5 – junked recliner, appliances, and tires beside home
- e) Chapter 850, Section 9: Nuisance – Lot #7 – junk (mattresses, toilet, screen door, and miscellaneous) around shed and front stairs
- f) Chapter 850, Section 9: Nuisance – Lot #7 – junked? Chevy truck filled with junked chairs and door and junked? Ford Ranger in driveway
- g) Chapter 850, Section 9: Nuisance – Lot #11 – junked recliner, tire, dryer, and couch beside/behind home
- h) Chapter 850, Section 9: Nuisance – Lot #? (left of lot #11) – junk (mattress, box spring, rug, doors, and miscellaneous) beside home
- i) Chapter 850, Section 9: Nuisance – Vacant lot to the right of lot #23 – junked deck and miscellaneous debris
- j) Chapter 850, Section 9: Nuisance – Lot #23 – junked? mattress leaning against deck
- k) Chapter 850, Section 9: Nuisance – Lot #44 – junked wood debris in trailer behind home
- l) Chapter 850, Section 9: Nuisance – Lot #54 – junk (dryer, tires, hose reel, tank, and miscellaneous) behind home and beside shed
- m) Chapter 850, Section 9: Nuisance – Lot #57 – wood debris and junked rug
- n) Chapter 850, Section 9: Nuisance – Lot #60 – miscellaneous junk (tire, rug) behind shed and junked? Ford pick-up truck filled with miscellaneous junk
- o) Chapter 850, Section 9: Nuisance – Lot #62 – junked door and awning behind home
- p) Chapter 850, Section 9: Nuisance – Lot #68 – large pile of junk (couch, dresser, mattresses, exercise machine, and miscellaneous) beside shed and trash and miscellaneous debris beside home
- q) Chapter 850, Section 9: Nuisance – Vacant lot beside lot #68 – miscellaneous debris (plastic, wood)
- r) Chapter 850, Section 9: Nuisance – Lot #84 – junked toilet on front lawn
- s) Chapter 850, Section 9: Nuisance – Lot #93 – junked dishwasher on deck

(State Exh. #5.)

3. The Notice of Violation and Order of Correction informed the Licensee that within 90

days of receipt of the letter, he was required to correct the violations and submit the

following certifications to the Board:

- a) Certification from a licensed electrician that all violations of NFPA 70, 2002 National Electrical Code, had been corrected.
- b) Certification from the Licensee that all homes had been clearly marked for identification in a uniform manner that was clearly visible from the street serving the site.
- c) Certification from the Licensee that all broken glass, garbage, trash, and junk had been removed from the community.

(State Exh. #5.)

4. The Notice informed the Licensee that if he failed to correct the violations and provide the required certifications, enforcement action would be taken against the manufactured housing community's license. (State Exh. #5.) Although the certified mail copy of the Notice of Violation was unclaimed, the copy sent first class mail was not returned. (State Exh. #5; Administrative File.)
5. On November 25, 2015, Manufactured Housing Inspector Jessica Parlin left the Licensee a voicemail informing him that the certifications of corrections were overdue. (State Exh. #3.) On December 3, 2015, Inspector Parlin left the Licensee another voicemail reminding him that the certifications were overdue. (State Exh. #3.)
6. By letter dated January 5, 2016, the Board informed the Licensee that a complaint had been filed against him, alleging that he had failed to correct the deficiencies cited in the August 17, 2015, Notice of Violation and Order of Correction, and document the corrections. (State Exh. #2.) The certified letter was signed for by Betty Dow, Agent, on January 11, 2016. (State Exh. #2.)
7. The Notice of Hearing issued on June 15, 2016, to Birchtree Meadows Mobile Home Park and Michael Kearns was also signed for by Betty Dow, on June 24, 2016. (State Exh. #2.)
8. The Board has received several complaints against the Licensee. (Testimony of LeClair.) A few years ago, the Licensee was in violation of state regulations regarding water quality, as overseen by the Department of Human Services, which resulted in a meeting with Board staff, the Department of Human Services, and the Licensee. (Testimony of LeClair.) Birch Tree Meadows Mobile Home Park was not licensed at that time but

subsequently obtained a license. (Testimony of LeClair.) In 2010, the Licensee failed to certify corrections identified in a Notice of Violation and Order of Correction that included electrical violations. (Testimony of LeClair.) In 2012, during a reinspection, it was noted that none of the 2010 violations had been corrected. (Testimony of LeClair.)

III. GOVERNING STATUTES AND RULES

1. All deficiencies discovered during an inspection of a manufactured housing community must be corrected. The Licensee shall correct deficiencies that do not involve a serious danger to the health or safety of the public within 90 days of receipt of notice from the Board. (02-385) Rules of Manufactured Housing Board, Chapter 860, Section 3.
2. The Board may impose discipline upon a licensee who violates a Board statute or rule. 10 M.R.S. § 8003(5-A)(A)(4) & (5).
3. The Board may impose upon a licensee a civil penalty of up to \$1,500 for each violation of Board statutes or rules. 10 M.R.S. § 8003(5-A)(B)(5).

IV. CONCLUSIONS OF LAW

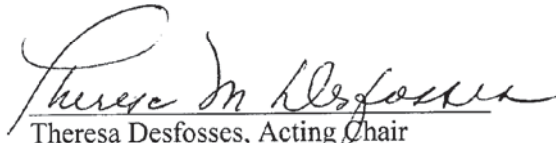
The Board, considering the above facts and those alluded to in the record but not referred to herein, concluded that it had jurisdiction over licensee Birchtree Meadows Mobile Home Park/Michael T. Kearns, and determined unanimously that the Licensee violated Board Rule Chapter 860, Section 3, by not certifying that the electrical, life/safety, and nuisance violations identified in the August 17, 2015, Notice of Violation and Order of Correction had been corrected. As a sanction, the Board, by unanimous vote, imposed a fine of \$1,500 for the electrical violation, a fine of \$1,500 for the life/safety violation, and a fine of \$1,500 for the nuisance violations, for a total of \$4,500, payable within 90 days of the date of this Decision and

Order. The Board also ordered that the Licensee complete the work ordered and submit certifications of completion within 90 days of the date of this Decision and Order.

Payment of the fines imposed shall be remitted to the attention of Heather Greenleaf, Maine Manufactured Housing Board Clerk, Maine Department of Professional and Financial Regulation, 35 State House Station, Augusta, Maine 04333-0035 by check or money order payable to the Treasurer, State of Maine.

So Ordered.

Dated: September 7, 2016


Theresa Desfosses, Acting Chair
Maine Manufactured Housing Board

V. APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. § 11002 and 10 M.R.S. § 8003(5-A), any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Decision and Order. The petition shall specify the person seeking review, the manner in which they are aggrieved, and the final agency action that they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought, and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the State of Maine Manufactured Housing Board, all parties to the agency proceedings, and the Attorney General.