

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF FLORIDA LAND SALES, )  
CONDOMINIUMS, AND MOBILE HOMES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 99-0780  
 )  
GEORGE LEMPENAU, PRESIDENT, )  
FOUR MARNAN, INC., ARCADIA )  
PEACE RIVER CAMPGROUND, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Upon due notice, William R. Cave, an Administrative Law Judge for the Division of Administrative Hearings, held a formal hearing in this matter on April 26, 1999, in Arcadia, Florida.

APPEARANCES

For Petitioner: Eric H. Miller, Esquire  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1007

For Respondent: George Lempenau, Qualified Representative  
2998 Northwest Highway 70  
Arcadia, Florida 34266

STATEMENT OF THE ISSUE

Did Respondent violate Section 723.037(1), Florida Statutes, by failing to give timely written notice of rent increase on mobile home lots, and, if so, what penalty should be imposed?

PRELIMINARY STATEMENT

By a Notice to Show Cause issued on February 1, 1999, the Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) made the following allegations: 1. Respondent Four Marnan, Inc., failed to pay annual fees, to the Division, for the years 1996 and 1997 by December 31 of each year, in violation of Section 723.007, Florida Statutes; and 2. Respondent implemented and collected a lot rent increase of \$30 a month without giving written notice of at least 90 days prior to any increase, in violation of Subsection 723.037(1), Florida Statutes. By letter dated February 5, 1999, Respondent denied the allegation contained in the Notice to Show Cause and requested a formal hearing. Additionally, Respondent challenged the Division's authority to regulate its business. By letter dated February 18, 1999, the Department referred this matter to the Division of Administrative Hearings for the assignment of an Administrative Law Judge and for the conduct of a formal hearing. On March 12, 1999, the Division filed an Amended Notice to Show Cause and Petitioner's Motion to Amend Notice to Show Cause.

The Amended Notice to Show Cause dismissed the first allegation contained in the Notice To Show Cause and added the following allegation: Respondent, Four Marnan, Inc., implemented and collected a lot rent increase of \$15.00 per month, effective on January 1, 1998, without giving written notice at least 90 days prior to any increase, in violation of Subsection 723.037(1), Florida Statutes. Without objection from the Respondent, the motion to amend was granted and the matter proceeded forward on the Amended Notice to Show Cause as the charging document.

At the hearing, the Division presented the testimonies of Charles Collins, Arthur McRae, and John Floyd. The Division's Exhibits Numbered 2-8 were received as evidence. Respondent presented the testimony of George Lempenau but offered no documentary evidence. The Final Order in Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes vs. Four Marnan, Inc., d/b/a Arcadia Peace River Campground, Docket No. 98-007, dated June 26, 1998, was officially recognized.

There was no transcript of this proceeding filed with the Division of Administrative Hearings. Petitioner, the Division, filed its Proposed Recommended Order. Respondent filed a two-page letter which will be considered as its Proposed Recommended Order.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence adduced at the hearing, the following relevant findings of fact are made:

1. At all times pertinent to this proceeding, Respondent owned the Arcadia Peace River Campground (Campground) located in DeSoto County, Florida, whose mailing address is 2988 Northwest Highway 70, Arcadia, Florida 34266.

2. From October 3, 1996 through March 21, 1998, the Campground had 14 or more of its mobile home lots occupied by mobile homes.

3. From October 3, 1996 through March 21, 1998, seven or more of the mobile homes located in the Campground were owned by residents of the Campground other than Respondent. Furthermore, these mobile homes were placed on lots leased by the mobile home residents from the Campground.

4. From October 3, 1996 through March 21, 1998, four or more of the mobile homes located in the Campground were owned by Respondent's employees and placed on lots in the Campground. The rental for these lots was considered as part of the employees' compensation.

5. On January 1, 1997, Respondent implemented and began collecting a \$30.00 increase in the monthly lot rental from those mobile home owners leasing spaces in the Campground.

6. Respondent gave the affected mobile home owners written notice of the January 1, 1997, monthly lot rental increase on November 26, 1996, some 36 days prior to the effective date (January 1, 1997) of the increase. No other notice of the lot rental increase was given to the affected mobile home owners.

7. Respondent collected the \$30.00 lot rental increase from the affected mobile home owners during the period from January 1, 1997, through March 21, 1998.

8. On January 1, 1998, Respondent implemented and began collecting a \$15.00 increase in the monthly lot rental from those mobile home owners leasing spaces in the Campground.

9. Respondent gave the affected mobile home owners written notice of the January 1, 1998, monthly lot rental increase on October 28, 1997, some 65 days prior to the effective date of the increase.

10. Respondent collected the \$15.00 monthly lot rental increase from January 1, 1998, through March 21, 1998.

11. Each of the following affected mobile home owners paid both the \$30.00 monthly lot rental increase from January 1, 1997, through March 21, 1998 and the \$15.00 monthly lot rental increase from January 1, 1998, through March 21, 1998:

- (a) Charles Collins;
- (b) Arthur P. McRae;
- (c) Harold Martin;
- (d) Maurice W. Jackson;
- (e) Robert F. Martin;
- (f) Irene K. Apps and;
- (g) Reba Conner.

12. On March 21, 1998, the Peace River flooded the Campground. The mobile homes located in the Campground were damaged. Subsequently, the mobile homes were removed from the Campground, purchased by Respondent, or were purchased by one or more new employees of Respondent.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.57(1), Florida Statutes.

14. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 2d DCA 1981). To meet this burden, the Division must establish facts upon which its allegations are based by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection vs. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

15. Section 723.002(1), Florida Statutes, provides in pertinent part as follows:

The provisions of this chapter apply to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease. . . . (Emphasis furnished)

16. The Campground comes within the definition of "mobile home park" as that term is defined in Section 723.003(6), Florida

Statutes, and at all times pertinent to these proceedings, the Campground was renting or leasing 10 or more spaces for the placement of "mobile homes" as that term is defined in Section 723.003(3), Florida Statutes. Without question, the Respondent comes under the jurisdiction of the Division to be regulated under Chapter 723, Florida Statutes. See Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes vs. Four Marnan, Inc., d/b/a Arcadia Peace River Campground, Docket No. 98-007, Final Order entered June 26, 1998.

17. Section 723.037(1), Florida Statutes, provides in pertinent part as follows:

(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days prior to any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. (Emphasis furnished)

Respondent failed to comply with Section 723.037(1), Florida Statutes, by imposing a lot rental increase on January 1, 1997, and January 1, 1998, without a timely notice of that increase to the affected mobile home owners in the Campground.

18. Section 723.006(5) and (9), Florida Statutes, provides in pertinent part as follows:

In performing its duties, the division has the following powers and duties:

\* \* \*

(5) Notwithstanding any remedies available to mobile home owners, mobile home park

owners, and homeowners' associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or any rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against a developer, mobile home park owner, or homeowners' association, or its assignee or agent, as follows:

\* \* \*

(b) The Division may issue an order requiring the mobile home park owner, or its assignee or agent, to cease and desist from an unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. The affirmative action may include the following:

1. Refunds of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons collected in violation of the terms of this chapter.

\* \* \*

3. Reasonable action necessary to correct a statutory or rule violation.

(c) In determining the amount of civil penalty or affirmative action to be imposed under this section, if any, the division must consider the following factors

1. The gravity of the violation.

2. Whether the person has substantially complied with the provisions of this chapter.

3. Any action taken by the person to correct or mitigate the violation of this chapter.

\* \* \*

(e)1. The division may impose a civil penalty against a mobile home park owner or homeowners' association, or its assignee or agent, for any violation of this chapter, a properly promulgated park rule or regulation, or rule or regulation promulgated pursuant hereto. A penalty may be imposed on the basis of each separate violation and, if the violation is continuing one, for each day of continuing violation, but in no event may the penalty for each separate violation or for each day of continuing violation exceed \$5,000. . . .

\* \* \*



(9) A minor violation means a violation which does not endanger the health, safety, or welfare of mobile home residents, which does not involve the failure to make full and fair disclosure, or which does not cause economic harm to mobile home park residents.  
(Emphasis furnished)

19. Although Respondent's failure to give a timely notice of the lot rental increase does not fall within those violations listed in Rule 61B-35.002, Florida Administrative Code as being minor violations, the rule does not preclude the Division from considering other violations as minor violations provided those violations fall within the definition of a minor violation as defined in Section 723.006(9), Florida Statutes. However, since Respondent's failure to give the affected mobile home owners a timely notice of lot rental increase resulted in his failure to make full and fair disclosure and therefore resulted in economic harm to the affected mobile home owners, it does not constitute a minor violation.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, and having specifically reviewed the factors set out in Section 723.006(5)(c), Florida Statutes, it is recommended that the Division enter a final order assessing Respondent with an administrative fine of \$500.00. It is further recommended that Respondent be ordered to refund to Charles Collins, Arthur P. McRae, Harold Martin, Maurice W. Jackson, Robert F. Martin, Irene K. Apps, and Reba Conner all sums collected from these

individuals as increases in lot rental during the period of  
January 1, 1997 through March 21, 1998.

DONE AND ENTERED this 16th of June, 1999, in Tallahassee,  
Leon County, Florida.

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WILLIAM R. CAVE  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of June, 1999.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.