

9-19-01

Final Order No. BPR-2001-04229 Date: 10-10-01

**FILED**

**FILED**

Department of Business and Professional Regulation  
AGENCY CLERK

01 OCT 12 PM 2: 13

Sarah Wachman, Agency Clerk

DIVISION OF ADMINISTRATIVE HEARINGS  
STATE OF FLORIDA

By: Brandon M. Nichols

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES**

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,  
 DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES,  
 Petitioner,

v.

CHESTER YU, RONALD YU, AND KAROL YU,  
 Respondents.

AT  
 Rem-clos

DOAH CASE NO. 01-2350  
 Division Docket  
 No. MH2001-015

**FINAL ORDER**

The Director of the Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) enters this Final Order in the above referenced matter.

**PRELIMINARY STATEMENT**

The Division served Chester Yu, Ronald Yu, and Karol Yu, Respondents, the mobile home park owner (Owner) with a Notice to Show Cause (Notice) in March 2001. Owner requested a formal hearing on April 2, 2001. An amended Notice to Show Cause to correct the designation of the Respondent was entered on April 24, 2001. Karol Yu was dropped as a party. The Respondent has been

corrected to show that the park is owned by Chester and Ronald Yu as trustees for the Patricia Yu Irrevocable Trust.

The Notice charged Owner with violating section 723.031(5), Florida Statutes, by imposing a rent increase, as an invalid "pass-through" charge, of \$28.61 per lot per month, effective December 1, 2000, during the term of the current rental agreements that began on May 1, 2000, to cover the cost of repairing the electrical distribution system that serves the park.

The Notice advised the Owner of its right to request a formal hearing or an informal proceeding pursuant to chapter 120, Florida Statutes. Owner timely requested a formal hearing, which took place on August 17, 2001, before Administrative Law Judge Robert E. Meale (ALJ). The procedural history of the proceedings before the ALJ are set out in the Recommended Order, which is adopted in full and incorporated in this Final Order. The Recommended Order is attached as exhibit A.

On October 8, 2001, Respondent filed exceptions to the Recommended Order.

#### **RULING ON EXCEPTIONS FILED BY RESPONDENT**

1. Owner enumerates seven exceptions to the Recommended Order. Because Owner did not file a copy of the transcript of the hearing, the Division is unable to review the entire record. Therefore, the Division may not reject or modify any of the findings of fact in the Recommended Order. See *Financial Marketing Group, Inc. v. State, Dep't of Banking and Finance*, 352 So. 2d 524 (Fla. 3d DCA 1977).

2. Owner's first objection is to the ALJ's finding, paragraph 1, that "The Patricia Yu Irrevocable Trust owns Tanglewood Mobile Home Park, Inc." and that Chester and Ronald Yu are the trustees for the trust. Owner states that this is contrary to an agreement of the parties, who stipulated that Chester and Ronald Yu were trustees of the Patricia Yu Irrevocable Trust, which held title to Tanglewood Mobile Home Park. The division does not contest this stipulation, but without a transcript to review the record is unable to modify the ALJ's factual finding.

3. Owner objects to the ALJ's finding, paragraph 2, that Owner's father originally owned and operated the park for many years. Owner objects to the ALJ's finding, paragraph 5, as "incorrectly stat[ing] that only 148 lots are improved and available for rent" on the grounds that Chester Yu testified that 143 lots were improved for leasing, but only 139 lots were assessed the pass-through charge because four lots were not included in the electrical work done at the park. Owner disagrees with the ALJ's finding, paragraphs 23, 24 and 25, that the work was a repair and not a capital improvement by citing to its expert's testimony and discounting other evidence presented. Owner disagrees with the ALJ's conclusion that the replacement of the park's electrical distribution system did not fall within the definition of a "pass-through" charge.

4. Florida case law holds that an agency reviewing a recommended order is not authorized to reevaluate the quantity and quality of the evidence presented at an administrative hearing beyond determining whether the evidence is competent and substantial. *Brogan v. Carter*, 671 So.2d 822, 823 (Fla. 1st

DCA 1996). On reviewing a recommended order, an agency may not reweigh the evidence, resolve the conflicts, or judge the credibility of witnesses, as those are evidentiary matters within the province of the ALJ as the fact-finder. See *Martucci v. Dep't of Prof. Reg.*, 622 So. 2d 607 (Fla. 1st DCA 1993); *Heifetz v. Dep't of Bus. Reg.*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). The Division is bound by the ALJ's factual findings where the record of the hearing discloses any competent substantial evidence supporting the findings of fact. *Florida Dep't of Corrections v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987).

5. Even if the agency had the record to review, Owner's exceptions would be rejected because they would require the agency to reweigh the credibility of witnesses, reassess evidence, resolve conflicts in testimony, and draw different conclusions as to the facts based on this reassessment. See § 120.57(1)(l), Fla. Stat.; *Martucci v. Dep't of Prof. Reg.*, 622 So. 2d at 609.

6. Owner's exceptions 1, 2, 3, 4, 5, 6, and 7 are rejected as they are requests to reweigh the evidence or resolve alleged conflicts in the evidence without a complete record to review. See 120.57(1)(l), Fla. Stat.; *Martucci*, 622 So. 2d at 609; *Brogan*, 671 So. 2d at 823..

7. To the extent Owner's exceptions 4, 5, 6 and 7 may be construed as objections to legal conclusions, they are rejected. The Division adopts the ALJs findings and conclusions as limited to the facts of this case as being correct on these facts and rejects all of Owner's exceptions.

## FINDINGS OF FACT

8 The Division adopts and incorporates by reference the Findings of Fact set forth in the Recommended Order.

**CONCLUSIONS OF LAW**

9. The Division adopts and incorporates by reference the Conclusions of Law set forth in the Recommended Order.

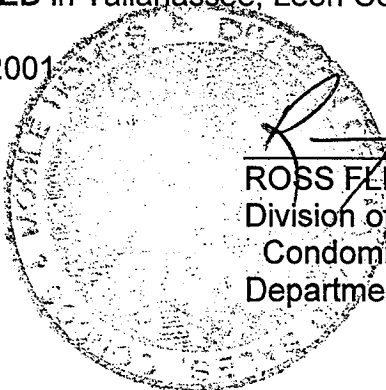
**ORDER**

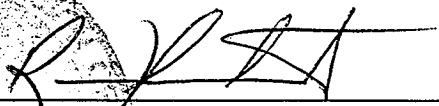
Based on the foregoing findings of fact and conclusions of law, it is **ORDERED** that:

1. Chester Yu and Ronald Yu as trustees for the Patricia Yu Irrevocable Trust cease and desist collecting the invalid pass through charge of \$28.61 per month per lot and from any further violations of chapter 723, Florida Statutes; and

2. Respondent shall pay a penalty of \$250 by cashier's check or money order made payable to State of Florida, Department of Business and Professional Regulation within 45 days of the date of this Order, which Respondent shall mail by certified mail to Peter Butler, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1030.

**DONE and ORDERED** in Tallahassee, Leon County, Florida, this 8<sup>th</sup> day of October, 2001.



  
ROSS FLEETWOOD, Director  
Division of Florida Land Sales,  
Condominiums, and Mobile Homes  
Department of Business and

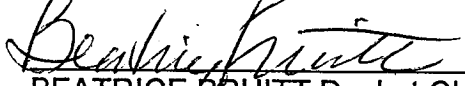
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1030

NOTICE OF RIGHT OF APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE  
APPEALED BY ANY PARTY SUBSTANTIALLY AFFECTED BY THIS FINAL  
ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE  
9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE  
OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d),  
FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE  
APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE  
APPROPRIATE FILING FEE, AND WITH THE AGENCY CLERK, DEPARTMENT  
OF BUSINESS AND PROFESSIONAL REGULATION, AT 1940 NORTH  
MONROE STREET, TALLAHASSEE, FLORIDA 32399-1007 WITHIN THIRTY  
(30) DAYS OF THE RENDITION OF THIS ORDER.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail to Respondent c/o Bernard Conko, Cohen, Norris, Scherer, Weinberger & Wolmer, 712 U.S. Highway One, West Palm Beach, Florida 33408, this 11<sup>th</sup> day of October, 2001

  
BEATRICE PRUITT, Docket Clerk

Copies furnished to:

Division of Administrative Hearings  
Janis Sue Richardson, Office of the General Counsel  
Peter Butler, Chief, Bureau of Compliance