

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 JOHN BACHMEIER, et al.,

No. 14F-L1415003-BFS

4 Petitioners,

**ADMINISTRATIVE
LAW JUDGE DECISION**

5 vs

6 HOLIDAY PALMS MOBILE HOME PARK,

7 Respondent.

9 **HEARING:** November 21, 2014, at 8:00 a.m.

10
11 **APPEARANCES:** John Bachmeier, et al. (hereinafter "Petitioners") was
12 represented by Arthur Chick from Arizona Association of Manufactured Homeowners
13 ("AAMHO"). Holiday Palms Mobile Home Park (hereinafter "Holiday") was represented
14 by its attorney, Michael A. Parham, Esq., Williams, Zinman & Parham P.C.

15 **ADMINISTRATIVE LAW JUDGE:** M. Douglas

17 After filing the Petition in this matter, Petitioners failed to submit sufficient
18 credible evidence to establish facts to support the Petition. Therefore, it is
19 recommended that the Petition be dismissed in its entirety.

20 **FINDINGS OF FACT**

21 1. Holiday is an age restricted (55+) mobile home park located in Mesa,
22 Arizona. Petitioners are residents of Holiday.

23 2. Petitioners filed a Petition with the Department of Fire, Building and Life
24 Safety ("the Department") against Holiday alleging violations of A.R.S. § 41-2155(E),
25 and the Arizona Mobile Home Residential Landlord Tenant Act, A.R.S. § 33-1434.

26 3. Petitioners specifically alleged that Holiday had failed to supply all utilities to
27 homeowners in the mobile home park. Petitioners asserted that the telephone
28 company (identified as CenturyLink) that supplied landline service to Petitioners had
29 filed a tariff with the Arizona Corporation Commission refusing to service or repair
30 communications lines on private property unless the property owner agreed to certain
conditions, including: (1) To provide a conduit or adequate trench for the telephone

1 company's cable; (2) To dig to the fault, open a trench, or provide a conduit; and (3) To
2 be responsible for any pavement cuts and restoration.

3 4. Petitioners asserted that Holiday had refused to meet the conditions imposed
4 by the telephone company and that Holiday had refused to allow the telephone
5 company to run telephone lines above the ground. Petitioners asserted that they were
6 facing the loss of landline communication services that were medically necessary for
7 the Petitioners.

8 5. Holiday's response to the petition denied all claims and asserted that the
9 telephone company is responsible for providing telephone service to its customers who
10 reside in the mobile home park, not Holiday.

11 **Testimony of John Bachmeier**

12 6. John Bachmeier (hereinafter "Mr. Bachmeier") testified that he is 90 and 1/2
13 years old and a World War II veteran. Mr. Bachmeier stated that having telephone
14 landline service is essential for older people to contact emergency responders and
15 immediate family reliably.

16 7. Mr. Bachmeier testified that he had lived in Holiday for fifteen and one-half
17 years. Mr. Bachmeier stated that he had landline telephone service when he moved
18 into Holiday. Mr. Bachmeier testified that his landline telephone service "broke" on July
19 17, 2014, and that he has been without landline telephone service since that date.

20 8. Mr. Bachmeier testified that, initially, the telephone company tried to repair
21 the landline telephone service by laying an above-ground line to his residence. Mr.
22 Bachmeier stated that the telephone company removed the above-ground telephone
23 line when Holiday refused to sign a release of liability for the above-ground line. Mr.
24 Bachmeier testified that the above-ground telephone line was approximately 43 feet
25 long. Mr. Bachmeier stated that the telephone line has not been repaired.

26 9. Mr. Bachmeier acknowledged that he had current telephone service through
27 his cell phone. Mr. Bachmeier testified that the cell phone was more expensive and
28 less reliable than a landline telephone. Mr. Bachmeier stated that he would like to have
29 his landline telephone back because he would like to be able to use his answering
30 machine.

1 10. Mr. Bachmeier testified that a telephone company installed the landline
2 telephone in his residence. Mr. Bachmeier acknowledged that Holiday was not
3 involved in the installation of the landline telephone. Mr. Bachmeier stated that he paid
4 the telephone company directly for the landline telephone service.

5 11. Mr. Bachmeier acknowledged that the telephone company was asking
6 Holiday to be responsible for digging trenches or to provide conduits for the telephone
7 company's telephone line or to sign a waiver of liability for the laying of above-ground
8 telephone lines. Mr. Bachmeier asserted that either Holiday or the telephone company
9 should pay the cost of repairing the landline telephone.

10 12. Mr. Bachmeier testified that by definition, telephone service is a utility. Mr.
11 Bachmeier stated that there are already numerous telephone lines that were laid on top
12 of the ground in Holiday. Mr. Bachmeier opined that the utility lines lying on top of the
13 ground were not hazardous because they were on Mr. Bachmeier stated that he did not
14 regard the cost of digging of a trench three of four inches as being an unreasonable
15 expense for Holiday.

16 **Testimony of Susan L. Brenton**

17 13. Susan L. Brenton (hereinafter "Ms. Brenton") testified that she is the
18 executive director Manufactured Housing Communities of Arizona ("MHCA"). Ms.
19 Brenton stated that she had been with MHCA for 11 years. Ms. Brenton testified that
20 prior to her employment with MHCA she had been employed by AAMHO.

21 14. Ms. Brenton testified that she was working for AAMHO when the Mobile
22 Home Parks Residential Landlord and Tenant Act (hereinafter "the Act") was changed
23 in 1987. Ms. Brenton stated that only essential utilities were referred to in the Act,
24 including electrical, gas, water, sewer, and trash utilities. Ms. Brenton testified that no
25 effort was made to include telephone or telecommunication services as utilities that
26 were required to be furnished by mobile home parks.

27 15. Ms. Brenton testified that residents in mobile home parks did not
28 experience any problems relating to telephone service until the telephone company
29 stopped maintaining its legacy landline telephone service. Ms. Brenton stated that
30 mobile home parks were not subject to the telephone company's tariff. Ms. Brenton

1 testified that she did not believe that the Arizona Corporation Commission could hold
2 mobile home park owners responsible for maintaining the telephone company's legacy
3 telephone lines. Ms. Brenton opined that laying telephone lines on top of the ground
4 presented an unacceptable tripping hazard.

5 16. Ms. Brenton testified that digging trenches for telephone lines could be
6 quite expensive and transferring the cost of digging trenches from the telephone
7 company to mobile home parks would be enormously expensive. Ms. Brenton stated
8 that if mobile home parks were required to maintain the telephone company's legacy
9 telephone lines, the cost would necessarily be passed on to tenants in the form of rent
10 increases. Ms. Brenton acknowledged that most mobile home parks maintained
11 reserves for emergency maintenance. Ms. Brenton testified that she did not see why a
12 mobile home park owner should be responsible for maintaining a telephone service that
13 it did not install and from which it received no income.

14
15 **PROVISIONS OF LAW AND THE RENTAL AGREEMENT**
16 **REFERENCED AT HEARING**

17 1. A.R.S. § 41-2155 provides as follows:

18 A. No building code or local enforcement agency or its adopted
19 building codes may require, as a condition of entry into or sale in
20 any county or municipality, that any unit which has been certified
21 pursuant to this article be subjected to any local enforcement
22 inspection to determine compliance with any standard covering
23 any aspect of the unit which is inspected pursuant to this article.

24 B. Except where a local enforcement agency participates in the
25 office permit and insignia issuance program for the installation of
26 manufactured homes, mobile homes, factory-built buildings and
27 accessory structures and inspection of such installations, no local
28 enforcement agency shall subject any unit installed to any local
29 inspections or charge a fee for any services provided pursuant to
30 this article.

31 C. A local enforcement agency in any county or municipality shall
32 recognize the minimum standards of the act as equal to any
33 nationally accepted or locally adopted building code standard.

1 D. Nothing in subsection A, B or C of this section shall prevent
2 the application of local codes and ordinances governing zoning
3 requirements, fire zones, building setback, maximum area and fire
4 separation requirements, site development and property line
5 requirements and requirements for on-site utility terminals for
6 factory-built buildings, manufactured homes and mobile homes.

7 E. Notwithstanding any other provision of this section, the owner
8 of a manufactured home or mobile home located in a park subject
9 to title 33, chapter 11 is responsible for the maintenance of utility
10 connections from any outlets furnished by the landlord pursuant
11 to section 33-1434 to the unit, except that the landlord is
12 responsible for the maintenance of connections for any distance
13 greater than twenty-five feet to the point at which the utility
14 connections are the property of the providing utility company if the
15 outlet is located outside the lot line of the owner's unit and is
16 more than twenty-five feet from the unit. A local enforcement
17 agency that determines that local code requirements are not
18 being met or that maintenance or safety activities are needed for
19 utility connections may not require anyone except the responsible
20 party to perform or pay for such activities.

21 2. A.R.S. § 33-1434 provides as follows:

22 A. The landlord shall:

23 1. Comply with the requirements of all applicable city, county and
24 state codes materially affecting health and safety.

25 2. Make all repairs and do whatever is necessary to put and keep
26 the premises in a fit and habitable condition.

27 3. Keep all common areas of the premises in a clean and safe
28 condition.

29 4. Maintain in good and safe working order and condition all
30 swimming pool, shower, bathhouse, electrical, plumbing and
sanitary facilities, including the recreational hall or meeting
facilities supplied or required to be supplied or maintained by him.

5. Provide for removal of garbage, rubbish, and other waste
incidental to the occupancy of the mobile home space.

6. Furnish outlets for electric, water and sewer services. The
landlord shall also furnish a prospective tenant with information

concerning the type, size and power rating of all electrical, water and sewer connections.

7. Provide a statement of proposed interruption of utility service to the tenants within a reasonable time frame except in the case of an interruption caused by an emergency. An emergency does not include any failure or refusal on the part of the landlord to fulfill his duties and obligations as specified in this section. A statement of proposed interruption of utility service may be provided by posting an announcement of the period of the interruption in a conspicuous place within the mobile home park or by individual delivery to each tenant.

B. A mobile home park landlord shall not impose any conditions of rental or occupancy which restrict the mobile home owner in his choice of a seller of fuel, furnishings, goods, services or mobile homes connected with the rental or occupancy of a mobile home space unless such condition is necessary to protect the health, safety, aesthetic value or welfare of mobile home residents in the park. However, the landlord may impose reasonable conditions relating to central gas, oil, electricity, or water meter systems in the park.

3. **APPLICABLE PROVISIONS OF PARTIES' RENTAL AGREEMENT**¹

UTILITIES. Utility service shall be paid for as indicated below:

- A. Electricity Resident pays: S.R.P.
- B. Natural Gas Resident pays: City of Mesa
- C. Water Resident pays: Holiday
- D. Sewer/Septic Resident pays: Holiday
- D. Trash Resident pays: Holiday

CONCLUSIONS OF LAW

1. The Burden of proof at an administrative hearing is generally upon the Petitioner. *Utah Construction Company v. Berg et al*, 68 Ariz. 285, 205 P.2d 367 (1949). Further, the standard of proof at hearing is a "preponderance of the evidence." *Smith v. Arizona Dept. of Transportation*, 146 Ariz. 430, 706 P.2d 756 (App. 1985).

2. The Department referred this case to the Arizona Office of Administrative Hearings pursuant to A.R.S. §§ 41-2198 and 41-2198.01(E). This Office has

1 jurisdiction to hear and decide the petition pursuant to A.R.S. §§ 41-1092.02, 41-2198,
2 and 41-2198.02.

3 3. Pursuant to A.R.S. § 41-2198.01(A), “[a] person who is subject to title 33,
4 chapter 11 or a party to a rental agreement entered into pursuant to title 33, chapter 11
5 may petition the department for a hearing concerning violations of the Arizona mobile
6 home parks residential landlord and tenant act by filing a petition with the department
7 and paying a fifty dollar filing fee”

8 4. Pursuant to A.R.S. § 41-2198.02(A), “[t]he administrative law judge may order
9 any party to abide by the statute, condominium documents or contract provision at
10 issue and may levy a civil penalty on the basis of each violation...”

11 5. Pursuant to A.R.S. § 41-2198.02(B), “[t]he order issued by the administrative
12 law judge is binding on the parties unless a rehearing is granted pursuant to § 41-
13 2198.04 based on a petition setting forth the reasons for the request for rehearing, in
14 which case the order issued at the conclusion of the rehearing is binding on the parties.
15 . . . The order issued by the administrative law judge is enforceable through contempt
16 of court proceedings.”

17 6. Petitioners’ petition alleged that Respondent violated A.R.S. § 41-2155(E),
18 which is quoted above, and requires landlords to furnish utility connections that are
19 located within twenty-five feet of any unit located in the mobile home park. The alleged
20 violation of A.R.S. § 41-2155 is not within the purview of the Arizona Mobile Home
21 Parks Residential Landlord and Tenant Act found at Arizona Revised Statutes Title 33,
22 Chapter 11 (A.R.S. §§ 33-1401 through 33-1491).

23 7. Petitioners’ petition also alleges that Respondent violated A.R.S. § 33-
24 1434(A)(6), which is quoted above and requires a landlord to “[f]urnish outlets for
25 electric, water and sewer services.” Mr. Bachmeier testified that a telephone company
26 installed the landline telephone in his residence. Mr. Bachmeier acknowledged that
27 Holiday was not involved in the installation of the landline telephone. Mr. Bachmeier
28 stated that he paid the telephone company directly for the landline telephone service.
29 Mr. Bachmeier acknowledged that he had current telephone service through his cell

30 ¹ See Rental Agreement, page 4, attached to Petition.

1 phone. Petitioners failed to prove by a preponderance of credible evidence that
2 Holiday violated the charged provision of A.R.S. § 33-1434 by failing to maintain the
3 premises of the mobile home park in a fit and habitable condition.

4 5. This case is governed by the Arizona Mobile Home Parks Residential
5 Landlord and Tenant Act found at Arizona Revised Statutes Title 33, Chapter 11
6 (A.R.S. §§ 33-1401 through 33-1491). The furnishing of outlets for telephone lines,
7 and the maintenance thereof, is not a utility that is required by Arizona Mobile Home
8 Parks Residential Landlord and Tenant Act found at Arizona Revised Statutes Title 33,
9 Chapter 11 (A.R.S. §§ 33-1401 through 33-1491).

10 6. This Tribunal concludes that since the factual basis of the Petition was not
11 established by the greater weight of the evidence at hearing, the Petitioners have failed
12 to meet their burden of proof, and that the Petition should be dismissed in its entirety.

13 **RECOMMENDED ORDER**

14 In view of the foregoing, it is ORDERED that this Petition shall be dismissed in
15 its entirety.

16 *In the event of certification of the Administrative Law Judge Decision by the*
17 *Director of the Office of Administrative Hearings, the effective date of this Order will be*
18 *five (5) days from the date of that certification.*

19 Done this day, December 10, 2014.

20 /s/ M. Douglas
21 Administrative Law Judge
22

23 Transmitted electronically to:

24 Gene Palma, Director
25 Department of Fire Building and Life Safety
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