

NO. 49836-7-II

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**COURT OF APPEALS, DIVISION II**  
**OF THE STATE OF WASHINGTON**

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EDNA ALLEN, an individual,

and

MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM,  
WASHINGTON STATE ATTORNEY GENERAL'S OFFICE,

Petitioners,

v.

DAN & BILL'S RV PARK,

Respondent.

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REPLY BRIEF OF PETITIONER STATE OF WASHINGTON

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## I. INTRODUCTION

The paramount duty of the Attorney General is to “protect the interests of the people of the state.” *Reiter v. Wallgren*, 28 Wn.2d 872, 880, 184 P.2d 571 (1947). As the administrator of the Manufactured Housing Dispute Resolution Program (MHDRP or Program), the Attorney General’s duties include facilitating negotiations between manufactured housing landlords and tenants, investigating alleged violations of the Manufactured/Mobile Home Landlord Tenant Act (MHLTA or the Act), making determinations, and issuing fines and penalties against landlords and tenants if the Attorney General finds violations under MHLTA. *See* RCW 59.30.010(3)(c). The Act, in turn, extends tenant protections to those who live in manufactured housing and mobile home parks. The Legislature acknowledges that these parks “provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing.” RCW 59.22.010(1)(a). In administering the Program, the Attorney General is charged with protecting this housing-vulnerable population.

Over the years, the Legislature has amended MHLTA a number of times while maintaining protections of the Act for those tenants of manufactured/mobile home lots who reside in recreational vehicles (RVs) that they own. Indeed, Manufactured Housing Communities of

Washington (MHCW), which filed an amicus curiae brief in support of Dan & Bill’s RV Park (Dan & Bill’s), testified in support of many of these bills, which time and again stressed both the prevalence and the need to extend protections of MHLTA to low-income people who live in RVs as their primary residence. *See, e.g.*, Hearing Before the S. Fin. Insts., Hous. & Ins. Comm. on S.B. 6384, 61st Leg., Reg. Sess., at 53:55 (Wash. Jan. 27, 2010, 3:30 PM), <http://www.tvw.org/watch/?eventID=2010011059> (Park owner advocate John Woodring testifying “Let me state here unequivocally, that under the [MHLTA] . . . RVs that are primary residences . . . in manufactured housing communities . . . are subject to the [Act]”); *id.* (Walt Olsen, MHCW attorney, testifying that “the definition of ‘park model’ in 59.20.030 includes recreational vehicles that are intended as primary residences”); Hearing Before the H. Trade & Econ. Devel. Comm. on H.B. 1786, 58th Legl, Reg. Sess., at 1:40:20 (Wash. Feb. 20, 2003, 8:00 AM), <https://www.tvw.org/watch/?eventID=2003021167> (John Woodring, representing MHCW, testified in support in principle).

It is against this backdrop that Dan & Bill’s now pushes a crabbed and incorrect interpretation of “park model” onto this Court, one that would effectively strip tenant protections afforded under the Act from a vulnerable population whose housing choices are limited to primary residence in their RV or homelessness. Edna Allen, an elderly woman one

step from homelessness, lived in a park model trailer at Dan & Bill's. Resp. Br. at 7-8 (acknowledging Ms. Allen's residence in the park "upgraded [her] from transient, homeless, and penniless to sheltered"). Ms. Allen was not given a written rental agreement when she moved in. AR 864 (Findings of Fact (FOF) 4.60). Her rent was increased within *months* of moving in; after she complained to the Program, Dan & Bill's retaliated by increasing her monthly rent again, telling her it was to cover his attorney's fees. *Id.* (FOF 4.65-4.66).

Without the protections of MHLTA to stop these abusive practices, Ms. Allen and others in her situation would fare far worse. They would be afforded no protection under the law and treated as if they were casual RV campers spending a couple of days at a campground. *See* Resp. Br. at 41 (Dan & Bill's emphasizing that tenants are able to leave their plots in fifteen minutes to an hour). But Ms. Allen and other residents at Dan & Bill's are not casual campers, nor even "snowbirds" enjoying Washington's summers before returning to warmer winter climes, and they should not be treated as such. They are full-time, year-round residents living in parks like Dan & Bill's in recreational vehicles and park models that they own. For many of the tenants, moving their vehicles off the lot might be a possibility, but it was not a reality. Despite Dan & Bill's efforts to trivialize these actions, its tenants testified that they could not afford to

move from lot to lot and cited cost as a reason for living where they did for as long as they did. AR 1003:7-24 (Edna Allen Test.) (Ms. Allen testifying that the age and poor condition of her park model prevented her from moving to another park and noting she could not get a new trailer); AR 1016: 9-12 (Barbara Hamrick Test.) (“A lot of it’s financial. I can afford to be [at Dan & Bill’s]. And to rent a place, I’d never be able to afford it, I’ll probably just keep buying RVs and living in an RV court.”).

Dan & Bill’s encourages year-round residence on its lot and enjoys year-round rent payments as a result. In accepting these long-term tenants in their recreational vehicles, intended for permanent or semi-permanent installation, Dan & Bill’s is a “mobile home park” or “manufactured/mobile home community” under MHLTA and must comply with the Act.

## I. ARGUMENT

In its response brief, Dan & Bill’s presents a series of scattershot arguments designed to create an impression that MHLTA does not apply to Dan & Bill’s. All of these arguments miss their mark.

### A. **Dan & Bill’s Pierce County Proceedings Have No Bearing on This Appeal**

Dan & Bill’s correctly states that an agency order is arbitrary and capricious if it results from willful and unreasoning disregard of the facts and circumstances. *Pierce Cty. Sheriff v. Civil Serv. Comm’n of Pierce Cty.*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983) (noting that “[j]udging

whether the [agency's] decision was arbitrary and capricious requires an evaluation of the evidence produced at the hearing"). However, Dan & Bill's goes on to cite lengthy summaries of three proceedings involving Dan & Bill's – one in Pierce County Superior Court from 2010 and two in Pierce County District Court from 2001 and 2008, respectively – and not one involves the Attorney General or Edna Allen.

Dan & Bill's argues that one or more of the Pierce County proceedings "defeat[] any contention that the [ALJ Order] was arbitrary and capricious by bolstering the existence of room for two opinions." Resp. Br. at 31. The ALJ Order itself undermines Dan & Bill's argument by explicitly rejecting the Pierce County proceedings as persuasive evidence: "[T]hose resolutions are not binding on this tribunal and, more to the point, occurred several years ago in legal proceedings with different postures, with facts this tribunal is not privy to, and perhaps, with different versions of the relevant statutes. Accordingly, those arguments are not persuasive." AR 867 (Conclusion of Law (COL) 5.14).

The ALJ Order is correct on this issue, and to the extent that Dan & Bill's attempts to argue that the Attorney General is collaterally estopped from enforcing MHLTA against it, that argument fails.<sup>1</sup>

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<sup>1</sup> Dan & Bill's asks this Court to decide if the ALJ Order is "harmonious" with at least one Pierce County proceeding "where the same issue in this case was brief, litigated, and ruled upon with finality." Dan & Bill's Resp. Br. at 4. However, Dan & Bill's does not attempt to make a collateral estoppel argument, claiming only that the

Collateral estoppel precludes a party from raising issues that were actually litigated and determined in a prior action. The party asserting collateral estoppel must establish that:

(1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom issue preclusion is asserted was a party to, or in privity with a party to, the earlier proceeding; and (4) application of issue preclusion does not work an injustice on the party against whom it is applied.

*Ullery v. Fulleton*, 162 Wn. App. 596, 256 P.3d 406 (2011). “A court may apply issue preclusion only if all four elements are met.” *Id.* Dan & Bill’s does not establish that these elements have been met. The issues in the Pierce County proceedings are not identical to the matter on appeal and involve different laws with different policy considerations and different facts, most of which are unknown to this Court. The Attorney General was not a party nor in privity with a party involved in any of those prior actions. Finally, those proceedings are not binding in this Court.

Additionally, Dan & Bill’s misinterpreted this Court’s ruling in *Pierce County Sheriff* to mean that any similar ruling suggesting there could be “room for two opinions” would prevent this Court from holding that the ALJ Order was arbitrary and capricious. To the contrary, this Court only stated that an evaluation of whether an agency order was

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ALJ Order was “consistent” with the determinations in the prior Pierce County proceedings.

arbitrary and capricious should be based on the considered evidence at the hearing. The ALJ Order noted its pointed disregard of the earlier Pierce County proceedings, and this Court should similarly disregard them in determining whether the ALJ Order is arbitrary and capricious.

**B. Dan & Bill’s Attempts to Carve Itself Out From the Statutory Definitions in MHLTA Are Unavailing**

Dan & Bill’s muddles the definition of “mobile home park”<sup>2</sup> under RCW 59.20.030(10), which is actually a collective definition for “mobile home park,” “manufactured housing community,” and “manufactured/mobile home community.” Together, these three types of housing communities refer to “any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.” RCW 59.20.030(10).

Dan & Bill’s claims “[t]he MHLTA looks to the intent of the landlord and not the occupant – only a landlord can ‘hold out’ his or her premises for a particular purpose. ” Resp. Br. at 19. Further, Dan & Bill’s

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<sup>2</sup> Dan & Bill’s claims it is not a mobile home park because it “is not rented, nor held out for rent to others for the placement of two or more park models.” Resp. Brief, p. 19. This conclusory statement merely restates the issue before the Court, as the Attorney General introduced in his opening brief: “the question is whether Dan & Bill’s contains two or more park models to meet the definition of ‘mobile home park’ or ‘manufactured/mobile home community’ under MHLTA.” AGO Op. Br. at 18.

claims that because a “mobile home lot” is “a portion of a mobile home park . . . designated as the location of one . . . park model,” a landlord’s intent (through his or her ability to designate lots) controls whether a park can be deemed a “mobile home park.” RCW 59.20.030(9). In making these claims, Dan & Bill’s overstates the fact that RCW 59.20.030(10) creates the only *exception* from the definitions of “mobile home park,” “manufactured housing community,” and “manufactured/mobile home community” for housing communities that are “not intended for year-round occupancy.” In other words, the Legislature exempted campgrounds and other transient housing arrangements from MHLTA but did not exempt parks like Dan & Bill’s where tenants live continuously in mobile homes, manufactured homes, or park models that serve as their primary residences. The Court should look to *how* the park is actually used, not what the landlord now claims was the intended purpose of the park.<sup>3</sup>

Next, Dan & Bill’s claims that “the ALJ found [Dan & Bill’s] does not hold out the Premises for year round occupancy.” Resp. Br. at 19. This is not accurate. The ALJ Order concludes, “[h]ere, the residents pay money for the privilege to place their units in the Park live in them

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<sup>3</sup> RCW 59.20.080(3) states “[t]his chapter governs the eviction of mobile homes, manufactured homes, park models, and recreational vehicles used as a primary residence from a mobile home park.” The Legislature clearly acknowledges that tenants (1) do utilize recreational vehicles as primary residence in mobile home parks and (2) should be afforded protections from eviction. The Legislature has been consistent and unambiguous in its intent to protect tenants who reside in recreational vehicles – even those who do not qualify as park models - if they are used as primary residences in mobile home parks.

*continuously.*” AR 868 (COL 5.17) (emphasis added). Dan & Bill’s cannot collect rent from year-round, full-time tenants year after year and credibly contend that it does not hold itself out for year-round occupancy.

Dan & Bill’s argues to this Court that the quality of its utility connections, the electrical amperage available at the park, and the allegedly superior installation requirements of manufactured homes prevents Dan & Bill’s from being deemed a “mobile home park” under the Act. However, a “mobile home park” under MHLTA is not defined by the quality of the utility infrastructure available at the park. Rather, a mobile home park is defined by the type of housing units owned by the tenants for year-round occupancy. RCW 59.20.030(10). Equally irrelevant to the Court’s analysis is whether Dan & Bill’s is located in a flood-prone area.<sup>4</sup> Nor are the standards for construction installation of manufactured and mobile homes set forth in RCW 43.22A relevant to the determination of whether Dan & Bill’s is a mobile home park under RCW 59.20. Indeed, these standards are irrelevant because RCW 43.22A does not discuss or reference park models at all.

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<sup>4</sup> Dan & Bill’s separately argues that because its location is prone to flooding, it should not be held to comply with MHLTA, otherwise it would have to shut down during a flood, presumably because Dan & Bill’s could not “remedy the defect within the time allotted by RCW 59.20.200.” RCW 59.20.230. This scenario has no bearing on whether Dan & Bill’s is subject to MHLTA. Moreover, Dan & Bill’s scenario is not borne out by the record: some tenants testified that they have not had to move or merely move to other parts of the park during times of flood. AR 1057:23-25 (Ed Shinkle Test.) (did not move at all during flood); AR 1014: 7-9 (Hamrick Test.) (noting during a flood “in the park, we have another road that we can move to, so that’s where we’ve been so far in it”).

**C. The Court Must Apply the Definition of “Park Model” That Is in RCW 59.20.030(14)**

Dan & Bill’s tries to get around the definition of “park model” under MHLTA by variously referencing different definitions from other statutes, citing lay witness opinions, even showcasing pictures plucked from marketing web sites. All of its attempts fail.

Dan & Bill’s suggests that “park model” should be defined as the term is used in *Brotherton v. Jefferson Cty.*, 160 Wn. App. 699, 249 P.3d 666 (2011), since it “closely tracks what witnesses articulated to be a park model in the testimony at this hearing.” Resp. Br. at 20. First, *Brotherton* did not address MHLTA at all, and the *Brotherton* court did not analyze definition of “park model” under MHLTA. Indeed, the ALJ Order explicitly rejected the definition of “park model” under *Brotherton* as “operat[ing] within the context of land use regulations, and specifically not regarding landlord-tenant relations. There was no landlord or tenant, and the unit in question was a guest house on a residential property.” AR 867-68 (COL 5.15). The ALJ Order stated that *Brotherton* did not offer “circumstances and facts sufficiently analogous to this case to provide guidance, much less precedence.” *Id.*

Additionally, Dan & Bill’s cites its tenants’ lay opinions as support that their residences do not meet the legal definition of “park model,” even though the same tenants also testified they did not know the statutory

definition of “park model” in RCW 59.20. See, e.g., AR 1024:24-1025:1 (Hamrick Test.); AR 1035:6-8, 1052:8-15 (Matthew Niquette Test.); AR 1063:17-19 (Shinkle Test.); AR 1094:2-4 (Roy Bordenik Test.); AR 1267:13-17 (Michael Dewey Test.). The meaning of “park model” under RCW 59.20.030(14) is a question of law for this Court. The witnesses’ subjective and uninformed impressions have no bearing on this Court.

Dan & Bill’s next cites to two different statutes where the term “mobile home park” has the same meaning as in RCW 59.20.030. Pursuant to the cited statutes, cities and counties must transmit copies of any permits obtained for park model installations. No one has alleged that Dan & Bill’s violated these statutes, and the statutes themselves do not shed light on whether Dan & Bill’s is subject to MHLTA.

Dan & Bill’s also points to RCW 82.50.530 to claim that a “park model can also become real property . . . if it is placed on a foundation.” Resp. Br. at 21. However, RCW 82.50.530 does not use the term “park model”; instead, it refers to a “park trailer *as defined in RCW 46.04.622* (emphasis added),” which means “a travel trailer designed to be used with temporary connections to utilities necessary for operation of installed fixtures and appliances. The trailer’s gross area shall not exceed four hundred square feet when in the setup mode. ‘Park trailer’ excludes a mobile home.” This definition is entirely different from the “park model”

definition in RCW 59.20.030. The Legislature could have stated that the definition of “park trailer” under RCW 46.04.622 is equivalent to RCW 59.20.030, but it chose not to. *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 10, 43 P.3d 4 (2002) (noting “legislators enact legislation in light of existing statutes”). Thus, the definition of “park trailer” under RCW 46.04.622 has no bearing on this appeal.

Dan & Bill’s cites other unsupported claims, such as that park models are “more sturdily built to its own, federal, engineering standard” compared to “a normal RV,” and provides images of what Dan & Bill’s considers “park models” and other kinds of “recreational vehicles,” Resp. Br. at 21-22 & Attach. to Br., even though there is no indication that the ALJ Order was based on any such finding. Dan & Bill’s further claims without support that “[p]ark models are generally transported once or twice per year and used as vacation or guest homes.” Resp. Br. at 21-22. Dan & Bill’s surmises that “[i]t follows that building permits are required to install park models,” but only cites statutes that require cities and counties to transmit copies of installation permits, to the extent they are required. None of Dan & Bill’s claims are supported or availing, and none demonstrate that Dan & Bill’s is not subject to MHLTA.

**D. The Attorney General May Challenge the ALJ Order and Has Standing to Appeal**

**1. The Attorney General Has the Duty to Present Issues in the Public's Interest to This Court**

The duties of the Attorney General under the MHDRP are described in RCW 59.30.030 and summarized in Section IV.A of the Attorney General's Opening Brief. The Attorney General shall administer the program for the purpose of "protecting the public." RCW 59.30.030(1), RCW 59.30.010(1). Chief among its duties, the Attorney General conducts an investigation following a complaint from the tenant or landlord, and "[i]f after an investigation the attorney general determines that an agreement cannot be negotiated between the parties, the attorney general shall make a written determination on whether a violation of chapter 59.20 RCW has occurred." RCW 59.30.040(5). "The attorney general may issue an order requiring the respondent . . . to cease and desist from an unlawful practice and take affirmative actions that in the judgment of the attorney general will carry out the purposes of this chapter." RCW 59.30.040(7). The notice of violation, notice of nonviolation, fine, other penalty, order, or action does not constitute a final order of the Attorney General if an administrative hearing is requested. RCW 59.30.040(8)(c).

If a hearing is requested, the administrative law judge (ALJ) from the Office of Administrative Hearings (OAH), who is not an employee of

the Attorney General, “[d]ecide[s] whether the evidence supports the attorney general finding by a preponderance of the evidence.” RCW 59.30.040(9)(b).<sup>5</sup> The OAH ALJ then issues an order that “constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW.” RCW 59.30.040(9)(c).<sup>6</sup> The OAH order is final in terms of marking the end of administrative review and the beginning of possible judicial review. But the Act does not express that the ALJ order becomes the attorney general’s own final interpretation of the Act. The attorney general is a constitutional officer elected by the people. The OAH, which employs the ALJ, is run by the Chief Administrative Law Judge, who is appointed by the governor. RCW 34.12.010. Dan & Bill’s seems to suggest that RCW 59.20 and 59.30 have explicitly removed the attorney general’s authority

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<sup>5</sup> The Attorney General does not challenge the findings of fact in this appeal. Instead, he argues that the ALJ’s statutory construction and conclusions of law are not supported by law or legislative history. While a reviewing court must be deferential to factual determinations of the fact finding authority, *Citizens to Preserve Pioneer Park LLC v. City of Mercer Island*, 106 Wn. App.461, 474 (2001), citing *Schofield v. Spokane Co.*, 96 Wn. App. 581, 586, 980 P.2d 277 (1999), it is for the reviewing court to determine the meaning and purpose of a statute. *Cornelius v. Wash. Dept. of Ecology*, 182 Wn.2d 574, 615, 344 P.3d 199 (2015). Contrary to Dan & Bill’s assertions, conclusions of law are not reviewed as findings of fact unless they are erroneously described as conclusions of law. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986). Dan & Bill’s does not identify any conclusions of law as wrongly labeled, therefore, that argument falls flat.

<sup>6</sup> The court in *DaVita, Inc. v. Washington State Dep’t of Health*, 137 Wn. App. 174, 151 P.3d 1095 (2007) ruled that the final agency action subject to judicial review was the written order of the Health Law Judge (HLJ). Here, all parties agree that the agency action at issue on judicial review is the issuance of the ALJ Order, not the Program’s Notice of Violation. The administrative process described in *DaVita* is also distinguishable from the one before this Court. The HLJ is an employee of the Department of Health, whereas the ALJ for OAH is not an employee of the Attorney General’s Office.

and conferred upon an unelected administrative law officer employed by OAH, and the attorney general is deprived of any right to appeal. This position has no merit for the reasons stated below.

Dan & Bill's acknowledges that the Attorney General is a necessary party in representing the State, Resp. Br. at 50, but incorrectly argues that the Attorney General is "enjoined to defend" the ALJ Order. *Id.* at 49. The Attorney General is not compelled to defend the ALJ Order simply because ALJ review is the last step in the administrative hearing process. This Court has noted that the Attorney General has the duty *not* to defend against the public interest; rather, the Attorney General's "paramount duty is made the protection of the interest of the people of the state, and, where he is cognizant of violations of the Constitution or the statutes by a state officer, his duty is to obstruct and not to assist, and, where the interests of the public are antagonistic to those of state officers, or where state officers may conflict among themselves, it is impossible and improper for the Attorney General to defend such state officers." *State v. State Bd. of Equalization*, 140 Wash. 433, 249 P. 996, 999 (1926), superseded by regulation as stated in *State ex rel. Tattersall v. Yelle*, 52 Wn.2d 856, 329 P.2d 841 (1958), quoted with approval in *Reiter*, 28 Wn. 2d at 880. This is particularly true where the final order is not issued by the Attorney General, but by the OAH.

Moreover, the Attorney General is “charged as a public officer with the responsibility of seeing that both sides of an issue are adequately presented to the court when there is a conflict between state officials or departments, or when there is a question as to whether a state officer, committee, or department is acting in an illegal manner, to the detriment of the public interest.” *Reiter*, 28 Wn. 2d at 879. The Attorney General cannot perform his duties as charged if he cannot offer the perspective of the Program to this Court, which includes presenting facts and making arguments that the complainant could not make or have access to, and particularly not if the Attorney General regards the ALJ Order as detrimental to the best interest of the public where, as here, a housing vulnerable population is at risk of losing tenant protections.

Dan & Bill’s reliance on *Goldmark v. McKenna*, 172 Wn.2d 568, 259 P.3d 1095 (2011), is misplaced. At no time here does the Attorney General refuse to represent a state agency. The Attorney General administers the Program and represents it in this appeal. *Goldmark* held that only the elected official who is delegated a specific duty may make policy decisions regarding that duty. *Id.* at 574. Here, the Attorney General is statutorily required to make determinations of violations of RCW 59.20 and all policy decisions resulting from that determination. Following *Goldmark*, the Attorney General is authorized to make policy

decisions involving positions taken on a particular issue, including the decision to petition for judicial review of an ALJ Order. The Attorney General's statutory duty continues through every phase of the litigation, from trial to appellate proceedings. *Id.* at 574. Thus, the Attorney General's statutory duty to make determinations under MHLTA allows it to appeal OAH rulings to the superior and appellate courts.

Dan & Bill's reliance on *Aloha Lumber Corp. v. Dep't of Labor & Indus.*, 77 Wn.2d 763, 466 P.2d 151 (1970) and *DaVita, Inc.*, 137 Wn. App. 174, also miss the mark; those cases discussed appeal of orders issued by agency employees. As discussed, the OAH is separate from the Program and the Attorney General's Office. The ALJ of OAH is not similarly charged with the statutory duties that the Attorney General has under the Act and in administering the Program.

## **2. The Attorney General Has Standing to Appeal the Order**

Pursuant to the Administrative Procedure Act (APA), aggrieved or adversely affected persons have standing to petition for judicial review of agency action. RCW 34.05.530. A person is aggrieved or adversely affected when:

- (1) The agency action has prejudiced or is likely to prejudice that person;
- (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

*Id.* The first and third factors are equivalent to the federal “injury-in-fact” test, while the second factor is equivalent to the federal “zone of interest” test. *Snohomish Cty. Pub. Transp. Ben. Area v. State Pub. Employment Relations Comm’n*, 173 Wn. App. 504, 512, 294 P.3d 803, 808 (2013). To show an injury-in-fact, the party must demonstrate that it will be “specifically and perceptibly harmed” by the action. *City of Burlington v. Washington State Liquor Control Bd.*, 187 Wn. App. 853, 868, 351 P.3d 875, 882 (2015), *as amended* (June 17, 2015), *review denied sub nom. City of Burlington v. Singh*, 184 Wn.2d 1014, 360 P.3d 818 (2015).

As discussed above, the Attorney General is statutorily required to investigate allegations of MHLTA violations and make determinations. RCW 59.30.030. Pursuant to his statutory duties, the Attorney General determined that Dan & Bill’s violated the Act. The ALJ reversed that determination. As a party, the Attorney General is bound by the decision of the ALJ. The Attorney General was specifically and perceptibly harmed in his ability to carry out assigned statutory duties when the ALJ reversed and set aside the Notice of Violation served on Dan & Bill’s.

The zone of interest test limits judicial review of an agency action to litigants with a viable interest at stake, rather than individuals with only an attenuated interest in the agency action. *City of Burlington*, 187 Wn.

App. at 862. The test focuses on whether the Legislature intended the agency to protect the party's interest when taking the action at issue. *Washington Indep. Tel. Ass'n v. Washington Utilities & Transp. Comm'n*, 110 Wn. App. 498, 513, 41 P.3d 1212 (2002), *aff'd*, 149 Wn.2d 17, 65 P.3d 319 (2003). Here, the Legislature specifically intended that the Attorney General protect the public and foster fair and honest competition through enforcement of MHLTA. *See* RCW 59.30.010. The plain language of RCW 59.30.010 confers upon the Attorney General a viable interest in this proceeding because the ALJ order reversed the Attorney General's decision that Dan & Bill's is subject to and in violation of MHLTA and implicated the Attorney General's statutory duty.

Dan & Bill's references to the federal APA is unavailing. The Washington APA expressly states that "legislature . . . intends that the courts should interpret provisions of [the APA] consistently with decisions of other courts interpreting *similar provisions* of other states, the federal government, and model acts." RCW 34.05.001 (emphasis added). Dan & Bill's cites *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 115 S. Ct. 1278, 131 L. Ed. 2d 160 (1995), in which the Supreme Court noted that "the United States Code's general judicial review provision, 5 U.S.C. § 702, which employs the phrase 'adversely affected or aggrieved,'

specifically excludes agencies from the category of persons covered, § 551(2).” Not so under the Washington APA, where “person” is defined as “any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and *includes another agency*.” RCW 34.05.010(14). The Attorney General does not lack standing to file this appeal on the basis of *Newport News* nor references to the federal APA, which does not contain a similar provision to Washington APA in defining “agency.”

If the Attorney General lacked standing to appeal ALJ Orders regarding the Program, it would deprive the reviewing court of an adversarial presentation of arguments from all necessary parties, particularly given the Attorney General’s exclusive duties under MHLTA; worse yet, if the Attorney General is prevented from appealing ALJ orders that are adverse to low-income tenants, those tenants would be left on their own to appeal. Leaving the most vulnerable alone to face legal challenges regarding housing would threaten the integrity of the Program’s administrative review process and the overarching goals of MHLTA.

In its Restatement of Issues, Dan & Bill’s raises the following issue: “Do RV Park’s due process rights continue to be violated by RV Park having to defend the Attorney General’s own order against the Attorney General?” Resp. Br. at 4. Dan & Bill’s brief contains no

assignments of error, citation of authority, or even argument to address this issue, therefore, the Court need not consider it on appeal. *McKee v. Am. Home Products, Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989). For the reasons addressed above, the Attorney General has standing to appeal and to present the issues before the Court. Because Dan & Bill's has failed to brief the issue, the Attorney General cannot provide an effective response, and the Court should ignore the due process argument.

**E. Dan & Bill's Is Not Entitled to Fees Under Washington's Equal Access to Justice Act (EAJA)**

Under Washington's EAJA, codified at RCW 4.84.340, a statutory award goes to the party that prevails in judicial review in superior court or appellate court, not before an administrative board. *Cobra Roofing Serv., Inc. v. Dep't of Labor & Indus.*, 122 Wn. App. 402, 97 P.3d 17 (2004), *aff'd on other grounds sub nom. Cobra Roofing Servs., Inc. v. State Dep't of Labor & Indus.*, 157 Wn.2d 90, 135 P.3d 913 (2006). Dan & Bill's did not prevail in the superior court and is therefore not a prevailing party entitled to fees under EAJA.<sup>7</sup>

Even assuming *arguendo* that Dan & Bill's was entitled to attorney's fees under EAJA, such an award will not be granted by the

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<sup>7</sup> Dan & Bill's also suggests that the Estate of Edna Allen should seek fees under EAJA rather than from Dan & Bill's, ignoring the fact that the superior court specifically awarded attorney's fees to Ms. Allen pursuant to RCW 59.20.110, which authorizes attorney's fees to the prevailing party in any action arising out of MHLTA. Dan & Bill's originated the action by challenging the Program's Notice of Violation. Dan & Bill's cannot now challenge the superior court's authority to award attorney's fees to Ms. Allen's estate pursuant to RCW 59.20.110.

court if an agency's "actions were substantially justified or that circumstances would make that award unjust. The term 'substantial justification' requires the State to show that its position has a reasonable basis in law and fact." *Constr. Indus. Training Council v. Washington State Apprenticeship & Training Council of Dep't of Labor & Indus.*, 96 Wn. App. 59, 68, 977 P.2d 655 (1999). "Substantially justified" means justified to a degree that would satisfy a reasonable person. *Silverstreak, Inc. v. Washington State Dep't of Labor & Indus.*, 159 Wn.2d 868, 892, 154 P.3d 891 (2007). It need not be correct, only reasonable. *Raven v. Dep't of Soc. & Health Servs.*, 177 Wn.2d 804, 832, 306 P.3d 920, 933–34 (2013), citing *Pierce v. Underwood*, 487 U.S. 552, 566 n.2, 108 S. Ct. 2541, 101 L. Ed. 2d 490 (1988). The Program's position in this case meets that standard: the Notice of Violation to Dan & Bill's was based on the Program's finding that there were two or more park models at Dan & Bill's to satisfy the definition of "park model" under MHLTA. The Program's position was reasonable enough for the superior court to hold that Dan & Bill's was subject to MHLTA. For these reasons, an award under EAJA is unwarranted.

**F. The Appeal Is Not Rendered Moot by Edna Allen's Death**

Dan & Bill's makes a single conclusory statement that this Court can provide no effective relief to the extent the Notice of Violation

requested rental adjustments and lease terms for Ms. Allen. Resp. Br. at 53. Dan & Bill's cites no legal authority for its mootness argument. Since this argument is made with no citation to legal authority, this Court is free to disregard this argument. See RAP 10.3(a) & (b); *McKee, supra*, 113 Wn.2d at 705 ("We will not consider issues on appeal that are not raised by an assignment of error or are not supported by argument and citation of authority.") Further, case law does not support Dan & Bill's mootness claim. A case is moot if the court can no longer provide meaningful relief. *Yakima Police Patrolmen's Ass'n v. City of Yakima*, 153 Wn. App. 541, 552, 222 P.3d 1217 (2009). If this Court finds that Dan & Bill's is subject to and violated MHLTA, Ms. Allen paid excess rent that her estate should recover. AR 7-13; AR 141; AGO Op. Br. at 38-41. See *Yakima Police Patrolmen's Ass'n*, 153 Wn. App. at 552 (case is not moot where deceased officer's disputed compensation could pass to his estate). This case is not moot because meaningful relief is possible. *See id.*

**G. The Program Was Not Obligated to Obtain a Search Warrant**

In its Restatement of Issues, Dan & Bill's raises the following issue: "Even RCW Ch. 59.30 applied, whether RCW 59.30 authorizes unwarranted searches (sic)." Resp. Br. at 4. Dan & Bill's raises no assignments of error, citation of authority, or even argument to address this issue, therefore, the Court need not consider it on appeal. *McKee*, 113

Wn. 2d at 705. Regardless, the Program conducted its investigation in a lawful manner, no reasonable expectation of privacy was violated, and the Program was not obligated to obtain a warrant. *Katz v. United States*, 389 U.S. 347, 351–52, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); *State v. Young*, 123 Wn.2d 173, 181, 867 P.2d 593 (1994). A law enforcement officer with legitimate purpose may enter areas of the curtilage which are impliedly open, such as access routes to the house. *State v. Ross*, 141 Wn.2d 304, 312–13, 4 P.3d 130 (2000). A tenant may consent to search of the rented area over any landlord objections, and “consent vitiates the need for a warrant.” *City of Seattle v. McCready*, 124 Wn. 2d 300, 303-04, 306, 877 P.2d 686 (1994). Dan & Bill’s tenants consented to speak with the Program investigator, and all statements and photographs were obtained in a lawful manner in accordance with authority granted by MHLTA.

### **III. CONCLUSION**

Dan & Bill’s operates as a mobile home park. It readily rents to owners of recreational vehicles that are permanently or semi-permanently installed and intended as primary residences – in short, park models – and ungrudgingly receives regular rent payments year round from elderly and low-income tenants who live year-round at Dan & Bill’s. They should not be treated under the law as casual weekend campers. Without the protection of MHLTA, they would be subject to rent increases and

retaliatory practices with little legal recourse to defend themselves. The Legislature intended to extend protections to these long-term residents under MHLTA in recognition of the fact that tenants like Edna Allen are in vulnerable positions in housing disputes.

The statutory construction and conclusions of law in the ALJ Order are not supported by law or legislative history. Because they are based on erroneous applications of law and are arbitrary and capricious, the ALJ Order should be reversed and Dan & Bill's should be found subject to and in violation of MHLTA.

RESPECTFULLY SUBMITTED this 13th day of September, 2017.

ROBERT W. FERGUSON  
Attorney General

/s/ Amy Teng  
AMY TENG, WSBA #50003  
Assistant Attorney General  
Attorneys for Respondent State of Washington

### CERTIFICATE OF SERVICE

I certify that I served a copy of the forgoing on the following party/parties via the following methods:

|  |   |
|--|---|
| Seth S. Goodstein<br>Carolyn A. Lake<br>Goodstein Law Group PLLC<br>501 S G St.<br>Tacoma, WA 98405-4715<br>Email: sgoodstein@goodsteinlaw.com<br>clake@goodsteinlaw.com | <input type="checkbox"/> Legal Messenger<br><input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid<br><input type="checkbox"/> Certified Mail, Receipt Requested<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> COA E-Service<br><input checked="" type="checkbox"/> Email |
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of September, 2017, at Seattle, Washington.

/s/ P. Joseph Drouin  
P. JOSEPH DROUIN  
Legal Assistant

# Appendix

**RCW 59.20.030****Definitions.**

For purposes of this chapter:

(1) "Abandoned" as it relates to a mobile home, manufactured home, or park model owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;

(2) "Eligible organization" includes local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations;

(3) "Housing authority" or "authority" means any of the public body corporate and politic created in RCW **35.82.030**;

(4) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

(5) "Local government" means a town government, city government, code city government, or county government in the state of Washington;

(6) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

(7) "Manufactured/mobile home" means either a manufactured home or a mobile home;

(8) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States department of housing and urban development manufactured home construction and safety act;

(9) "Mobile home lot" means a portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

(10) "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(11) "Mobile home park cooperative" or "manufactured housing cooperative" means real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

(12) "Mobile home park subdivision" or "manufactured housing subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development,

consisting of common areas and two or more lots held for placement of mobile homes, manufactured homes, or park models in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

(13) "Notice of sale" means a notice required under RCW **59.20.300** to be delivered to all tenants of a manufactured/mobile home community and other specified parties within fourteen days after the date on which any advertisement, multiple listing, or public notice advertises that a manufactured/mobile home community is for sale;

(14) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence;

(15) "Qualified sale of manufactured/mobile home community" means the sale, as defined in RCW **82.45.010**, of land and improvements comprising a manufactured/mobile home community that is transferred in a single purchase to a qualified tenant organization or to an eligible organization for the purpose of preserving the property as a manufactured/mobile home community;

(16) "Qualified tenant organization" means a formal organization of tenants within a manufactured/mobile home community, with the only requirement for membership consisting of being a tenant;

(17) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

(18) "Tenant" means any person, except a transient, who rents a mobile home lot;

(19) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence;

(20) "Occupant" means any person, including a live-in care provider, other than a tenant, who occupies a mobile home, manufactured home, or park model and mobile home lot.

[ **2008 c 116 § 2; 2003 c 127 § 1; 1999 c 359 § 2; 1998 c 118 § 1; 1993 c 66 § 15; 1981 c 304 § 4; 1980 c 152 § 3; 1979 ex.s. c 186 § 1; 1977 ex.s. c 279 § 3.**]

#### NOTES:

**Findings—Intent—Severability—2008 c 116:** See notes following RCW **59.20.300**.

**Severability—1981 c 304:** See note following RCW **26.16.030**.

**Severability—1979 ex.s. c 186:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ **1979 ex.s. c 186 § 30.**]

**RCW 59.30.010****Findings—Purpose—Intent.**

(1) The legislature finds that there are factors unique to the relationship between a manufactured/mobile home tenant and a manufactured/mobile home community landlord. Once occupancy has commenced, the difficulty and expense in moving and relocating a manufactured/mobile home can affect the operation of market forces and lead to an inequality of the bargaining position of the parties. Once occupancy has commenced, a tenant may be subject to violations of the manufactured/mobile home landlord-tenant act without an adequate remedy at law. This chapter is created for the purpose of protecting the public, fostering fair and honest competition, and regulating the factors unique to the relationship between the manufactured/mobile home tenant and the manufactured/mobile home community landlord.

(2) The legislature finds that taking legal action against a manufactured/mobile home community landlord for violations of the manufactured/mobile home landlord-tenant act can be a costly and lengthy process, and that many people cannot afford to pursue a court process to vindicate statutory rights. Manufactured/mobile home community landlords will also benefit by having access to a process that resolves disputes quickly and efficiently.

(3)(a) Therefore, it is the intent of the legislature to provide an equitable as well as a less costly and more efficient way for manufactured/mobile home tenants and manufactured/mobile home community landlords to resolve disputes, and to provide a mechanism for state authorities to quickly locate manufactured/mobile home community landlords.

(b) The legislature intends to authorize the department of revenue to register manufactured/mobile home communities and collect a registration fee.

(c) The legislature intends to authorize the attorney general to:

(i) Produce and distribute educational materials regarding the manufactured/mobile home landlord-tenant act and the manufactured/mobile home dispute resolution program created in RCW **59.30.030**;

(ii) Administer the dispute resolution program by taking complaints, conducting investigations, making determinations, issuing fines and other penalties, and participating in administrative dispute resolutions, when necessary, when there are alleged violations of the manufactured/mobile home landlord-tenant act; and

(iii) Collect and annually report upon data related to disputes and violations, and make recommendations on modifying chapter **59.20** RCW, to the appropriate committees of the legislature.

[ **2011 c 298 § 29**; **2007 c 431 § 1**.]

**NOTES:**

**Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289:**  
See notes following RCW **19.02.020**.

**Implementation—2007 c 431:** "The attorney general may take the necessary steps to ensure that this act is implemented on its effective date." [ **2007 c 431 § 12**.]

**RCW 59.30.030****Dispute resolution program—Purpose—Attorney general duties.**

(1) The attorney general shall administer a manufactured/mobile home dispute resolution program.

(2) The purpose of the manufactured/mobile home dispute resolution program is to provide manufactured/mobile home community landlords and tenants with a cost-effective and time-efficient process to resolve disputes regarding alleged violations of the manufactured/mobile home landlord-tenant act.

(3) The attorney general under the manufactured/mobile home dispute resolution program shall:

(a) Produce educational materials regarding chapter **59.20** RCW and the manufactured/mobile home dispute resolution program, including a notice in a format that a landlord can reasonably post in a manufactured/mobile home community that summarizes tenant rights and responsibilities, includes information on how to file a complaint with the attorney general, and includes a toll-free telephone number and web site address that landlords and tenants can use to seek additional information and communicate complaints;

(b) Distribute the educational materials described in (a) of this subsection to all known landlords and information alerting landlords that:

(i) All landlords must post the notice provided by the attorney general that summarizes tenant rights and responsibilities and includes information on how to file complaints, in a clearly visible location in all common areas of manufactured/mobile home communities, including in each clubhouse;

(ii) The attorney general may visually confirm that the notice is appropriately posted; and

(iii) The attorney general may issue a fine or other penalty if the attorney general discovers that the landlord has not appropriately posted the notice or that the landlord has not maintained the posted notice so that it is clearly visible to tenants;

(c) Distribute the educational materials described in (a) of this subsection to any complainants and respondents, as requested;

(d) Perform dispute resolution activities, including investigations, negotiations, determinations of violations, and imposition of fines or other penalties as described in RCW **59.30.040**;

(e) Create and maintain a database of manufactured/mobile home communities that have had complaints filed against them. For each manufactured/mobile home community in the database, the following information must be contained, at a minimum:

(i) The number of complaints received;

(ii) The nature and extent of the complaints received;

(iii) The violation of law complained of; and

(iv) The manufactured/mobile home dispute resolution program outcomes for each complaint;

(f) Provide an annual report to the appropriate committees of the legislature on the data collected under this section, including program performance measures and recommendations regarding how the manufactured/mobile home dispute resolution program may be improved, by December 31st, beginning in 2007.

(4) The manufactured/mobile home dispute resolution program, including all of the duties of the attorney general under the program as described in this section, shall be funded by the collection of fines, other penalties, and fees deposited into the manufactured/mobile home

dispute resolution program account created in RCW **59.30.070**, and all other sources directed to the manufactured/mobile home dispute resolution program.

[ **2007 c 431 § 3.**]

**NOTES:**

**Implementation—2007 c 431:** See note following RCW **59.30.010**.

**RCW 59.30.040****Dispute resolution program—Complaint process.**

(1) An aggrieved party has the right to file a complaint with the attorney general alleging a violation of chapter **59.20** RCW.

(2) Upon receiving a complaint under this chapter, the attorney general must:

(a) Inform the complainant of any notification requirements under RCW **59.20.080** for tenant violations or RCW **59.20.200** for landlord violations and encourage the complainant to appropriately notify the respondent of the complaint; and

(b) If a statutory time period is applicable, inform the complainant of the time frame that the respondent has to remedy the complaint under RCW **59.20.080** for tenant violations or RCW **59.20.200** for landlord violations.

(3) After receiving a complaint under this chapter, the attorney general shall initiate the manufactured/mobile home dispute resolution program by investigating the alleged violations at its discretion and, if appropriate, facilitating negotiations between the complainant and the respondent.

(4)(a) Complainants and respondents shall cooperate with the attorney general in the course of an investigation by (i) responding to subpoenas issued by the attorney general, which may consist of providing access to papers or other documents, and (ii) providing access to the manufactured/mobile home facilities relevant to the investigation. Complainants and respondents must respond to attorney general subpoenas within thirty days.

(b) Failure to cooperate with the attorney general in the course of an investigation is a violation of this chapter.

(5) If after an investigation the attorney general determines that an agreement cannot be negotiated between the parties, the attorney general shall make a written determination on whether a violation of chapter **59.20** RCW has occurred.

(a) If the attorney general finds by a written determination that a violation of chapter **59.20** RCW has occurred, the attorney general shall deliver a written notice of violation to the respondent who committed the violation by certified mail. The notice of violation must specify the violation, the corrective action required, the time within which the corrective action must be taken, the penalties including fines, other penalties, and actions that will result if corrective action is not taken within the specified time period, and the process for contesting the determination, fines, penalties, and other actions included in the notice of violation through an administrative hearing. The attorney general must deliver to the complainant a copy of the notice of violation by certified mail.

(b) If the attorney general finds by a written determination that a violation of chapter **59.20** RCW has not occurred, the attorney general shall deliver a written notice of nonviolation to both the complainant and the respondent by certified mail. The notice of nonviolation must include the process for contesting the determination included in the notice of nonviolation through an administrative hearing.

(6) Corrective action must take place within fifteen business days of the respondent's receipt of a notice of violation, except as required otherwise by the attorney general, unless the respondent has submitted a timely request for an administrative hearing to contest the notice of violation as required under subsection (8) of this section. If a respondent, which includes either a landlord or a tenant, fails to take corrective action within the required time period and the attorney general has not received a timely request for an administrative hearing, the attorney general may impose a fine, up to a maximum of two hundred fifty dollars

per violation per day, for each day that a violation remains uncorrected. The attorney general must consider the severity and duration of the violation and the violation's impact on other community residents when determining the appropriate amount of a fine or the appropriate penalty to impose on a respondent. If the respondent shows upon timely application to the attorney general that a good faith effort to comply with the corrective action requirements of the notice of violation has been made and that the corrective action has not been completed because of mitigating factors beyond the respondent's control, the attorney general may delay the imposition of a fine or penalty.

(7) The attorney general may issue an order requiring the respondent, or its assignee or agent, to cease and desist from an unlawful practice and take affirmative actions that in the judgment of the attorney general will carry out the purposes of this chapter. The affirmative actions may include, but are not limited to, the following:

(a) Refunds of rent increases, improper fees, charges, and assessments collected in violation of this chapter;

(b) Filing and utilization of documents that correct a statutory or rule violation; and

(c) Reasonable action necessary to correct a statutory or rule violation.

(8) A complainant or respondent may request an administrative hearing before an administrative law judge under chapter **34.05** RCW to contest:

(a) A notice of violation issued under subsection (5)(a) of this section or a notice of nonviolation issued under subsection (5)(b) of this section;

(b) A fine or other penalty imposed under subsection (6) of this section; or

(c) An order to cease and desist or an order to take affirmative actions under subsection (7) of this section.

The complainant or respondent must request an administrative hearing within fifteen business days of receipt of a notice of violation, notice of nonviolation, fine, other penalty, order, or action. If an administrative hearing is not requested within this time period, the notice of violation, notice of nonviolation, fine, other penalty, order, or action constitutes a final order of the attorney general and is not subject to review by any court or agency.

(9) If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses.

(10) The administrative law judge appointed under chapter **34.12** RCW shall:

(a) Hear and receive pertinent evidence and testimony;

(b) Decide whether the evidence supports the attorney general finding by a preponderance of the evidence; and

(c) Enter an appropriate order within thirty days after the close of the hearing and immediately mail copies of the order to the affected parties.

The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter **34.05** RCW.

(11) When the attorney general imposes a fine, refund, or other penalty against a respondent, the respondent may not seek any recovery or reimbursement of the fine, refund, or other penalty from a complainant or from other manufactured/mobile home tenants.

(12) All receipts from the imposition of fines or other penalties collected under this section other than those due to a complainant must be deposited into the manufactured/mobile home dispute resolution program account created in RCW **59.30.070**.

(13) This section is not exclusive and does not limit the right of landlords or tenants to take legal action against another party as provided in chapter **59.20** RCW or otherwise. Exhaustion of the administrative remedy provided in this chapter is not required before a landlord or

tenants may bring a legal action. This section does not apply to unlawful detainer actions initiated under RCW **59.20.080** prior to the filing and service of an unlawful detainer court action; however, a tenant is not precluded from seeking relief under this chapter if the complaint claims the notice of termination violates RCW **59.20.080** prior to the filing and service of an unlawful detainer action.

[ **2007 c 431 § 4.**]

**NOTES:**

**Implementation—2007 c 431:** See note following RCW **59.30.010**.

**CONSUMER PROTECTION DIVISION AGO**

**September 13, 2017 - 4:53 PM**

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**Appellate Court Case Title:** Edna Allen, Respondent v. Dan and Bills RV Park, Appellant  
**Superior Court Case Number:** 15-2-02446-6

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