NO. 49836-7-II

97530-2

SUPREME COURT
OF THE STATE OF WASHINGTON

ESTATE OF EDNA ALLEN,

Petitioner,

and

WASHINGTON STATE ATTORNEY GENERAL,

Petitioner,

v.

DAN & BILL'S RV PARK,

Respondent.

PETITION FOR REVIEW

Law Offices of Dan R. Young
Attorney for Petitioner Estate of Edna Allen
1000 Second Avenue, Ste 3200
Seattle, WA 98104
(206) 962-0676

TABLE OF CONTENTS

Appendix

TABLE OF AUTHORITIES

Cases

Statutes

Rules

A. IDENTITY OF PETITIONER

Petitioner Estate of Edna Allen asks this court to accept review of the decision or parts of the decision designated in Part B of this motion.

B. COURT OF APPEALS DECISION

Petitioner seeks review of (1) the Court of Appeals' decision filed on October 16, 2018 which reversed the attorney-fee award adjudged by the Pierce County Superior Court in favor of petitioner, and (2) the denial of petitioner's motion for reconsideration. The court of appeals decision was published *sub nomine Allen v. Dan and Bill's RV Park*, 6 Wn. App.2d 349, 428 P.3d 376 (2018). A copy of the decision is attached in the Appendix at A-1.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the court of appeals too narrowly construed a remedial statute providing low-income tenants with greater access to legal services.

2. Whether a tenant's initial utilization of the MHDRP precludes a later award of attorney's fees to the tenant who successfully files an action to obtain reversal of an ALJ order.

3. Whether the language "action arising out of" in RCW 59.20.110 should have a broad construction—instead of a narrow one-- to carry out its purpose of making legal services more accessible to mobile home park and RV park tenants.

4. Whether the decision of the court of appeals provides a disincentive for attorneys to help low-income tenants who experience blatant violations of the MHLTA at the hands of park management.

5. Whether the formerly homeless tenant was a "qualified party" with assets of less than $1 million so as to be alternatively entitled to attorney's fees under RCW 4.84.350(1).

D. STATEMENT OF THE CASE

This case arose when the mobile home park (the "park") in which Edna Allen lived in her recreational vehicle ("RV") failed to give her a written rental agreement as she requested after she acquired the RV in Dan and Bill's RV Park, and after the park raised her rent without prior notice within a few months, both of which actions are expressly prohibited by the MHLTA.[1]

The park did nothing in response to her complaints, so she filed a complaint with the Mobile Home Dispute Resolution Program ("MHDRP") administered by the Washington Attorney General under RCW ch. 59.30.

The MHDRP determined that there was a violation of the MHLTA and issued a notice of violation to the park, followed by a cease and desist order. AR 7-13, AR 60-64. The park sought an administrative hearing regarding the validity of the notice and order. AR 3-6, AR 65-68. An ALJ determined, following a hearing, that Dan and Bill's RV Park did not meet the definition of a mobile home park under the MHLTA and reversed the AG's notice and order. Conclusions of Law 5.25 and 5.26 at CP 21 and 6.1 and 6.2 at CP 22. Significant to the instant petition for review is that *no court action* had been filed up to that point.

Ms. Allen, believing herself aggrieved by the ALJ's order and not knowing whether the AG would appeal that order, retained private counsel

[1] AR 976-979; RCW 59.20.050(1) and 59.20.060(1) (requiring a mobile home park landlord to offer a written rental agreement); RCW 59.20.060(2)(c) (prohibiting a park landlord from increasing rent more frequently than annually); RCW 59.20.090(2) (three months' written notice to tenant required before raising rent at the end of a term).

to appeal the ALJ's decision to the superior court.[2] Her counsel filed an action in the Thurston County Superior Court for review of the ALJ's decision on December 8, 2015. CP 3-6. Since the ALJ's final order was issued on November 9, 2015 (CP 7-23), Ms. Allen filed her petition for review on the 29th day, one day before the deadline for filing the petition for review. RCW 34.05.542(2). The very next day, on December 9, 2015, the MHDRP also filed a petition for review. CP 251-4. The superior court consolidated the MHDRP's appeal under the case number assigned to Ms. Allen's appeal. CP 30-31.

The superior court determined that the park met the statutory definition of a mobile home park and reversed the ruling of the ALJ. CP 159-60. The superior court also found petitioner was entitled to reasonable attorney's fees and costs under RCW 59.20.110, finding that the *action* arose under the MHLTA. *Id*.

The park appealed the ruling of the superior court with respect to the holding that its park was a mobile home park and that Ms. Allen was entitled to attorney's fees. CP 231-32. The court of appeals reversed, consistent with the superior court's ruling, the ALJ's determination that the landlord did not operate a mobile home park subject to the provisions of RCW ch. 59.20. The court of appeals also reversed the superior court's concomitant ruling that the petitioner tenant Edna Allen was entitled to attorney's fees

[2] The park has argued that the AG had no standing to appeal an order entered by its own agency. CP 44. That particular issue was not decided by the superior court or the Court of Appeals. If the superior court or the court of appeals had ruled that the MHDRP had no standing, and Ms. Allen had not filed a petition for review of the ALJ's decision, then the ALJ's determination would have been final and adverse to Ms. Allen's interest.

and costs in the amount of $41,655.25 under RCW 59.20.110 on the basis that the present action was one *arising out of* RCW ch. 59.30 rather than one *arising out of* RCW ch. 59.20. *Slp. Opn.* at 7, 23 (A-7, 23). Ms. Allen argued that the present *action* was filed when Ms. Allen filed her petition for review in Thurston County Superior Court, which action was later consolidated with the AG's later-filed petition for review in the superior court.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This case presents issues of substantial public importance that should be determined by the Supreme Court. RAP 13.4(b)(4).

1. The Court of Appeals Too Narrowly Construed a Remedial Statute Providing Low-Income Tenants with Greater Access to Legal Services.

A remedial statute should be construed liberally to effectuate its purpose. *See Gaglidari v. Denny's Rests., Inc.,* 117 Wn.2d 426, 450-51, 815 P.2d 1362 (1991) (recognizing statute's remedial nature and liberal construction requirement); *Naches Valley Sch. Dist. No. JT3 v. Cruzen,* **5**4 Wn. App. 388, 399, **77**5 P.2d 960 (1989). A liberal construction requires that the coverage of the statute's provisions "'be liberally construed [in favor of the employee] and that its exceptions be narrowly confined.'" *Peninsula Sch. Dist. No. 401 v. Pub. Sch. Employees,* 130 Wn.2d 401, 407, 924 P.2d 13 (1996) (interpreting chapter 41.56 RCW) (quoting *Nucleonics Alliance, Local Union 1-369 v. Wash. Pub. Power Supply Sys.,* 101 Wn.2d 24, 29, 677 P.2d 108 (1984)).

The legislature put in place the MHLTA, RCW ch. 59.20, to regulate

the relations between landlords and tenants of mobile home parks. RCW 59.20.040. RV's are a particularly important housing resource for the lowest income people, such as people living on SSI or other forms of fixed income. CP 374. Some 67,000 people live in such parks in the state of Washington. CP 401. RCW 59.20.110 provides a fee-shifting mechanism such that tenants in mobile home parks can obtain attorney's fees for successfully prosecuting or defending a lawsuit arising out of the MHLTA. The court of appeals stripped away significant tenants' protections by narrowly interpreting the phrase "arising out of" in RCW 59.20.110. Unbeknownst to them, tenants who make a complaint to the AG through the MHDRP are effectively barred by the court of appeals' decision from retaining counsel to appeal an unfavorable ALJ decision at the administrative level. This results from their inability to hire counsel to represent them.

2. The Language "Action Arising Out Of" in RCW 59.20.110 Should Have a Broad Construction—Instead of a Narrow One-- to Carry Out its Purpose of Making Legal Services More Accessible to Mobile Home Park and RV Park Tenants.

The present case involves a fee-shifting statute under the Mobile Home Landlord-Tenant Act ("MHLTA"), i.e., RCW 59.20.110, which provides that in "any action arising out of this chapter [RCW ch. 59.20], the prevailing party shall be entitled to reasonable attorney's fees and costs." The court of appeals determined that the action involved herein arose out of the MHDRP's notice of violation under RCW ch. 59.30, and therefore the action did not *arise out of* RCW ch. 59.20, so petitioner was not entitled to

attorney's fees. *Slp. Opn*. at 22 (A-22). This constituted a very narrow construction where a more liberal construction was required to carry out the legislative intent. The court of appeals failed to consider that an *action* may arise from more than one source.

In addition, the court of appeals quoted RCW 59.30.040(13) (see A-63) as supporting its conclusion that "the remedy provided by chapter 59.30 RCW is distinct from that provided by chapter 59.20 RCW, and supports the conclusion that the attorney fees and costs provided under RCW 59.20.110 is [sic] limited to those incurred as a result of a legal action arising from chapter 59.20 RCW." Slp. Opn. at 21 (A-21). This is circular reasoning. A more liberal construction of the statute would be to conclude that Ms. Allen's *action* commenced when she filed the petition for review in superior court based on the ALJ's erroneous interpretation of the law defining a mobile home park, i.e., RCW ch. 59.20. RCW ch. 59.20 is inextricably bound with everything that happened in this case.

Washington courts have previously defined "arising out of" as meaning "'originating from,' 'having its origin in,' 'growing out of,' or 'flowing from.'" *National Surety Corporation v. Immunex Corporation*, 162 Wn. App. 762, 772-3, 256 P.3d 439 (2011), *aff'd*, 176 Wn.2d 872, 297 P.3d 688 (2013). The phrase is unambiguous and has a broader meaning than "caused by" or "resulted from." *Munn v. Mutual of Enumclaw Insurance Co.,* 73 Wn. App. 321, 325, 869 P.2d 99 (1994) (citing *Toll Bridge Auth. v. Aetna Ins. Co.,* 54 Wn. App. 400, 404, 773 P.2d 906 (1989)). "Arising out of" does not mean "proximately caused by." *Id.*

a. An *Action* Refers to a Court Action.

RCW 59.20.110 refers to an "action arising out of" RCW ch. 59.20. An "action" is a "prosecution in a *court* for the enforcement or protection of private rights and the redress of private wrongs . . ." *Thorgaard Plumbing & Heating Co. v. King County*, 71 Wn.2d 126, 130, 426 P.2d 828 (1967) (italics added) (distinguishing between an "action" and an arbitration proceeding). The proceeding before the ALJ in this case was therefore not an *action* within the meaning of RCW 59.20.110.

The *action* did not occur until Ms. Allen filed a petition for review of the ALJ's decision in Thurston County Superior Court on the 29th day following the ALJ's decision. The fact that the AG filed a similar petition for review on the next day, and that both petitions were consolidated under the *action* that Ms. Allen filed, does not change that result. CP 251-54; CP 30-31.

Ms. Allen's petition for review by the superior court raised the issue that the ALJ incorrectly determined the definition of a mobile home park. Following the ALJ's ruling, she may well have been able to file a civil lawsuit against the park regarding the park's failure to provide her with a written rental agreement. RCW 59.30.040(13) (A-64); *Slp Opn*. at 21 (A-21). However, unless she appealed the ALJ's decision, that decision may well have been binding upon her in a subsequent civil action. So as a practical matter, she had little choice but to appeal the ALJ's incorrect determination that she did not live in a mobile home park as defined in RCW ch. 59.20.

b. The Term "arising out of" Has Two Meanings, Both of Which Support its Application to the Present Case.

The word "arise" can mean (1) *come into being*; *originate*, or (2) in the expression "arise from/out of" *occur as a result of*: *most conflicts arise from ignorance or uncertainty*. *New Oxford American Dictionary* 84 (2001).[3] Under the first meaning, this case arose from, i.e., originated from, the park's violations of the MHLTA, which led to a complaint to the MHDRP, an administrative hearing, an appeal to the superior court and ultimately an appeal to this court.

Under the second meaning, this case occurred as a result of the park's failure to have a written lease and failure to provide adequate notice of rental increases. These violations led to Ms. Allen's complaint to the MHDRP, a subsequent administrative hearing, an appeal to the superior court and court of appeals, and ultimately a petition for review to this court.

Under common usage of the term *arise out of*, this case arose out of the MHLTA. The definitions of a *mobile home park* under RCW 59.20.030(10), a *park model* under RCW 59.20.030(14), and a *recreational vehicle* under RCW 59.20.030(17) were pervasive and central to the resolution of this case, and were extensively addressed by the ALJ, the superior court and the court of appeals. It is evident that this case would not have arisen at all if the MHLTA had not been enacted, or if the above definitions had been worded differently.

[3] Another meaning of "arise" is "emerge" or "become apparent," as in the expression *new difficulties had arisen*. *Id.*

Finally, since the MHLTA is a remedial statute, it should be given a liberal interpretation.[4] A liberal interpretation would be a broad reading of the circumstances under which a litigant were entitled to attorney's fees in accordance with RCW 59.20.110, i.e., any *action* arising out of the MHLTA, rather than excluding attorney's fees in actions *procedurally arising out of* the MHDRP.

c. Other Courts Have Given the Term "arising out of" a Broad Interpretation in Similar Circumstances.

Counsel for petitioner Edna Allen has found no cases in Washington construing the language "arising out of" the MHLTA as contained in RCW 59.20.110. However, cases in California, with a virtually identical statute in the mobile home context have construed the same language in its broad sense as used in ordinary language.[5]

In *SC Manufactured Homes, Inc. v. Canyon View Estates, Inc.*, 148 Cal.App.4th 663, 675, 56 Cal.Rptr.3d 79 (2007) the California court of appeals held that to be entitled to attorney's fees and costs under the California equivalent to RCW 59.20.110, "the underlying case must arise in the context of those relationships and claims addressed by the MRL" [equivalent to the MHLTA]. 148 Cal.App. 4th at 675. The court further held that the "phrase 'any action arising out of the provisions of [the MRL]'

[4] The remedial nature of the MHLTA is exemplified by its protection of tenants. See *infra* at fn 7 and cases cited at p. 17 herein.

[5] The California Mobilehome Residency Law ("MRL") (Cal. Civ. Code § 798 et seq.) contains a fee-shifting statute providing in relevant part as follows: "In any action arising out of the provisions of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs." Cal. Civ. Code § 798.85.

in Civil Code section 798.85 encompasses only those actions directly involving the application of MRL provisions in specific factual contexts addressed by the MRL, such as actions by mobilehome park residents against management for failing to maintain physical improvements in common facilities in good working order." 148 Cal.App. 4th at 675. The court of appeals clarified that a "case may 'arise' under the MRL even if a complaint does not allege a specific cause of action under the MRL, as long as the dispute is one within the scope of the MRL. While the defendants' defenses may be considered, the foundation of the case must be grounded in the MRL." *Canyon Park*, 148 Cal.App. 4th at 676.

The present case comes within the scope of *Canyon View*, as the notice of violation issued by the MHDRP stated that following an "investigation into the above-entitled matter pursuant to RCW 59.30.040, the Manufactured Housing Dispute Resolution Program of the Office of the Attorney General of Washington has found there to be a VIOLATION of the [MHLTA], RCW 59.20." AR 7. The notice in its introduction to the violation sets forth the AG's conclusion that the park violated "RCW 59.20.050(1) and RCW 59.20.060(1) by failing to provide a written rental agreement; RCW 59.20.060(2)(c), RCW 59.20.080, and RCW 59.20.090(2) by improperly increasing rent; RCW 59.20.130(1) by failing to comply with Pierce County codes and ordinances; and RCW 59.30.050(2) by failing to register as a manufactured/mobile home community with the Department of Revenue." AR 8. The overwhelming number of violations were of the MHLTA [RCW ch. 59.20], with only one coming under RCW ch. 59.30

[failure to register with the Department of Revenue]. *Id.* Thus, the *foundation* of the present case *was grounded in* the MHLTA. *Canyon View, supra*, 148 Cal.App.4th at 676.

In *Canyon View*, the court also discussed the case of *Palmer v. Agee*, 87 Cal.App.3d 377, 150 Cal.Rptr. 841 (1978) as follows:

> [The] owners of a mobilehome park filed a complaint for unlawful detainer against the defendants, residents of the park. The trial court granted the defendants' motion for judgment on the pleadings because the park failed to give proper notice. However, the trial court denied the defendants' motion for attorney fees pursuant to . . . [MRL] Section 798.85. The trial court reasoned that "the action did not *arise out of* [the MRL notice provision], but arose out of an unlawful detainer action . . . ." The appellate court held that the trial court erred in refusing to award attorney fees under the MRL because actions include all proceedings required to perfect rights and *are not 'limited to the complaint or the document initiating the action but the entire judicial proceeding* . . . . An 'action' thus includes all proceedings, at least to the time of judgment, which are required to perfect the rights. The defenses raised in the answer to the complaint are a real part of any action.' The tenant's defense to the unlawful detainer proceedings that the landlord had not complied with MRL arose from the MRL.

[Citations omitted and italics added.] *Canyon View*, *supra*, 148 Cal.App.4th at 676, discussing *Palmer v. Agee*, 87 Cal.App.3d 377, 380-81, 386-87. This same rationale strongly supports the conclusion that the MHDRP action here, where the claims were predominantly based on the park's violations of the MHLTA, was within the scope and "particular factual context addressed by the" MHLTA, because the claims "involve application of" the MHLTA provisions "to a particular factual context addressed by

the" MHLTA. *Canyon View*, *supra*, 148 Cal.App.4th at 675, 676 (discussing *Palmer*). That context is whether mobile parks have to provide written rental agreements as provided in RCW 59.20.050(1) and .060(1) and must give three months' notice of a rent increase as provided in RCW 59.20.090(2), and conform to other aspects of the MHLTA as raised in the AG's notice of violation.

Canyon View also cited in support of its decision the case of *People v. McKale*, 25 Cal.3d 626, 159 Cal.Rptr. 811 (1979). *Canyon View*, 148 Cal.App.4th at 677. In *McKale*, a district attorney advancing the interests of park tenants brought an action against a mobile home park and Wells Fargo Bank seeking civil penalties and injunctive relief for claimed violations of the California Mobilehome Residency Law ["MRL"]. The purported violations related to safety and sanitation and ranged from dumping waste water on the premises to improper burial of underground electrical wiring. *McKale, supra*, 25 Cal.3d at 632, 634. Other causes of action related to violations of the park's rules and regulations governing tenants. *Id.* at 634-635 and fn 2.

As to Wells Fargo, the issue was whether it was in "possession and control of the park during any of the alleged discriminatory acts." *McKale*, 25 Cal.3d at 638. Wells Fargo requested attorney's fees and costs as the prevailing party under the MRL, and the court stated, "[w]hile Wells Fargo appears to be entitled to fees and costs if it is determined to be a prevailing party (see Civ. Code, § 789.12), that determination must eventually depend on whether it prevails on remand." *McKale*, at 639; cited in *Canyon View*,

148 Cal.App. 4th 663, 677. Thus the California Supreme Court allowed for the possibility that Wells Fargo could be the prevailing party in an action arising out of a lawsuit by the district attorney raising issues on behalf of mobile home park tenants, which issues were governed by the MRL, the equivalent of the MHLTA.

Canyon View characterized the *McKale* case as "another situation in where the plaintiff did not allege a cause of action under the MRL, yet the underlying case discussed a specific factual situation addressed by the MRL." *Canyon View*, 148 Cal.App. 4th 663, 677. This is the same as the present case, where the AG did not specifically allege a cause of action under the MHLTA, but his claimed violations of the MHLTA were based on a factual situation addressed by the MHLTA. AR 9-10.

Thus, under the reasoning in *Canyon View* and *McKale*, the fact that the Washington AG here issued a notice of violation on behalf of tenants at the park does not negate the fact that the case initially arose out of the park's violations of the MHLTA, which statute addresses the specific issues raised by the AG, i.e., whether the park was required to provide a written lease, whether the park could raise rents without providing three months' notice, and whether rents could be adjusted more than once per year, all issues addressed by the MHLTA. *Canyon View* and *McKale* support the conclusion in this case that Ms. Allen is entitled to attorney's fees and costs with respect to a case *arising out of* the MHLTA pursuant to RCW 59.20.110.

The court of appeals' narrow interpretation that a court action

following an MHDRP notice of violation is *an action arising out of* the MHDRP (RCW ch. 59.30) rather than the MHLTA (RCW ch. 59.20) artificially focuses on the *procedural origin* or posture of the case rather than the basis for, or the law applicable to, the particular court action. Such narrow interpretation also ignores the fact that an action may *arise out of* more than one source, just as there may be more than one proximate cause of an injury. See, WPIC 15.01; *Jonson v. Chicago, M., St. Paul & P.R.R.*, 24 Wn. App. 377, 379-80, 601 P.2d 951 (1979). The court of appeals erred in its narrow construction of RCW 59.20.110.

3. A Tenant's Initial Utilization of The MHDRP Should Not Preclude a Later Award of Attorney's Fees to the Tenant Who Successfully Files an Action to Obtain Reversal of an ALJ Order.

On December 8, 2015, Ms. Allen's counsel filed a petition in the Thurston County Superior Court for review of the ALJ's decision issued on November 9, 2015. CP 3-6; CP 7-23. Ms. Allen thus filed her petition for review on the 29th day, one day before the deadline for filing the petition for review. RCW 34.05.542(2). The very next day, on December 9, 2015, the MHDRP also filed a petition for review. CP 251-4. The superior court consolidated the MHDRP's appeal under the case number assigned to Ms. Allen's appeal. CP 30-31.

When she filed her petition for review in Thurston County Superior Court, Ms. Allen had no assurance that the AG would also file a petition for review in the superior court of the ALJ's determination that Ms. Allen did not live in a mobile home park. The AG may have had resource issues or not have considered the case important enough to appeal. Ms. Allen had no

control over whether the AG filed a petition for review of the ALJ's decision. In addition, the AG could have dismissed its petition at any time for any reason, or for reasons negotiated between the AG and the park. The bottom line is that the AG was representing the MHDRP, not Ms. Allen, who was denominated as an "interested party." CP 252. It was therefore appropriate for Ms. Allen to obtain her own counsel to pursue her own claims.

Simply on the grounds of fundamental fairness, the court of appeals' denial of attorney's fees to Ms. Allen is manifestly unjust. If she herself had filed a lawsuit against the park alleging a violation of the MHLTA for its failure to provide her a written lease, under the court of appeals' interpretation of the law, she would have prevailed and would have clearly been entitled to attorney's fees under RCW 59.20.110. But because she complained first to the AG, who gave a notice of violation to the park for the park's failure to provide a written lease, and the park then appealed the notice of violation in order to have an administrative hearing, and after 28 days passed without any indication that the AG would appeal the ALJ's determination adverse to Ms. Allen, Ms. Allen obtained an attorney who filed a petition for review to the superior court on the 29th day of the appeal period in order to protect Ms. Allen as an aggrieved party under the ALJ's ruling. Under those circumstances Ms. Allen should receive the benefit of having filed the *action,* i.e., the lawsuit in Thurston County Superior Court,

as at the time her action was filed, the AG had not filed any *action*.[6]

The MHDRP is only a *mechanism* to help resolve disputes in mobile home parks, and mobile home park tenants should not be penalized by using the MHDRP to try and resolve disputes with parks. The legislature likely did not intend to limit appeals of incorrect ALJ rulings in enacting RCW ch. 59.30, and the attorney's fees provisions in ch. 59.30 and 59.20 are easily harmonized by concluding that attorney's fees are not available in an administrative hearing under ch. 59.30, but such fees are allowable if an *action* is filed in superior court to appeal an incorrect administrative decision. The *action* on appeal does arise out of the MHLTA. Such interpretation facilitates the involvement of attorneys where necessary, does not penalize tenants who use the MHDRP, and effectuates the legislative intent.

4. The Decision of the Court of Appeals Provides a Disincentive for Attorneys to Help Low-Income Tenants Who Experience Blatant Violations of the MHLTA at the Hands of Park Management.

The MHLTA contains a fee-shifting provision in RCW 59.20.110 providing for the payment of reasonable attorney's fees to the prevailing party in any action *arising out of* the MHLTA. RCW 59.20.110.

In *Brand v. Department of Labor & Industries of the State of Washington*, 139 Wn.2d 659, 667, 989 P.2d 1111 (1999) the court stated:

> Central to the calculation of an attorney fees award . . . is the underlying purpose of the statute authorizing the attorney fees. [The Washington Supreme

[6] Ms. Allen has sought no fees for any representation through the ALJ hearing. The only fees she has sought were for her attorney's filing the petition for review, the briefing and appearance in the superior court, and the briefing and appearance in the court of appeals.

> Court] has recognized that specific statutes authorizing the award of attorney fees may be designed to serve purposes other than the general purpose of most fee shifting statutes: to punish frivolous litigation and encourage meritorious litigation. *Scott Fetzer Co.*, 122 Wash.2d at 149, 859 P.2d 1210. For example, in *Scott Fetzer*, this court recognized that the attorney fees provision of the long-arm statute served the purpose of compensating out-of-state defendants for their reasonable efforts while encouraging the exercise of state jurisdiction. *Id.* Given that attorney fees statutes may serve different purposes, it is important to evaluate the purpose of the specific attorney fees provision and to apply the statute in accordance with that purpose.

Brand, 139 Wn.2d at 667.

The purposes for which the MHLTA was adopted relate to the unique problem faced by mobile home park tenants: the expense of relocating their mobile homes if their tenancy is terminated. *Western Plaza, LLC v. Tison*, 184 Wn.2d 702, 714-15, 364 P.3d 76 (2015) (quoting a report noting that the "most difficult problem currently experienced by the mobile home plot tenant is eviction from a lot with insufficient notice and without cause"); *Holiday Resort Community Association v. Echo Lake Associates*, 134 Wn. App. 210, 224, 135 P.3d 499 (2006) (legislative purpose in enacting the MHLTA was to regulate and protect mobile home owners by providing stable, long-term tenancy for homeowners living in a mobile home park).

These purposes are furthered by construing the MHLTA to protect tenants in mobile home parks. That protection is enhanced by encouraging and compensating attorneys in their representation of tenants in mobile home parks when they prevail in actions against the parks, and not by

denying attorney's fees through taking a narrow interpretation of what actions *arise under* the MHLTA.[7]

The ruling of the court of appeals provides a disincentive for any mobile home park tenant to complain to the MHDRP in order to resolve a disagreement with a park, rather than simply directly filing a lawsuit against the park. The legislature clearly did not intend such a result in setting up the MHDRP. See RCW 59.30.010 (A-60). The purpose of the MHDRP was "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." RCW 59.30.030(2). This purpose is not served by denying attorney's fees to a tenant under the circumstances of this case.

The park also appealed to the court of appeals the superior court's decision adverse to the park and again, there was no guarantee that the MHDRP would weigh in on the appeal. Ms. Allen's actions were reasonable and well within the contemplation of the legislature in enacting RCW 59.20.110 providing for attorney's fees in actions *arising out of* the MHLTA.

This Court should also give some weight to the superior court's determination as to the appropriateness of an attorney's fee award, as that

[7] The MHLTA contains a number of provisions protecting tenants, e.g., those specifying the only grounds for eviction or termination of a tenant's tenancy (RCW 59.20.080), prohibiting retaliation by the park (RCW 59.20.070(5)), allowing the transfer of a tenant's rental agreement (RCW 59.20.073), limiting the enforceability of rules against a tenant (RCW 59.20.045), providing for automatic renewal of rental agreements (RCW 59.20.090(1)), imposing duties on landlords (RCW 59.20.130), and requiring park landlords to maintain permanent structures in the park (RCW 59.20.135).

court is "closer to the ground" on these kinds of issues and would have some basis to observe a larger number of cases than this Court.

The above considerations strongly support this Court's granting review and affirming the superior court's award of attorney's fees under RCW 59.20.110.

5. Ms. Allen is a "Qualified Party" With Assets of Less Than $1 Million so as to be Alternatively Entitled to Attorney's Fees Under RCW 4.84.350(1).

Petitioner Allen requested in the alternative attorney's fees and costs pursuant to the statutory mandate of RCW 4.84.350(1).[8] The court of appeals denied such fees because it thought Ms. Allen failed to show that she was a "qualified party" under RCW 4.84.340(5), i.e., that her net worth did not exceed one million dollars.[9] *Slp. Opn*. at 22, fn 9 (A-22).

The record, however, shows that Ms. Allen is a "qualified party." She is disabled. AR 960, 967. She is on a fixed income. AR 967. She has a high school education. AR 961. She did not buy the home relevant to this case, but it was given to her. AR 963. It was in "terrible condition." *Id.* It took Ms. Allen three months to dry the home out. AR 965. The title was not transferred to Ms. Allen at the time because Ms. Allen "just didn't have $156 to do it . . ." AR 965, 1006. Immediately before she moved into the park Ms. Allen stayed with her son for about three months in his fifth wheel.

[8] RCW 4.84.350(1) provides in relevant part that " a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees . . . ."

[9] RCW 4.84.340(5) provides in relevant part that a "[q]ualified party" means (a) an individual whose net worth did not exceed one million dollars at the time the initial petition for judicial review was filed . . . "

AR 961. Before that she was "camped out at Walmart on the south hill . . ." AR 966. She stated that when she moved into the park in 2014, she "cannot be living in [her] truck anymore." AR 992.

The record thus shows that Ms. Allen was essentially homeless before the home in question was given to her. She was disabled and on a fixed income. She did not have $156 to transfer the title of the home to herself. Accordingly, the record establishes that she was an individual "whose net worth did not exceed one million dollars . . . "under RCW 4.84.340(5).[10] She is therefore entitled to attorney's fees under RCW 4.84.350(1).

Ms. Allen notes that attorney's fees under RCW 4.84.350(2) are limited to $25,000. Ms. Allen is entitled to at least that amount.

F. CONCLUSION

This Court should (1) reverse the decision of the court of appeals so as to reinstate the attorney's fees awarded by the superior court under either RCW 59.20.110 or RCW 4.84.350(1), (2) award Ms. Allen attorney's fees incurred on appeal, and (3) remand to the ALJ for further action.

RESPECTFULLY SUBMITTED this 9th day of August 2019.

Law Offices of Dan R. Young

By Dan R. Young
Dan R. Young, WSBA # 12020
Attorney for Estate of Edna Allen

[10] This is not surprising, since "consumers of mobile homes are generally lower income young families and older Americans on fixed or retirement incomes." *Reforming the Mobile Home Tenant-Landlord Relationship: The Ohio Experience*, 30 Cleveland State L. Rev. 57, 58 (1981).

Appendix

Filed
Washington State
Court of Appeals
Division Two

October 16, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

EDNA ALLEN, an individual, and MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM, WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, Respondents, v. DAN AND BILL'S RV PARK, Appellant.	No. 49836-7-II PUBLISHED OPINION

LEE, J. — This appeal concerns the statutory interpretation of "park model" under the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA). " 'Park model' means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence[.]" RCW 59.20.030(14). The MHTLA applies only to mobile home parks containing two or more park models.

Edna Allen filed a complaint against Dan and Bill's RV Park (the Park) with the Manufactured Housing Dispute Resolution Program (the Program),[1] alleging that the Park violated

[1] The Manufactured Housing Dispute Resolution Program is created by statute and administered by the Attorney General's Office. RCW 59.30.030(1). The program has the authority to "[p]erform dispute resolution activities, including investigations, negotiations, determinations of violations, and imposition of fines or other penalties[.]" RCW 59.30.030(3)(d).

the MHTLA by failing to provide her with a written rental agreement and improperly raising her rent. After investigating, the Program notified the Park that it had violated the MHLTA. The Park disputed that it was a mobile home park subject to the MHTLA.

The matter proceeded to a hearing before the Office of Administrative Hearings (OAH). The OAH determined that the MHLTA did not apply to the Park because the Park contained only one "park model" and, therefore, was not a mobile home park. The Program and Allen appealed the OAH decision to the superior court. The superior court concluded that the MHLTA applied to the Park because it was a mobile home park containing two or more "park models," and reversed the OAH decision. The Park appeals the superior court's order reversing the OAH decision.

We hold that the OAH erred in (1) construing the definition of "park model," (2) concluding that the Park contained only one "park model," (3) concluding that the Park is not a mobile home park, and (4) concluding that the Park is not subject to the MHLTA. We also hold that the superior court erred in awarding attorney fees to Allen.[2] Accordingly, we reverse the OAH order and the superior court order on attorney fees, and remand to the OAH for further proceedings consistent with this opinion.

FACTS

A. THE PARK AND ALLEN

Dan Haugsness owns the Park, which is located in Puyallup, Washington. At the time of Allen's complaint, the Park rented space to people with different types of trailers and motorhomes.

[2] We decline to address the Park's argument regarding the Program's standing to appeal because the claims that the Program raises are also raised by Allen. We also decline to address the Park's argument that this case is moot because the Park fails to provide legal authority or support for this argument. RAP 10.3(a)(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

No one rented a specific lot or space, but the residents occupied allotted spaces for years. The Park did not provide residents with a rental agreement. Instead, they were provided with a copy of the Park rules.

In January 2014, Allen was given a trailer located in the Park and began living in the trailer. Haugsness told Allen that the trailer was permanent and that she could build onto the trailer. Allen did not receive a written rental agreement when she moved in. Allen asked for a written rental agreement multiple times, but the Park never gave her one.

Allen received a set of the Park rules. The rules discussed the payment of rent and set out certain restrictions within the Park. The rules stated, in part, "Sites shall be free and clear of debris at all times; trailers and RV's shall be maintained in good repair." Administrative Record (AR) at 19. The rules also stated, "Due to the small size of each a[l]lotted space at [the Park], everyone needs to respect each other[']s privacy and property." AR at 19.

In April 2014, Haugsness orally told Allen that her rent would increase by $20 beginning the following month. Allen asked Haugsness where her notice was and he told her that he was giving her notice then. Haugsness returned later that same day and provided Allen with written notice of the increase to start the next month. Allen began paying the increased rent the next month.

B. COMPLAINT AND INVESTIGATION

In May 2014, Allen filed a request for dispute resolution with the Program, asserting that the Park failed to provide her with a written rental agreement and improperly raised her rent. The Program conducted an investigation and found that the Park violated the MHLTA by failing to

provide Allen a written rental agreement and improperly raising her rent. The Program issued a notice of violation to the Park later that year. The Park appealed the notice of violation.

In February 2015, the Park gave Allen written notice that her rent would increase by an additional $10 beginning in April. The Program later issued a cease and desist order against the Park to stop increasing Allen's rent in violation of the MHLTA. The Park appealed the cease and desist order.

C. ADMINISTRATIVE HEARING

The OAH consolidated the two appeals and held a hearing. At the hearing, testimony was presented by Allen, Haugsness, and other residents of the Park.

Allen testified about her trailer and the events that led to her complaint. Allen testified that she had lived in her trailer in the Park since January 2014 and that she intended to live in the Park permanently. Her trailer had two bedrooms, no holding tank, and was hooked up to the Park's septic system. The septic was hooked up with a hard pipe, not a flex hose. The trailer did not have a generator and had to be plugged in to have electricity. Allen's trailer had wheels and a tow bar, but it did not have a license plate or tabs. The trailer sat on cinder blocks and did not have jacks.

Barbara Hamrick testified that she had lived in the Park since 2003. Hamrick had talked to Haugsness about how long she would be living in the Park and she told him that she would probably die there. Hamrick had signed a rental agreement to rent month to month. Hamrick lived in an RV trailer with wheels and a trailer attachment. Her trailer was licensed for the road. Hamrick moved her trailer at least twice a year because of flooding. It took about two hours for Hamrick to move. When Hamrick moved her trailer, she had to unplug the electric plug-in, unhook the cable television and sewer, and take the blocks and jacks down.

Matthew Niquette testified that he had lived in the Park on and off for five years. Niquette had no plans to move out of the Park. Niquette lived in a travel trailer. His trailer plugged into the Park's electricity, but it was not hard wired. The trailer's septic was connected with a flex hose. Niquette only moved his trailer if there was flooding. It took about 40 minutes to prepare to move his travel trailer. To move, Niquette had to hitch his travel trailer to his truck, drop the jacks, and unplug the power and the septic. Niquette had a deck that was not attached to his trailer. The tabs on his trailer were expired, but he could get a three-day permit to move the trailer on the road.

Edward Shinkle, II, testified that he had moved back into the Park in 2010 and had lived there for about five years. Shinkle did not have plans to leave the Park. Since his return in 2010, he had not moved his trailer even when there were threats of flooding. Shinkle had changed out the trailer that he lived in three days before he testified, but he had no plans to move his trailer. If Shinkle had to move, he could be on the road in an hour or two. If Shinkle were to leave, he would have to clear the area around the trailer, wheels, and anything underneath. He would then need to unplug the power, sewer, and water. Shinkle had built a rock wall and planted flowers around his trailer. Shinkle also had a small deck that was not attached to his trailer. Shinkle had a license plate on his trailer, but his tabs were not current.

Roy Bordenik testified that he had lived in the Park for nine years. Bordenik lived in a motorhome and had no plans to move out of the Park. Bordenik's motorhome had a self-contained generator and a holding tank for water. Bordenik maintained the grass around his motorhome. Bordenik had a small deck that was not attached. Bordenik left the Park several times a year for a

couple of days. To leave, Bordenik had to unplug his power cord, undo his sewer and water hoses, and then drive away. This process took about 15 to 20 minutes.

Michael Dewey testified that he lived in a motorhome in the Park. It would take about 15 minutes to move his motorhome. Dewey had a little fence around his motorhome, but it was removable. The fence slipped into cement blocks on the ground.

Haugsness testified that he has owned the Park property since 1966. The Park is located in a flood plain. No one rented a specific space or lot of the Park and people move around. The individual trailers in the Park were assigned numbers for identification and mailing purposes. The Park has the same hookups for electricity, water, and sewage as a state park.

D. ADMINISTRATIVE DECISION

The OAH determined that because the Park contained only one "park model," it was not a mobile home park as defined by the MHLTA and, therefore, was not subject to the MHLTA. The OAH noted that a " 'park model' is 'a recreational vehicle intended for permanent or semi-permanent installation *and* is used as a primary residence.' " AR at 868. The OAH also noted that a " 'recreational vehicle' . . . 'is not occupied as a primary residence, *and* is not immobilized or permanently affixed to a mobile home lot.' " AR at 868 (emphasis in original). In construing the definitions of "park model" and "recreational vehicle," the OAH stated that "immobilized" and "permanently affixed" in the definition of "recreational vehicle" described "semi-permanent" and "permanent installation," respectively. AR at 868-69.

Applying this construction of "park model," the OAH concluded that Allen's trailer was a "park model," noting it sat on cinder blocks, was immobile in its present state, and thus, was semi-permanently installed. AR at 869. The OAH also concluded that the other units in the Park were

not "park models" because they were not permanently or semi-permanently installed. AR at 869. The OAH, therefore, concluded that because the Park was not a mobile home park subject to the MHLTA, the Park did not violate the MHLTA.

Allen and the Program appealed to the superior court.

E. SUPERIOR COURT HEARING

On appeal, the superior court concluded that the Park contained two or more park models and, therefore, was a mobile home park subject to the MHLTA. The superior court reversed the OAH decision and remanded to the OAH for further proceedings.

The superior court further concluded that Allen was a prevailing party and entitled to attorney fees under RCW 59.20.110.[3] The superior court ordered that the Park pay attorney fees in the amount of $41,655.25 to Allen.

The Park appeals.

ANALYSIS

A. THE WASHINGTON ADMINISTRATIVE PROCEDURES ACT

The Washington Administrative Procedures Act (APA) governs our review in this case. RCW 59.30.040(10). A reviewing court may reverse an administrative order if the order involves an error in interpreting or applying the law, the order is not supported by substantial evidence, or the order is arbitrary or capricious. RCW 34.05.570(3)(d), (e), (i). " 'We sit in the same position as the superior court and apply the APA to the administrative record.' " *Narrows Real Estate, Inc.*

[3] RCW 59.20.110 provides, "In any action arising out of [chapter 59.20 RCW], the prevailing party shall be entitled to reasonable attorney's fees and costs."

v. Mfd./Mobile Home Dispute Resolution Program, 199 Wn. App. 842, 852, 401 P.3d 346 (2017) (quoting *Cornelius v. Dep't of Ecology*, 182 Wn.2d 574, 585, 344 P.3d 199 (2015)).

B. STATUTORY CONSTRUCTION OF "PARK MODEL"

Allen argues that the OAH erred in construing the definition of "park model" under the MHLTA. We agree.

1. Legal Principles

We review issues of statutory construction de novo. *Clark County Pub. Util. Dist. No. 1 v. Dep't of Revenue*, 153 Wn. App. 737, 747, 222 P.3d 1232 (2009). In interpreting a statute, our fundamental obligation is to give effect to the legislature's intent. *Id*. When the statute's meaning is plain on its face, we give effect to the plain meaning of the statute as an expression of legislative intent. *Id*. When possible, we do not interpret statutes in a manner that renders any portion of the statute superfluous or meaningless. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

We presume that the legislature enacts laws with knowledge of existing laws. *Maziar v. Dep't of Corr.*, 183 Wn.2d 84, 88, 349 P.3d 826 (2015). "Where two statutes are in apparent conflict, we reconcile them, if possible, so that each may be given effect." *City of Lakewood v. Pierce County*, 106 Wn. App. 63, 71, 23 P.3d (2001). "Statutes must be read together to achieve a 'harmonious total statutory scheme . . . which maintains the integrity of the respective statutes.' " *Id*. (quoting *State v. O'Neill*, 103 Wn.2d 853, 862, 700 P.2d 711 (1985)). "When resolving a conflict between two statutes, we must look at the statutory context as a whole to give effect to the intent underlying the legislation." *Servais v. Port of Bellingham*, 72 Wn. App. 183, 192, 864 P.2d 4 (1993), *aff'd*, 127 Wn.2d 820 (1995).

2. Applicable Provisions in the MHLTA

The MHLTA was enacted to

> regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant. All such rental agreements shall be unenforceable to the extent any conflict with any provision of [the MHLTA].

RCW 59.20.040.

Under the MHLTA, a "mobile home lot" is defined as

> 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[.]

RCW 59.20.030(9).

A "mobile home park" is defined as

> 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).

In 1993, the legislature added a definition for "recreational vehicle" to the MHLTA. Laws of 1993 ch. 66, §15. "Recreational vehicle" is defined as

> 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[.]

RCW 59.20.030(17).

In 1999, the legislature added a definition for "park model." Laws of 1999, ch. 359, §2. "Park model" was defined as "a recreational vehicle intended for permanent or semi-permanent installation and habitation." Laws of 1999, ch. 359, §2. The legislature amended this definition in 2003, replacing the phrase "and habitation" with "and is used as a primary residence." Hence, the applicable definition of "park model" is "a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence." Laws of 2003, ch. 127, §1; RCW 59.20.030(14).

3. Statutory Interpretation of "Park Model"

a. Harmonizing "Recreational Vehicle" and "Park Model"

Here, the definition of "recreational vehicle" conflicts with the usage of the term in the definition of "park model." Specifically, a park model is defined as a "recreational vehicle" used as a primary residence, but a "recreational vehicle" is specifically defined as a unit that is *not* occupied as a primary residence.

But when interpreting a statute,

> we are obliged to construe the enactment as a whole, and to give effect to *all* language used. Every provision must be viewed in relation to other provisions and harmonized if at all possible. Preference is given a more specific statute *only* if the two statutes deal with the same subject matter and conflict to such an extent that they cannot be harmonized.

Omega Nat'l Ins. Co. v. Marquardt, 115 Wn.2d 416, 425, 799 P. 2d 235 (1990) (footnotes omitted).

When the legislature added to the MHLTA a definition of "park model" by using the term "recreational vehicle" in its definition, the MHLTA already included a separate definition of

"recreational vehicle." Specifically, at the time the legislature added the definition for "park model," "recreational vehicle" was defined as a type of vehicle "used as temporary living quarters . . . is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot[.]" RCW 59.20.030(17). Despite this definition, the legislature has defined "park model" as "a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence[.]" RCW 59.20.030(14). These two definitions conflict: the definition of "recreational vehicle" describes a type of vehicle that is temporarily used as living quarters, while the recreational vehicle used in the definition of "park model" describes using the recreational vehicle in a permanent or semi-permanent situation as a primary residence. However, this conflict can be harmonized.

The legislature is presumed to know how it defined a "recreational vehicle" at the time it added a definition of "park model" to the MHLTA. *See Maziar*, 183 Wn.2d at 88. Also, a comparison of the enactment dates of the definitional statutes and reading each statute in relation to the others may provide a reasonable basis upon which legislative intent can be determined. *In re Estate of Kerr*, 134 Wn.2d 328, 337, 949 P.2d 810 (1998). In harmonizing the two definitions, the statutes can be read together as a "recreational vehicle" being a type of vehicle that is temporarily used as living quarters, but when the recreational vehicle is intended for permanent or semi-permanent installation and is used as a primary residence, it is considered a "park model."

The Park acknowledges that the MHLTA specifies that there is a difference between recreational vehicles defined in RCW 59.20.030(17) and recreational vehicles occupied as primary residences, citing RCW 59.20.080(3). RCW 59.20.080(3) provides,

> Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles, as defined in RCW 59.20.030, from mobile home parks. This 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 plain language of RCW 59.20.080(3) shows the legislature recognized the potential different uses of a "recreational vehicle" in the MHLTA. For example, the statute specifically recognizes the existence of recreational vehicles used as primary residences in mobile home parks, which is a use different from a "recreational vehicle" used as temporary living quarters as defined in RCW 59.20.030(17). As a result, chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles as defined by RCW 59.20.030(17), and chapter 59.20 RCW governs the eviction of recreational vehicles that constitute a "park model" and recreational vehicles that do not constitute "park models" but are used as a primary residence.[4]

b. The Park's arguments

The Park argues that we have already defined "park model" in *Brotherton v. Jefferson County*, 160 Wn. App. 699, 249 P.3d 666 (2011). In *Brotherton*, the court stated in a footnote,

> Park model RVs are manufactured dwellings designed to be towed to sites such as mobile home parks to serve as full or part-time residences. Unlike other RVs, they lack self-contained holding tanks and require a sewer connection or external method of waste disposal.

160 Wn. App. at 701 n.1. However, the *Brotherton* court did not define "park model" in the context of RCW 59.20.030. Because the *Brotherton* court did not rely on the definition of "park

[4] Allen also argues that the OAH failed to sufficiently consider the legislative hearing records supporting the plain and ordinary meaning of "park model" understood among the various MHLTA stakeholders. However, the hearing records only evidence the stakeholder's understanding and application of the MHLTA, not the actual intent of the legislature.

model" in the context of RCW 59.20.030 in its analysis or holding, the Park's reliance on *Brotherton* is misplaced. Therefore, the Park's argument is unpersuasive.

The Park also argues that (1) the legislature has recognized that "park models" require permits for installation under RCW 36.01.220 and RCW 35.21.897; and (2) "park models" may become real property for taxation purposes under RCW 82.50.530, but travel trailers and recreational vehicles cannot become real property. However, requiring permits for installation of "park models" does not conflict with the definition of "park model" as construed in Section B.3. Moreover, travel trailers and recreational vehicles can become real property for taxation purposes "by virtue of its being permanently sited in location and placed on a foundation of either posts or blocks with connections with sewer, water, or other utilities" and is on property that is owned by the owner of the trailer. RCW 82.50.530. Therefore, the Park's argument fails.

C. CONCLUSIONS OF LAW

Allen argues that the OAH erred when it concluded that the Park contained only one "park model," the Park was not a mobile home park under the MHLTA, and the Park was not subject to the MHLTA.[5] We agree.

[5] Allen assigns error to a number of the OAH's findings of fact, including that (1) no one rents a specific lot in the Park; (2) the Park requires all residents to be ready to move any time; (3) none of the units have anything permanently attached to them, by order of the landlord and in compliance with county code; (4) none of the units are hardwired for electricity or plumbed for septic and water; and (5) Mr. Bordenik's mobile home is not permanently installed at the Park and he has no intention of permanently installing it. However, Allen fails to provide legal argument or support for these assignments of error. Therefore, we do not consider these claims of error. RAP 10.3(a)(6); *Cowiche Canyon*, 118 Wn.2d at 809. As a result, the OAH's findings are verities on appeal. *Galvis v. Dep't of Transp.*, 140 Wn. App. 693, 709, 167 P.3d 584 (2007) *review denied*, 163 Wn.2d 1041 (2008).

We review an agency's conclusions of law de novo, including whether the findings of fact support the conclusions of law. *Galvis v. Dep't of Transp.*, 140 Wn. App. 693, 708, 167 P.3d 584 (2007) *review denied*, 163 Wn.2d 1041 (2008); *Hickethier v. Dep't of Licensing*, 159 Wn. App. 203, 210, 244 P.3d 1010 (2011). For "mixed questions of law and fact, we determine the law independently and then apply the law to the facts as found by the agency." *Galvis*, 140 Wn. App. at 709. We treat unchallenged findings of fact as verities on appeal. *Id.* "Statements of fact included within conclusions of law will be treated as findings of fact." *Kunkel v. Meridian Oil, Inc.*, 114 Wn.2d 896, 903, 792 P.2d 1254 (1990). To give undefined terms meaning, we may look to dictionary definitions. *LaCoursiere v. CamWest Dev., Inc.*, 181 Wn.2d 734, 741-42, 339 P.3d 963 (2014).

1. Number of "Park Models"

Allen argues that the OAH erred by improperly importing the phrases from the definition of "recreational vehicle" into the definition of "park model" to define "semi-permanent installation" to mean "immobilized" and "permanent installation" to mean "permanently affixed." AR at 868-69. Allen also argues that the OAH further erred by concluding that the Park only contained one "park model."[6] We agree.

Under the MHLTA, "park model" is defined as "a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence." RCW 59.20.030(14). Neither the terms "permanent," "semi-permanent," nor "installation" are defined

[6] Allen also argues that the OAH's conclusion was arbitrary and capricious. However, Allen fails to provide any argument, legal authority, or support for this claim beyond stating that such a conclusion provides grounds for relief. Therefore, we decline to address this claim. RAP 10.3(a)(6); *Cowiche Canyon*, 118 Wn.2d at 809.

in the statute. Because the terms are not defined in the statute, we look to their dictionary definitions. *See LaCoursiere*, 181 Wn.2d at 741-42.

The dictionary defines "permanent" as "continuing or enduring (as in the same state, status, place) without fundamental or marked change . . . fixed or intended to be fixed." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1683 (1969). "Semi-permanent" is defined as "permanent in some respects," "partly permanent," "lasting for an indefinite time," and "virtually permanent." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2064 (1969). "Installation" means "setting up or placing in position for service or use." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1171 (1969). Therefore, a "park model" is (1) a recreational vehicle fixed or intended to be fixed in position for use or lasting for an indefinite time in position for use and (2) is used as a primary residence.

a. Allen's trailer is a "park model"

Here, the Park concedes that Allen's trailer is a "park model." The OAH's unchallenged findings of fact show that because Allen intended to live in her trailer in the Park permanently; had lived in the trailer continuously for several years; had not moved her trailer; and had immobilized her trailer, Allen's trailer is intended to be fixed in position for use, continuously, without fundamental or marked change. As a result, Allen's trailer is intended for permanent installation.

The findings of fact also show that Allen's trailer is her primary residence. Allen had lived in the trailer since January 2014, and she intended to live there permanently. This shows that Allen used her trailer as a primary residence. Therefore, we accept the Park's concession that Allen's trailer is a "park model" under the MHLTA.

b. Shinkle's trailer is a "park model"

Here, the OAH erred by concluding that Shinkle's trailer did not constitute a "park model."[7] First, the OAH's findings of fact show that Shinkle's trailer is a recreational vehicle under the MHLTA. The OAH found that Shinkle's unit was a travel trailer and that Shinkle's trailer had a license plate and that he can move the trailer. These findings support the conclusion that Shinkle's trailer is primarily designed as a temporary living quarters and can be drawn by another vehicle. Thus, Shinkle's trailer is a recreational vehicle.

Second, the OAH's findings of fact show that Shinkle's trailer was intended for semi-permanent installation. The OAH found that Shinkle had lived in his trailer in the Park for about five years; had no plans to leave the Park; had never relocated, not even when the Park was threatened with flooding; had built a rock wall and planted flowers around his trailer; and has a small deck that is not attached to his trailer. These findings show that Shinkle's trailer was intended to be fixed in position for use for an indefinite time, permanent in some respects, and partly permanent. As a result, Shinkle's trailer was intended for semi-permanent installation.

Third, the OAH found that Shinkle had lived in the Park for about five years and that he had no plans to leave the park. These findings showed that Shinkle uses his trailer as a primary residence. Therefore, contrary to the OAH's conclusion, Shinkle's trailer is also a "park model" under the MHLTA.

[7] The Park asserts that all of the Park resident witnesses, except Allen, testified that they do not live in "park models." To the contrary, Niquette testified that he lived in a "park model." AR at 1034. Other witnesses testified that they were not familiar with the definition of "park model" under RCW 59.20.030(14).

Because Allen's trailer is a "park model" and the OAH erred in concluding that Shinkle's trailer did not constitute a "park model" under the MHLTA, the OAH also erred in concluding that there was only one "park model."

2. Mobile Home Park

Allen also argues that the OAH erred when it concluded that the Park was not a mobile home park.[8] We agree.

Under the MHLTA, "mobile home park" is defined as

> 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). As discussed above, a "park model" is "a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence." *See supra* Section B.3; RCW 59.20.030(14).

Here, the OAH erred by concluding that the Park was not a mobile home park. The Park is real property and the Park is held out for rent to others. As discussed above, the Park is held out for rent for the placement of two or more park models. *See supra* Section C.1. Also, it is undisputed that the Park is held out for rent to others for the primary purpose of producing income. And the Park is not held out to rent for seasonal recreational purposes only and is intended for

[8] The Park argues that the OAH's ruling is consistent with prior Pierce County district court decisions and Pierce County code enforcement. However, the Park does not provide legal authority or support to show that these prior decisions are controlling here. Therefore, we decline to address this claim. RAP 10.3(a)(6); *Cowiche Canyon*, 118 Wn.2d at 809.

year-round occupancy. Allen, Hamrick, Niquette, Shinkle, and Bordenik have each lived in the Park continuously for several years. As a result, the OAH's findings show that the Park is

> 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). Given these findings, we hold that the OAH erred in concluding that the Park is not a mobile home park.

3. Applicability of MHLTA

Allen next argues that the OAH erred when it concluded that the Park was not subject to the MHLTA. We agree.

The MHLTA

> shall regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant.

RCW 59.20.040. From the plain language of RCW 59.20.040, the MHLTA applies when there is a rental agreement between a mobile home park landlord and a mobile home lot tenant where the tenant has no ownership interest in the property and the property's uses are referred to as a part of the rent structure paid by the tenant. The MHTLA requirements are met here.

a. Rental agreement

First, there is a rental agreement. Here, Allen lived in the Park and provided rent to the Park. This agreement and Allen's use of the Park was based on the rules the Park gave to Allen. Thus, there is a rental agreement.

b. Mobile home park landlord

Second, Haugsness is a mobile home park landlord. " 'Landlord' means the owner of a mobile home park and includes the agents of a landlord[.]" RCW 59.20.030(4). Here, there is no dispute Haugsness owns the property at issue. And the Park is a mobile home park as discussed above. *See supra* Section C.2. Thus, there is a mobile home park landlord.

c. Mobile home park tenant

Third, Allen is a mobile home lot tenant. A "tenant" is "any person, except a transient [as defined in RCW 59.20.030(19)], who rents a mobile home lot[.]" RCW 59.20.030(18). A "mobile home lot" is

> 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.

RCW 59.20.030(9).

Here, Allen rented a mobile home lot. Although no one rented a specific lot or space in the Park, residents rented a portion of the Park designated as the location of one park model, which is intended for the exclusive use as a primary residence. The Park rules referenced different sites and allotted spaces within the Park. The Park rules discussed keeping sites clear of debris and limited the number of vehicles per space. The Park rules also state that "[d]ue to the small size of

each a[l]lotted space at [the Park], everyone needs to respect each other[']s privacy and property." AR at 19. Allen had lived in her trailer since January 2014 and had not moved her trailer. She had been informed by the Park that her trailer was permanent. Thus, Allen rented a mobile home lot, and because she rented a mobile home lot, Allen is also a mobile home lot tenant.

d. No ownership interest in the property

Fourth, Allen does not have an ownership interest in the property. Here, Haugsness owns the Park and Allen provided rent to the Park according to the Park rules. Thus, Allen did not have an ownership interest in the property.

e. Uses referenced as a part of rent structure

Fifth, the uses of the property are referred to as a part of the rent structure paid by Allen. Here, the Park provided Allen with a set of Park rules. The rules set out restrictions on each site within the Park and covered the structure by which Allen paid rent. Thus, the uses of the property were referred to as a part of the rent structure paid.

Thus, we hold that the Park is subject to the MHTLA. Because OAH concluded that the Park did not violate the MHLTA based on the erroneous conclusion that the MHLTA did not apply to the Park, we remand to the OAH for determination of whether the Park violated the MHLTA.

D. ATTORNEY FEES BELOW

The Park argues that the superior court erred when it awarded Allen attorney fees. We agree that the superior court erred in awarding fees to Allen.

We review whether there is a legal basis for an award of attorney fees de novo. *Pub. Util. Dist. No. 2 of Pac. Cty. v. Comcast of Wash. IV, Inc.*, 184 Wn. App. 24, 82, 336 P.3d 65 (2014), *review denied*, 183 Wn.2d 1015 (2015). Under RCW 59.30.040(9), "If an administrative hearing

is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses." The MHLTA also states, "In any action arising out of [chapter 59.20 RCW], the prevailing party shall be entitled to reasonable attorney's fees and costs." RCW 59.20.110.

Here, the superior court erred in awarding Allen attorney fees. The superior court awarded Allen attorney fees as the prevailing party under RCW 59.20.110. Under that statute, "In any action arising out of [chapter 59.20 RCW], the prevailing party shall be entitled to reasonable attorney's fees and costs." RCW 59.20.110. However, this action did not arise out of chapter 59.20 RCW. Instead, this action arose out of chapter 59.30 RCW. As a result, Allen was not entitled to attorney fees under RCW 59.20.110.

Allen argues that the action "clearly arose out of the Park's violations of the MHLTA and Ms. Allen's subsequent complaints to the [Program]." Reply Br. of Allen at 22. However, although the reason for Allen's request for dispute resolution may have come from a potential violation of chapter 59.20 RCW, this particular action arose out of and was initiated under chapter 59.30 RCW, the dispute resolution statute.

RCW 59.30.040(13) states,

> 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 statute shows that the remedy provided by chapter 59.30 RCW is distinct from that provided by chapter 59.20 RCW, and supports the conclusion that the attorney fees and costs provided under RCW 59.20.110 is limited to those incurred as a result of a legal action arising from chapter 59.20 RCW. Therefore, we hold that the superior court erred in awarding attorney fees to Allen.

E. ATTORNEY FEES ON APPEAL

Allen and the Park both request attorney fees on appeal. We decline to award attorney fees to either party on appeal.

First, the Park requests attorney fees and costs on appeal under RCW 4.84.350(1). Under that statute, "a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees." RCW 4.84.350(1). However, because the Park does not prevail against Allen, the Park is not entitled to attorney fees.

Second, Allen requests attorney fees and costs on appeal under RCW 59.20.110.[9] RCW 59.20.110 provides, "In any action arising out of [chapter 59.20 RCW], the prevailing party shall be entitled to reasonable attorney's fees and costs." However, as discussed above, this action did not arise out of chapter 59.20 RCW. Allen initiated this action under chapter 59.30 RCW by filing a request with the Program. As a result, Allen is not entitled to attorney fees under RCW 59.20.110. Therefore, we decline to award attorney fees on appeal to either party.

[9] Allen alternatively requests attorney fees and costs under RCW 4.84.350(1). Under that statute, "a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees . . . ." RCW 4.84.350(1). A "qualified party" is "(a) an individual whose net worth did not exceed one million dollars at the time the initial petition for judicial review was filed or (b) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed five million dollars at the time the initial petition for judicial review was filed . . . ." RCW 4.84.340(5). Allen fails to show that she is a qualified party. Therefore, we decline to award attorney fees on appeal to Allen under RCW 4.84.350(1).

CONCLUSION

In conclusion, we hold that the OAH erred in (1) construing the definition of "park model," (2) concluding that the Park contained only one "park model," (3) concluding that the Park is not a mobile home park, and (4) concluding that the Park is not subject to the MHLTA. We also hold that the superior court erred in awarding attorney fees to Allen. Accordingly, we reverse the OAH order and the superior court order on attorney fees, and remand to the OAH for further proceedings consistent with this opinion.

Lee, J.

We concur:

Maxa, C.J.

Melnick, J.

Filed
Washington State
Court of Appeals
Division Two

July 10, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

EDNA ALLEN, an individual, and MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM, WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, Respondents, v. DAN AND BILL'S RV PARK, Appellant.	No. 49836-7-II ORDER DENYING MOTION FOR RECONSIDERATION

Respondent, Edna Allen, filed a motion for reconsideration of this court's unpublished opinion filed on October 16, 2019. After consideration, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT: Jj. Maxa, Lee, Melnick

LEE, JUDGE

cc Dan H.
cc CAL.
Dec. 11/18

ATTORNEY GENERAL
OF THE STATE OF WASHINGTON

MANUFACTURED HOUSING
DISPUTE RESOLUTION PROGRAM

In the Matter of the **Complaint of Edna Allen Against Dan & Bill's Mobile Home Park.**	**NOTICE OF VIOLATION** **RCW 59.30.040** **MHDRP Complaint No. 447862**

Following an investigation into the above-entitled matter pursuant to RCW 59.30.040, the Manufactured Housing Dispute Resolution Program of the Office of the Attorney General of Washington has found there to be a VIOLATION of the Manufactured/Mobile Home Landlord-Tenant Act, RCW 59.20. If you disagree with this decision, your attention is directed to the section entitled APPEAL RIGHTS at the end of this Notice, which outlines the procedures under RCW 59.30.040 for filing an appeal.

This Notice does not limit the rights of any party to take other legal action.

I. INTRODUCTION

1.1 In May 2014, Edna Allen filed a complaint against Dan & Bill's Mobile Home Park (Dan & Bill's) with the Manufactured Housing Dispute Resolution Program (MHDRP). Allen alleged that Dan & Bills violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20, by, failing to provide a written lease agreement, failing to provide statutorily required notice of a rent increase, and failing to provide receipts for payments made in cash. MHDRP contacted Dan & Bill's in an attempt to facilitate negotiation between the parties and resolve the dispute through an informal dispute resolution process. The parties were not able to negotiate a resolution to this matter and the MHDRP therefore concluded that an agreement could not be reached between the parties. As a result, the MHDRP conducted a formal investigation pursuant to RCW 59.30.040. As more fully set forth below, the MHDRP concludes that Dan & Bill's has violated RCW 59.20.050(1) and RCW 59.20.060(1) by failing to provide a written rental agreement; RCW 59.20.060(2)(c), RCW 59.20.080, and RCW 59.20.090(2) by improperly increasing rent; RCW 59.20.130(1) by failing to comply with Pierce County codes and ordinances; and RCW 59.30.050(2) by failing to register as a manufactured/mobile home community with the Department of Revenue.

II. FACTUAL BACKGROUND

2.1 Dan & Bill's is located in Puyallup, Washington. Dan & Bill's asserts that it is a recreational vehicle park (RV Park), not a mobile home park.

2.2 Dan & Bill's is open for residence year-round.

2.3 Tenants live in the park year round. Tenant S.S. has lived in the park for 12 years; tenants E.H. and B.H. have lived in the park for 11 years; tenant E.S. has lived in the park for 4 years; and tenant T.R. has lived in the park for approximately 3 years.

2.4 Tenants' homes are sitting on top of concrete blocks.

2.5 Tenants have installed permanently affixed porches and decks on their homes. Tenants also have gardens, patios, and sheds around their homes.

2.6 Dan & Bill's maintains a set of park Rules and Regulations "concerning all occupants." Dan & Bill's requires tenants to sign a copy of the Rules when they move into the park.

2.7 Allen owns and resides in a manufactured/mobile home located on space rented from Dan & Bill's. Allen is a tenant under RCW 59.20.030(18).

2.8 Allen has rented a space from Dan & Bill's since January 2014.

2.9 Dan & Bill's did not offer Allen a written lease when she moved in. Allen has repeatedly asked for a written lease but Dan & Bill's refuses to provide one to her.

2.10 In April 2014, Dan Haugness (the owner and manager of Dan & Bill's) verbally informed Allen that her rent had been raised by $20.00.

2.11 Beginning in May 2014, Allen began paying $480 each month for her rent (up from $460 per month).

2.12 Dan & Bill's does not have the permits required by Pierce County to operate a mobile home park on the property.

2.13 Pierce County issued a cease and desist order against Dan & Bill's in 2004 for operating the park without a conditional use permit as required by Pierce County Code. Pierce County does not believe Dan & Bill's has ever been in compliance with the cease and desist order.

2.14 Dan & Bill's is not registered with the Department of Revenue as a manufactured/mobile home community.

III. VIOLATIONS

3.1 RCW 59.20.030(10) defines "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" as:

> [A]ny 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.

a. RCW 59.20.030(14) defines a "park model" as:

> [A] recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence.

b. RCW 59.20.030(17) defines a "recreational vehicle" as:

> [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.

c. The homes in Dan & Bill's are park models, rather than recreational vehicles: they are semi-permanently installed and have been used as primary residences by tenants for numerous years. Dan & Bill's is a mobile home park pursuant to RCW 59.20.030(10).

3.2 RCW 59.20.050(1) requires landlords to offer tenants written rental agreements and RCW 59.20.060(1) requires that mobile home space tenancy "shall be based upon a written rental agreement..." Dan & Bill's is in violation of these statutes for failing to provide Allen a written rental agreement.

3.3 RCW 59.20.060(2)(c) prohibits landlords from increasing rent "(i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more." RCW 59.20.080 requires landlords "seeking to increase the rent upon expiration of the term of a rental agreement of any duration [to] notify the tenant in writing three months prior to the effective date of any increase in rent." And RCW 59.20.090(2) requires that any rent increase be communicated in writing three months prior to the increase. Dan & Bill's is in violation of these statutes by increasing Allen's rent more frequently than annually[1] and by failing to provide three months written notice.

3.4 RCW 59.20.130(1) requires landlords to "comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park." Dan & Bill's is violating this statute by failing to comply with Pierce County code, which require certain permits to operate the park/commercial business on the property.

3.5 RCW 59.30.050(2) requires landlords of manufactured/mobile home communities to file an application for registration with the Department of Revenue and pay a registration fee. Dan & Bill's is violating this statute by failing to apply for registration and failing to pay the registration fee.

IV. CORRECTIVE ACTION

4.1 Dan & Bill's must, within thirty (30) days of receipt of this Notice, provide Allen with a written rental agreement that complies with RCW 59.20.

4.2 Dan & Bill's must, within thirty (30) days of receipt of this Notice, return Allen's monthly rental payments to $460 and reimburse Allen in the amount of $140 for the additional $20 she was improperly required to pay every month from May through November pursuant to the illegal rent increase.

4.3 Dan & Bill's must, within thirty (30) days of receipt of this Notice, come into compliance with all applicable Pierce County codes and ordinances.

[1] Though Allen does not have a written rental agreement with Dan & Bill's, RCW 59.20.090(1) provides that "unless otherwise agreed rental agreements shall be for a term of one year." Therefore, because Dan & Bill's and Allen failed to agree to another term, this statute provides that Allen's rental term is one year.

4.4 Dan & Bill's must, within thirty (30) days of receipt of this Notice, apply for registration as a manufactured/mobile home community with the Department of Revenue and pay the required registration fee.

4.5 A failure to take the corrective action set forth above within thirty (30) days of receipt of this Notice will result in the imposition of a $150 fine per day thereafter, until compliance is achieved.

Signed this 17th day of November, 2014.

MANUFACTURED HOUSING DISPUTE
RESOLUTION PROGRAM

ROBERT W. FERGUSON
Attorney General

SHANNON E. SMITH
Senior Counsel
Chief, Consumer Protection Division

APPEAL RIGHTS

Either party may appeal this Notice by requesting a hearing before an administrative law judge. If neither party appeals this Notice, the Notice of Violation becomes a final order of the Attorney General and is not subject to review by any court or agency.
RCW 59.30.040 governs the parties' appeal rights. A copy of RCW 59.30.040 is attached. An appeal of this Notice requesting a hearing must be:

- In writing, stating the basis for the appeal and the specific remedy sought
- Signed by the appealing party
- Received by Manufactured Housing Dispute Resolution Program within fifteen (15) business days of the party's receipt of this notice
- Mailed or delivered to:
  Attorney General's Office
  Manufactured Housing Dispute Resolution Program
  800 Fifth Avenue, Suite 2000, TB-14
  Seattle, WA 98104-3188

If a timely appeal is received, MHDRP will coordinate with the Office of Administrative Hearings to schedule a hearing. In an appeal you will bear the cost of you own legal expenses. An administrative law judge will hear and receive pertinent evidence and testimony and decide whether a violation of the MHTLA has occurred by a preponderance of the evidence. The administrative law judge's decision will constitute the final agency order of MHDRP. A final order may be appealed to superior court according to instructions included a decision.

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☒ Certified and Regular US Mail

TO:

Dan & Bills RV Park
c/o Goodstein Law Group PLLC
Attn: Seth Goodstein
501 S G Streets
Tacoma, WA 98405

Edna Allen
15612 116th St E
Puyallup, WA 98374

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 17th day of November, 2014, at Seattle, Washington.

CHRIS BUNGER
Legal Assistant I

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of: Dan & Bill's RV Park, Appellant.	Docket Nos. 2014-AGO-0001 & 04-2015-AGO-00001 **FINAL ORDER** Agency: Office of the Attorney General Program: Manufactured Housing Dispute Resolution Program Agency No. MHDRP #447862

1. ISSUES

1.1. Did Dan & Bill's RV Park violate chapter 59.20 RCW by failing to provide a written rental agreement?

1.2. Did Dan & Bill's RV Park violate chapter 59.20 RCW by improperly increasing rent on or about April 2, 2014?

1.3. Did Dan & Bill's RV Park violate chapter 59.20 RCW by failing to comply with Pierce County codes and variances?

1.4. Did Dan & Bill's RV Park violate chapter 59.20 RCW by failing to register as a manufactured/mobile home community with the Department of Revenue?

1.5. If any of the foregoing violations occurred, as alleged in the Notice of Violation, what are the appropriate corrective actions and fine(s)?

1.6. On February 2, 2015, did Dan & Bill's RV Park violate RCW 59.20.070(5) when it increased Edna Allen's rent?

1.7. If Dan & Bill's RV Park violated RCW 59.20.070(5), was issuing a Temporary Order to Cease and Desist correct under RCW 59.30.040(7)?

2. ORDER SUMMARY

2.1. Given that Dan & Bill's RV Park is not subject to the Manufactured/Mobile Home Landlord-Tenant Act, Dan & Bill's RV Park did not violate chapter 59.20 RCW, the Manufactured/Mobile Home Landlord-Tenant Act, when it failed to provide Edna Allen, or apparently any other occupant, with a written rental agreement.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

2.2. Given that Dan & Bill's RV Park is not subject to the Manufactured/Mobile Home Landlord-Tenant Act, Dan & Bill's RV Park did not violate chapter 59.20 RCW, the Manufactured/Mobile Home Landlord-Tenant Act, when it increased Edna Allen's rent on or about April 2, 2014.

2.3. Given that Dan & Bill's RV Park is not subject to the Manufactured/Mobile Home Landlord-Tenant Act, Dan & Bill's RV Park did not violate the Manufactured/Mobile Home Landlord-Tenant Act when it allegedly violated one or more county land use codes.

2.4. Only the Department of Revenue may register manufactured/mobile home community landlords and collect registration fees and only the Department of Revenue may enforce those provisions. Therefore, the Attorney General's Office lacks authority to enforce registration and related fees. Thus, the alleged failure of Dan & Bill's RV Park to register and pay fees cannot be raised by the Attorney General's Office and this issue should be dismissed for lack of jurisdiction.

2.5. None of the foregoing violations, as alleged in the Notice of Violation, occurred. Accordingly, no corrective actions or fines are appropriate and the Notice of Violation should be set aside.

2.6. Given that Dan & Bill's RV Park is not subject to the Manufactured/Mobile Home Landlord-Tenant Act, Dan & Bill's RV Park did not violate chapter 59.20 RCW, the Manufactured/Mobile Home Landlord-Tenant Act, when it increased Edna Allen's rent again on February 2, 2015.

2.7. The foregoing violation, as alleged in the Temporary Order to Cease and Desist, did not occur. Accordingly, no corrective actions or fines are appropriate and the Temporary Order to Cease and Desist should be set aside.

3. HEARING

3.1. Hearing Date: September 28-29, 2015

3.2. Administrative Law Judge: Terry A. Schuh

3.3. Appellant: Dan & Bill's RV Park

3.3.1. Representative: Seth Goodstein, Attorney, Goodstein Law Group PLLC

3.3.2. Witnesses:

3.3.2.1. Matthew Niquette, resident at Dan & Bill's RV Park

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

3.3.2.2. Daniel E. Haugsness, owner, Dan & Bill's RV Park

3.3.2.3. Chad Crummer, consumer protection investigations mgr., AGO

3.3.2.4. Michael Dewey, resident at Dan & Bill's RV Park

3.4. Agency: Office of the Attorney General

3.4.1. Representative: Jennifer Steele, Assistant Attorney General

3.4.2. Witnesses:

3.4.2.1. Edna Allen, complainant

3.4.2.2. Barbara Hamrick, resident at Dan & Bill's RV Park

3.4.2.3. Matthew Niquette, resident at Dan & Bill's RV Park

3.4.2.4. Edward Shinkle, resident at Dan & Bill's RV Park

3.4.2.5. Roy Bordernick, resident at Dan & Bill's RV Park

3.4.2.6. James W. Howe, code enforcement officer, Pierce County

3.4.2.7. Chad Crummer, consumer protection investigations mgr., AGO

3.5. Exhibits: Exhibits 1 through 2, 4 through 34, A through L, and N through S were admitted.

3.6. Court Reporter: Anita W. Self, RPR, CRR, Buell Realtime Reporters, served as court reporter.

3.7. Observer: Chris Bunger, legal assistant, attended the hearing to assist Ms. Steele.

3.8. Post-hearing briefs: By agreement with the parties, the record remained open until 5:00 p.m. Pacific Time on October 9, 2015, for the submission of optional post-hearing briefs.

////

////

////

////

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1. On May 7, 2014, Edna Allen filed with the Consumer Protection Division of the Office of the Attorney General ("AGO") a Request for Dispute Resolution. Ex.1; Testimony of Allen.

4.2. On November 17, 2014, the AGO served on Dan and Bill's RV Park ("the Park") a Notice of Violation. Ex. A; Testimony of Haugsness.

4.3. The Park filed its Appeal of Notice of Violation dated December 10, 2014.

4.4. The AGO issued to the Park an Order to Cease and Desist dated February 26, 2015. Ex. B; Testimony of Haugsness.

4.5. On March 19, 2015, the Park filed with the AGO its Appeal of Order to Cease and Desist.

4.6. The parties requested the two matters be consolidated. By oral order at a Status Conference on April 9, 2015, and by written order, Notice of Hearing and Status Conference issued April 10, 2015, Administrative Law Judge Leslie Birnbaum ordered the two matters consolidated. However, the two matters were not consolidated under one docket number. Instead, each matter retained its original docket number.

General Conditions of the Park

4.7. Mail for all of residents is delivered to a common mail box. Testimony of Allen; *see* Ex. 28. The owner sorts the mail and delivers it to the residents. Testimony of Allen.

4.8. Each unit in the Park has a number. Testimony of Allen; Testimony of Hamrick. This characteristic of the Park has developed only recently. Testimony of Hamrick. The numbers attach to the unit. Testimony of Hamrick. Ms. Hamrick has not relocated her unit since she was assigned a number so she does not know whether the number is assigned to her location or to her unit. Testimony of Hamrick. The numbers are assigned to units, not lots. Testimony of Haugsness. The purpose of the numbers is so that the Park knows where its residents are and for facilitating the delivery of mail. Testimony of Haugsness. No one rents a specific lot. Testimony of Haugsness.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

4.9. The Park abuts the Puyallup River. Testimony of Niquette. Residents must be prepared to move to higher ground about once a year or so to avoid flooding. Testimony of Niquette. The Park occupies a flood zone. Testimony of Haugsness; *see* Ex. P (showing water running through the Park). Because the Park occupies a flood zone, Mr. Haugsness will not allow any unit to be permanently installed. Testimony of Haugsness. Nevertheless, he allowed the Allen unit to be installed by the occupant prior to Edna Allen and he told Ms. Allen when she moved into the unit that it was permanently installed. Testimony of Allen.

4.10. Most of the residents upgrade their locations during the summer, but not during the winter. Testimony of Niquette.

4.11. The Park requires all residents to be ready to move anytime. Testimony of Niquette.

4.12. The units in the Park are predominantly trailers in different sizes, shapes, and conditions. *See, generally*, Exs. 8-27. Many of the residents have personalized their unit with outdoor plants and furniture. *See, generally*, Exs. 8-27.

4.13. One unit in the Park was protected by a shelter. Exs. 9, 14. However, this unit is no longer located in the Park. Testimony of Crummer.

4.14. At least two units in the Park are fenced. Exs. 17, 18, 33, and 34.

4.15. One unit in the Park has a raised deck that parallels the entire length of the unit, and also has a storage shed. Exs. 22-23. However, that deck is not attached to the unit and the unit can be readily moved and relocated. Testimony of Haugsness.

4.16. Moreover, none of the units have anything permanent attached to them, by order of the landlord and in compliance with county code. Testimony of Haugsness.

4.17. Residents can and do move fences, stairs, and other improvements to their unit. Testimony of Haugsness.

4.18. None of the units in the Park are hardwired for electricity or plumbed for septic and water. Testimony of Haugsness; Testimony of Niquette. All of the electrical connections are by plug-in and all water and septic are connected like a garden hose is connected to a faucet. Testimony of Haugsness. All of the hook-ups are basically the same. Testimony of Bordernick. All of the hook-ups resemble those used in campgrounds and parks. Testimony of Haugsness.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

Moreover, the amperage is only 30, except for a couple of connections that are 50-amp. Testimony of Haugsness.

Allen Unit

4.19. Edna Allen has lived in her unit at the Park since January 3, 2014. Testimony of Allen.

4.20. Ms. Allen owns her unit. Testimony of Allen. It was a gift. Testimony of Allen. The previous owner signed over the title in Ms. Allen's presence. Testimony of Allen; Ex. 2. Ms. Allen has not transferred the title into her own name because she cannot afford the fees for doing so. Testimony of Allen.

4.21. Ms. Allen's unit does not have a holding tank. Testimony of Allen. She is hooked up to the Park's septic system. Testimony of Allen. It was hooked up when she moved in. Testimony of Allen.

4.22. Ms. Allen's unit does not have a generator. Testimony of Allen. She receives electricity by plugging into the electricity offered by the Park. Testimony of Allen.

4.23. Ms. Allen has never moved the unit since she occupied it. Testimony of Allen. The unit was already installed in the Park before she moved into it. Testimony of Allen. Perhaps it could be lifted onto a flatbed truck and moved. Testimony of Allen. It can be towed. Testimony of Ms. Allen. However, it lacks registration and tabs, so the unit could not presently be lawfully towed. Testimony of Allen. Moreover, the unit is fragile and likely could not be moved without damaging it. Testimony of Allen. In particular, the roof and floor are damaged at the end where the tow-bar is located. Testimony of Allen.

4.24. Nevertheless, Ms. Allen has investigated moving the unit to a mobile home park. Testimony of Allen. However, she failed to find a park willing to take it given its age – it is a 1995 model – and its condition. Testimony of Allen.

4.25. The unit has wheels and is installed on large cinder blocks surrounded by decorative rock. Testimony of Allen; Exs. 11-13. Ms. Allen has never tried to jack the unit. Testimony of Allen. The unit does not have jacks. Testimony of Allen.

4.26. When Ms. Allen moved into the unit in January 2014, she intended to live there permanently. Testimony of Allen. At that time, Mr. Haugsness told Ms. Allen that the unit was permanently installed and that she could add on to it if she wished to do so. Testimony of Allen.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

4.27. In July 2014, Mickey, the Park manager, gave Ms. Allen written notice that her tenancy would terminated in July 2015. Testimony of Allen; Ex. 31. However, she has not yet been evicted from the Park. Testimony of Allen.

4.28. Ms. Allen prefers to continue her residency at the Park if her issues with the Park are resolved. Testimony of Allen.

Hamrick Unit

4.29. Barbara Hamrick has lived in the Park since at least 2003. Testimony of Hamrick.

4.30. Ms. Hamrick lives in a recreational vehicle. Testimony of Hamrick. It is licensed and she can drive it away anytime. Testimony of Hamrick. At least twice a year she needs to temporarily relocate, either within the Park, or outside of the Park, to avoid flooding. Testimony of Hamrick. It takes Ms. Hamrick approximately two hours to prepare to relocate. Testimony of Hamrick. She needs to disconnect from the Park's utilities and remove the blocks and jacks. Testimony of Hamrick.

4.31. Ms. Hamrick considers her recreational vehicle to be her permanent home. Testimony of Hamrick. She resides at the Park because that is where she can afford to live. Testimony of Hamrick.

4.32. Ms. Hamrick places potted plants around her unit. Testimony of Hamrick.

4.33. Ms. Hamrick is hooked up to the Park's electrical system. Testimony of Hamrick.

4.34. Nothing is permanently attached to the Hamrick unit. Testimony of Haugsness.

Niquette Unit

4.35. Matthew Niquette lives in the Park in a 36-foot travel trailer, which he owns. Testimony of Niquette. He has lived in the Park "off and on" for approximately five years. Testimony of Niquette. The only time Mr. Niquette moves is to avoid flooding. Testimony of Niquette. It takes him approximately 35-40 minutes to prepare to move. Testimony of Niquette. Preparing to move consists of readying the interior contents, disconnecting electricity, water, and septic, and hooking up to his truck. Testimony of Niquette. Mr. Niquette can be ready to move anytime. Testimony of Niquette.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

4.36. When moving, if Mr. Niquette does not have the unit licensed and tabbed, he can purchase a 3-day trip permit to allow him to move the unit on public streets and highways. Testimony of Niquette.

4.37. Mr. Niquette does not fence his location. Testimony of Niquette. He has a small deck. Testimony of Niquette. The deck is unattached to Mr. Niquette's unit. Testimony of Niquette.

4.38. Mr. Niquette's installation is not permanent. Testimony of Niquette. He does not want a permanent installation. Testimony of Niquette.

4.39. Mr. Niquette plans to reside at the Park for an indefinite period of time. Testimony of Niquette.

4.40. Mr. Niquette has never lived in an RV campsite. Testimony of Niquette.

Shinkle Unit

4.41. Mr. Shinkle has lived at the Park for approximately five years. Testimony of Shinkle. This is his second term of residence at the Park. Testimony of Shinkle. Mr. Shinkle has no plans to leave the Park but he could if he wanted to. Testimony of Shinkle.

4.42. Mr. Shinkle owns his unit, which is a 40-foot travel trailer. Testimony of Shinkle. Approximately three days before this hearing Mr. Shinkle installed a different travel trailer than the one photographed as Exhibits 19-21. Testimony of Shinkle. The landscaping in those photographs remains. Testimony of Shinkle.

4.43. Mr. Shinkle has planted flowers around his unit. Testimony of Shinkle; Exs. 19-21. He has placed decorative stones, built a rock wall, placed a Sasquatch statue, and installed a free-standing deck below his door. Testimony of Shinkle; Exs. 19-21.

4.44. Since locating at the Park in approximately 2010, Mr. Shinkle has never relocated, not even when the lower part of the Park was threatened with flooding. Testimony of Shinkle.

4.45. Mr. Shinkle's travel trailer bears a license plate but the tabs are not current. Testimony of Shinkle. Nevertheless, he could move the travel trailer if he purchased a trip-permit. Testimony of Shinkle. It would take him an hour or two to prepare to move. Testimony of Shinkle.

4.46. Nothing is permanently attached to the Shinkle unit. Testimony of Haugsness.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

Bordernick Unit

4.47. Roy Bordernick has lived in the Park in a motor home for approximately nine years. Testimony of Bordernick. It is his primary residence. Testimony of Bordernick. Mr. Bordernick plans to stay indefinitely. Testimony of Bordernick.

4.48. The motor home is licensed to be driven. Testimony of Bordernick.

4.49. Mr. Bordernick leaves the Park several times a year for a couple of days or so each time. Testimony of Bordernick. Mr. Bordernick visits campgrounds in his motor home. Testimony of Bordernick. At campgrounds, his hook-up for utilities is the same as the hook-up at the Park. Testimony of Bordernick.

4.50. Mr. Bordernick has never had to move to avoid flooding. Testimony of Bordernick.

4.51. Mr. Bordernick can be ready to relocate within 15-20 minutes. Testimony of Bordernick. He simply needs to disconnect his utility hook-ups and he is ready to go. Testimony of Bordernick.

4.52. Mr. Bordernick has a small, portable deck, with chairs, a table, and a barbeque. Testimony of Bordernick. He maintains grass around his unit. Testimony of Bordernick.

4.53. Mr. Bordernick's motor home is not permanently installed at the Park and he has no intention of permanently installing it. Testimony of Bordernick.

4.54. Mr. Bordernick's motor home is self-contained and includes a generator. Testimony of Bordernick. He could live in his motor home without utility hook-ups for a couple of weeks if he wanted to do so. Testimony of Bordernick.

Dewey Unit

4.55. Michael Dewey's unit is a motor home. Testimony of Dewey.

4.56. The Dewey unit is hooked up to electricity with a power cord like at an RV campground. Testimony of Dewey.

4.57. Mr. Dewey installed a fence around his unit but the fence can be removed if he wishes to leave. Testimony of Dewey.

4.58. Mr. Dewey does not plan on having his unit permanently installed. Testimony of Dewey.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

4.59. Mr. Dewey could remove his unit from the Park in approximately 15 minutes. Testimony of Dewey.

Written Rental Agreement

4.60. The Park does not provide residents with a rental agreement. Testimony of Allen. The Park provides only park rules. Testimony of Allen; *see* Ex. 6. Ms. Allen asked Dan Haugsness, owner of the Park, for a written rental agreement at least three times. Testimony of Allen. The Park has never provided one. Testimony of Allen.

4.61. Ms. Allen first asked Mr. Haugsness for a rental agreement when he raised her rent. Testimony of Allen. Mr. Haugsness told Ms. Allen that the Park did not provide rental agreements. Testimony of Allen.

Rent Increases

4.62. When Ms. Allen moved in to the Park on January 3, 2014, her monthly rent was $460.00. Testimony of Allen.

4.63. Ms. Allen always pays her rent on time and always receives a receipt. Testimony of Allen; *see, e.g.,* Ex. 30.

4.64. The cost of utilities is included in the monthly rent. Testimony of Allen.

4.65. On April 2, 2014, Mr. Haugsness informed Ms. Allen verbally that her monthly rent would increase by $20.00. Testimony of Allen; Ex. 1, p. 2. Ms. Allen objected. Testimony of Allen. Mr. Haugsness told her that this was how they did things at the Park. Testimony of Allen. She asked for written notice. Testimony of Allen. On April 3, 2014, Mr. Haugsness provided Ms. Allen written notice of the rent increase effective May 1, 2014. Testimony of Allen; Ex. 1, p. 2; *see* Ex. 4.

4.66. On February 2, 2105, Mr. Haugsness gave Ms. Allen written notice that her rent would increase an additional $10.00 per month effective April 1, 2015. Testimony of Allen; Ex. 5. Mr. Haugsness told Ms. Allen that the purpose of the rent increase was to recover the cost of his attorney fees. Testimony of Allen. Mr. Haugsness offered her a copy of his attorney's bill. Testimony of Allen.

4.67. When Mr. Haugsness told Ms. Allen about the second rent increase, he knew she wanted notice in writing because she complained about lack of written notice when he told her about the first rate increase. Testimony of Allen.

////

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

Code Violations

4.68. Ms. Allen has no knowledge of any alleged violations of Pierce County land use codes by the Park. Testimony of Allen. Ms. Allen did not complain to the Manufactured/Mobile Home Dispute Resolution program about any such code violations. Testimony of Allen; Testimony of Crummer.

4.69. Pierce County asserted in 2004 and re-asserted in 2014 that Mr. Haugsness is operating a recreational vehicle park without a conditional use permit in violation of county regulations. Testimony of Howe; Ex. 7.

Registration with Department of Revenue

4.70. The Park is not registered with the Department of Revenue as a manufactured/mobile home park. Testimony of Haugsness.

4.71. Ms. Allen did not complain to the Manufactured/Mobile Home Dispute Resolution Program about the Park's failure to register with the Department of Revenue. Testimony of Allen.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions of law:

Jurisdiction

5.1. I have jurisdiction over the parties and subject matter herein under RCW 59.30.040, and more generally under chapter 59.30 RCW, chapter 59.20 RCW, chapter 34.12 RCW, and chapter 34.05 RCW.

Motions

5.2. The Park presented three motions in limine: Appellant's Motion in Limine re: Unwarranted Searches; Appellant's Motion in Limine re: Howe/County Testimony; and Appellant's Motion in Limine re: Cumulative and Telephonic Testimony. I denied the first two motions, as explained on the oral record. The Park withdrew the third motion.

Does the AGO have authority regarding registration with the Department of Revenue

5.3. During the evidentiary hearing, the Appellant moved for dismissal of the "charge" that the Appellant failed to register and pay fees as a mobile home park. The Appellant argued that the AGO lacks jurisdiction over that issue. I took the motion under advisement.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

5.4. Chapter 59.20 RCW, entitled the Manufactured/Mobile Home Landlord-Tenant Act ("MHLTA"), governs the relationship between landlords and tenants in manufactured/mobile home communities.

5.5. The only process the MHLTA contemplates for resolving disputes is private legal action. *See* RCW 59.20.110 and RCW 59.20.120. RCW 59.20.110 provides: "In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs." RCW 59.20.120 provides: "Venue for any action arising under this chapter shall be in the district or superior court of the county in which the mobile home lot is located."

5.6. However, the legislature promulgated chapter 59.30 RCW, entitled Manufactured/Mobile Home Communities – Dispute Resolution and Registration, with two intentions: (1) "to provide an equitable as well as less costly and more efficient way for manufactured/mobile home tenants and manufactured/mobile home community landlords to resolve disputes" and (2) "to provide a mechanism for state authorities to quickly locate manufactured/mobile home community landlords." RCW 59.30.010(3)(a). In other words, the legislature produced chapter 59.30 RCW for two purposes, to establish a dispute resolution program (in addition to the private action contemplated by the Act) and to provide a means of readily identifying landlords. Although there is a relationship between finding landlords and providing dispute resolution, they are nevertheless distinct responsibilities.

5.7. The legislature authorized the Department of Revenue to register manufactured/mobile home communities and collect a registration fee. RCW 59.30.010(3)(b). The legislature authorized the AGO to administer the dispute resolution program. RCW 59.30.010(3)(c).Therefore, the legislature specifically designated different state agencies to administer the two distinct responsibilities. Moreover, the legislature did so in the same statutory section.

5.8. Further, the legislature expanded its instructions to the AGO about the dispute resolution program in RCW 59.30.030 and RCW 59.30.040. Whereas the legislature separately gave the Department of Revenue its instructions in RCW 59.30.050. Once again, the legislature distinguished the responsibilities.

5.9. The legislature further clarified this distinction by providing that "unless context clearly requires otherwise", a reference to "department" in the chapter "means the department of revenue" and a reference to "'director' means director of revenue." RCW 59.30.050(2)-(3).

5.10. The instructions regarding the registration process and collection of fees are directed to "the department", meaning the Department of Revenue. *See* RCW 59.30.050.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

5.11. Finally, the legislature authorized the Department of Revenue to enforce registration and fees against non-compliant landlords. RCW 59.30.050(4); RCW 59.30.050(5); and RCW 59.30.090.

5.12. Therefore, the Department of Revenue, and only the Department of Revenue may register manufactured/mobile home community landlords and collect registration fees and only the Department of Revenue may enforce those provisions. Thus, the AGO lacks authority to enforce registration and related fees. Accordingly, the Appellant's alleged failure to register and pay fees cannot be raised by the AGO and that issue should be dismissed for lack of jurisdiction.

Is the Park Subject to the Manufactured/Mobile Home Landlord Tenant Act

5.13. Predicate to determining whether the Park violated the MHLTA is determining whether the Park is subject to the MHLTA.

5.14. The AGO argued that the legislature intended to include, under the MHLTA, RVs intended to be primary residences. However, the AGO relied upon selected testimony to legislative committees, which arguably summarizes what the legislature heard and what selected citizens thought but is not persuasive evidence of what the legislature thought or intended. The Appellant argued that the characterization of the Park had already been resolved by other courts. However, those 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. However, both parties acknowledged that the Park does not contain either mobile homes or manufactured homes. Accordingly, both parties observed and argued that whether the MHLTA applies here is dependent upon whether the Park contains two or more park models. I am persuaded that this issue is the key.

5.15. To that effect, the parties collectively referred me to three cases that discussed, directly or by implication, the definition of "park model". However, for the following reasons, I fail to find those cases to be helpful. The court in *Brotherton v. Jefferson County*, 160 Wn.App. 699, 249 P.3d 666 (2011) operated 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. The characterization of the unit was not at issue. The court in *Lawson v. City of Pasco*, 144 Wn.App. 203, 181 P.3d 896 (2008) determined whether the MHLTA clashed with a local code. That court found the unit in question to be a park model, but the court's order offered no details as to why. The court in *United States v. 19.7 Acres of Land More or Less in Okanogan*

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

County, 103 Wn.2d 296, 692 P.2d 809, addressed whether the units at issue constituted personal or real property for purposes of condemnation. In short, none of these cases offered circumstances and facts sufficiently analogous to this case to provide guidance, much less precedence. Given that two experienced attorneys researched and briefed this issue and did not find anything else in terms of case law means that I must rely on the statutes themselves.

5.16. The MHLTA regulates landlord-tenant relations regarding mobile home parks. RCW 59.20.040.

5.17. A "mobile home park" is real property rented for profit for placement of two or more mobile homes, manufactured homes, or park models, unless such rentals are for "seasonal recreational purposes" and "not intended for year-round occupancy". RCW 59.20.030(10). Here, the residents pay money for the privilege to place their units in the Park and live in them continuously. The units at issue are undeniably neither manufactured homes nor mobile homes. So, again, key is whether there are two or more park models in the Park.

5.18. A "park model" is "a recreational vehicle intended for permanent or semi-permanent installation *and* is used as a primary residence." RCW 59.20.030(14) (emphasis added).

5.19. A "recreational vehicle", on the other hand, is a unit that, among other things, "is not occupied as a primary residence, *and* is not immobilized or permanently affixed to a mobile home lot." RCW 59.20.030(17) (emphasis added).

5.20. The MHLTA makes reference to governing "recreational vehicles used as a primary residence", but that reference addresses only the issue of eviction. *See* RCW 59.20.080(3). Eviction is not at issue here.

5.21. The record does not provide information about all of the residents. However, those who testified have all lived in the Park and used their units as their primary residences. Clearly, the Park hosts many more than two residents who use their unit as their primary residence. The AGO makes much of this. However, primary residency (or not) is only half of the conjunctive definition of both "park model" and "recreational vehicle", the dispositive choice for charactering the units contained in the Park. The phrase "intended for permanent or semi-permanent installation", which is part of the definition of "park model", is vague. However, as provided above, the legislature defined a recreational vehicle as one that "is *not* immobilized or permanently affixed" (emphasis added). That phrase sheds light, especially given the juxtaposition comparing "park model" to "recreational vehicle". First of all, "immobilized" and "permanently affixed" are not the same thing, given that they are phrased as alternatives. Moreover, I suggest that "immobilized"

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

describes "semi-permanent installation" and "permanently affixed" describes "permanent installation".

5.22. Ms. Allen's unit sits upon cinder blocks, yet has wheels and a tow-bar, and apart from its condition, can be moved – but only after being jacked-up so as to remove the blocks. It is not permanently affixed to, for example, a foundation. Nor is it directly wired to its source of electricity or nor is it directly plumbed for water or waste disposal. But it is immobile in its present state. It is semi-permanently installed. It is Ms. Allen's primary residence. Ms. Allen's unit is park model.

5.23. The other units in the Park described by the evidence are not affixed. Their connections for electricity, water, and waste disposal, are simple connections that can be unplugged or disconnected with no more effort than unplugging a lamp or disconnecting a garden hose. The evidence is that they are movable and able to be relocated with as little as 15 minutes and no more than two hours of preparation. Although all of them are apparently primary residences, none of them is immobile or affixed, none of them is permanently or semi-permanently installed. The AGO argued that many of the units have storage sheds, small decks, stairs, and landscaping. At least a couple have fences. But none of those attributes are affixed to the unit. None of those attributes restrict the units' mobility. For example, a few days before the hearing, MR. Shinkle installed a different travel trailer and left his landscaping as it was. Those attributes are evidence that the units are primary residences. Those attributes are not evidence that the units are immobile or affixed. Those attributes are not evidence that the units are permanently or semi-permanently installed. Those attributes are not evidence that anyone intends that the units be permanently or semi-permanently installed. Therefore, none of the units other than Ms. Allen's constitute "park models".

5.24. Thus, the Park contains only one "park model".

5.25. Accordingly, the Park is not a mobile home park.

5.26. Therefore, the Park is not subject to the MHLTA.

Written rental agreement

5.27. Given that the Park is not subject to the MHLTA, the Park did not violate the MHLTA when it failed to provide Ms. Allen, or apparently any other occupant, with a written rental agreement.

////

////

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

Rent increases

5.28. Given that the Park is not subject to the MHLTA, the Park did not violate the MHLTA either time when it raised Ms. Allen's rent.

Code violations

5.29. Given that the Park is not subject to the MHLTA, the Park did not violate the MHLTA when it allegedly violated one or more county land use codes.

Summary

5.30. Accordingly, the Notice of Violation and the Temporary Order to Cease and Desist should both be set aside.

6. FINAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The actions of the Attorney General's Office are REVERSED.

6.2. The Notice of Violation is set aside.

6.3. The Temporary Order to Cease and Desist is set aside.

Issued from Tacoma, Washington, on the date of mailing.

Terry A. Schuh
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

Reconsideration:
Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470(1)

Mail such petition for reconsideration to:
Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

No petition for reconsideration may stay the effectiveness of an order. RCW 34.05.470(2).

If a petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the Office of Administrative Hearings (OAH) disposes of the petition for reconsideration. RCW 34.05.470(3). OAH is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, OAH does not either dispose of the petition, or serve the parties with a written notice specifying the date by which it will act on the petition. *Id.*

Unless the petition for reconsideration is deemed denied under RCW 34.05.470(3), the petition shall be disposed of by the same person who entered the order, if reasonably available. RCW 34.05.470(4). The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing. *Id.*

The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. RCW 34.05.470(5). An order denying reconsideration or a notice specifying the date by which OAH will act on the petition is not subject to judicial review. *Id.*

Judicial Review:

This order is the final agency order of the Attorney General Manufactured Housing Dispute Resolution Program and may be appealed to the Superior Court under chapter 34.05 RCW. RCW 59.30.040(10(c). Such petition for judicial review must be served on the agency, the office of the attorney general, and on all parties of record. RCW 34.05.514 and RCW 34.05.542.

CERTIFICATE OF MAILING IS ATTACHED

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (800) 583-8271 • Fax: (253) 593-2200

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2014-AGO-0001 & 04-2015-AGO-00001

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Dan & Bill's RV Park Dan Haugsness **c/o Goodstein Law Group PLLC** **501 S G Street** **Tacoma, WA 98405** Telephone: (253) 845-3439 ***Appellant***	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail
Seth S. Goodstein Goodstein Law Group PLLC 501 S G Street Tacoma, WA 98405 Telephone: (253) 779-4000 Fax: (253) 779-4411 ***Appellant Representative***	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail
Jennifer Steele, AAG Manufactured Housing Dispute Resolution Program Office of the Attorney General 800 Fifth Avenue, Ste 2000 Seattle, WA 98104 Telephone: (206) 389-2106 Fax: (206) 587-5636 ***Assistant Attorney General***	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail
Edna Allen 15612 116th St E, Sp-22 Puyallup, WA 98374 ***Interested Party (tenant)***	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail

Date: Monday, November 09, 2015

OFFICE OF ADMINISTRATIVE HEARINGS

Dora R Fitzpatrick
Legal Assistant

Superior Court of the State of Washington
For Thurston County

2000 Lakeridge Drive SW • Building Two • Olympia WA 98502
Telephone: (360) 786-5560 **Website:** www.co.thurston.wa.us/superior

15-2-02446-34
CTD
Court's Decision
680738

October 7, 2016

Dan Young
1000 2nd Ave Ste 3200
Seattle, WA 98104

Leslie Owen
711 Capitol Way S #704
Olympia, WA 985101

Jennifer Steele
800 Fifth Ave Ste 2000
Seattle, WA 98104

Seth Goodstein
501 S G St
Tacoma, WA 98405

COURT'S LETTER RULING

Edna Allen v. State Attorney General,
Thurston County Cause No. 15-2-02446-34 consolidated with 15-2-02663-34

Re: Defendant Motion for Interim Attorney Fees

Dear Counsel:

This court heard oral argument on this administrative law review on September 23, 2016. The court considered the entire contents of the court files, as well as the administrative record. In this letter opinion, the court reverses the final order and remands for further proceedings consistent with this opinion.

Background

Dan & Bill's RV Park is a residential setting next to the Puyallup River in Pierce County. It hosts several recreational vehicles on the grounds in exchange for monthly rent. Edna Allen resides in one RV in the park. Her RV has not been moved for years and it would be difficult to move it. Other RVs in the park could be moved within a couple of hours. From time to time, some RVs must move upland within the park due to high water and flooding conditions on the river. Some residents have lived at the park for several years, year-round, and many of the residents have installed items around their RV such as fencing, plants, stairs, and other improvements. Some residents have not moved their vehicle for years despite being in a flood plain.

Edna Allen complained about activities in the park. The Attorney General's Office issued a notice of violation and order to cease and desist to Dan & Bill's RV Park for several violations of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), chapter 59.20 RCW. The Park allegedly did not register under that Act, did not provide written rental agreements, increased rent with only verbal warnings, and failed to comply with Pierce County codes and variances.

The matter was heard by the Office of Administrative Hearings. The administrative law judge (ALJ) issued a final order, concluding that the MHLTA did not apply to the park. This decision focused on whether the park contained two "park models" under RCW 59.20.030(14). The specific legal and factual requirements for a "park model" appears to be a novel issue of law in Washington. If the MHLTA does not apply to the park, the Attorney General's Office does not have authority to issue a violation. Thus, the ALJ did not reach the merits of whether the Notice of Violation was supported by the facts of the case.

Allen appealed under cause number 15-2-2446-34. Dan & Bill's RV Park filed an unsigned cross appeal in that case, for which it has not apparently paid a filing fee. The Attorney General's Office separately appealed under cause number 15-2-2663-34. The court consolidated the two matters. The court allowed the Northwest Justice Project to file an amicus brief.

Analysis

1. Do Edna Allen and the Attorney General's Office have Standing to Appeal?

As a threshold issue, the RV Park argues that Allen and the AGO do not have standing to appeal the final order. This court concludes that Allen is an aggrieved party under RCW 34.05.530. This court also concludes that the AGO is an aggrieved party under that statute. *See also Snohomish County v. Hinds*, 61 Wn. App. 371, 377 (1991). Those appellants have standing.

2. Is the Park Subject to the Manufactured/Mobile Home Landlord Tenant Act?

The primary issue in this appeal is whether the park is a "mobile home park." If it is, the MHLTA applies to it. If it isn't, the MHLTA does not apply and the notice of violation issued is void. This court concludes that Dan & Bill's RV Park is a mobile home park under de novo review of the law and under the facts that the ALJ found.

A. Legal Requirements

There is some confusion in this case about what qualifies as a mobile home park. A park is a "mobile home park," and thus subject to the MHLTA, if it is:

> any real property that 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 the real property is rented or held out for rent for seasonal recreational purposes only and is not intended for year-round occupancy.

RCW 59.30.020 (emphasis added). There is no dispute here about the majority of requirements in this statutory definition. The sole dispute is whether the park rents to two or more park models.

"Park model means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence." RCW 59.30.020(11). This definition, standing alone, seems very straightforward.

The parties all agree that, under ordinary language, the vehicles that occupy Dan & Bill's are recreational vehicles. Some of the vehicles are what we would informally call RVs, which have engines and can be driven, while others are fifth wheels or other types of trailers. Likewise, there is no dispute about whether the recreational vehicles are being used as primary residences. Some occupants have lived there for several years, year-round, with the intention to stay for the foreseeable future.

The parties discuss what "installation" means, but simply turning to the dictionary answers this question. "Install" means "to make (a machine, a service, etc.) ready to be used in a certain place." Merriam-Webster Online Dictionary, "Install," (www.merriam-webster.com/dictionary/install) (last visited 9/9/16). Here the recreational vehicles are installed in the premises because they are settled down there, attached to water, electrical, and sewer. They are ready to be used for their purpose (occupancy) in a certain place (Dan & Bill's RV Park).

A problem arises, however, due to a special statutory definition of "recreational vehicle" in the MHLTA. It defines the term as:

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 manufactured/mobile home lot.

RCW 59.30.020(12). This causes two potential conflicts.

The first potential conflict regards the residency requirement. The "park model" definitions discusses recreational vehicles and requires that it *is* used as a primary residence. But the definition of "recreational vehicle" says that it is used as "temporary living quarters" and it *is not* occupied as a primary residence. Those two phases are mutually exclusive.

The petitioners and amici in this case offer several complicated solutions to try to resolve these conflicts. The ALJ took great pains to read the two definitions in harmony. This court holds that these definitions cannot be harmonized as they relate to the residency requirement. A recreational vehicle cannot simultaneously be defined as "used as a primary residence" and "not occupied as a primary residence." This conflict potentially exists in several statutes:

(1) "This chapter governs the eviction of mobile homes, manufactured homes, park models, and **recreational vehicles used as a primary residence** from a mobile home park." RCW 59.20.080(3).

(2) "A county may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of **a recreational vehicle used as a primary residence** in manufactured/mobile home communities, as defined in RCW 59.20.030, unless the recreational vehicle fails to comply with the fire, safety, or other local ordinances or state laws related to recreational vehicles." RCW 36.01.225(3).

(3) "[A] code city may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of **a recreational vehicle used as a primary residence** in manufactured/mobile home communities." RCW 35A.21.312.

(4) "[A] city or town may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of **a recreational vehicle used as a primary residence** in manufactured/mobile home communities." RCW 35.21.684.

(Emphases added.) These four statutes, along with the statutory definition of "park model," conflict with the MHLTA's statutory definition of recreational vehicle regarding the residency requirement. The statutes before the court today – the definitions of "park model" and "recreational vehicle" -- cannot be harmonized regarding the residency requirement.

"Generally, provisions of a specific more recent statute prevail in a conflict with a more general predecessor." *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 37 (1990). Here, the specific issue before the court is whether the vehicles are "park models." It is not genuinely disputed whether the vehicles are recreational vehicles. The definition of "park models" is the more specific statute regarding the dispute in this case. Further, the law that was enacted more recently is the statutory definition of "park models." *See* 1999 Laws of Washington, Ch. 359, s. 2 (enacting the definition of "park models") *and* 1993 Laws of Washington, Ch. 66 s. 15 (enacting the definition of "recreational vehicles"). Thus, the definition of "park model" prevails in this conflict regarding the residency requirement. For this reason, the legal requirement that applies in this case is that the vehicle "is used as a primary residence."

The second potential conflict relates to the permanency requirement. The "park model" definition requires that the vehicle is "intended for permanent or semi-permanent installation." In contrast, the "recreational vehicle" definition requires that the vehicle "is not immobilized or permanently affixed to a manufactured/mobile home lot." These provisions can be harmonized. Although there are conflicts within these two statutory definitions regarding residency, this court is required to effect and harmonize every word of the statute if possible. This can be done here.

Again, "install" means "to make (a machine, a service, etc.) ready to be used in a certain place." Merriam-Webster Online Dictionary, "Install," (www.merriam-webster.com/dictionary/install). Making an RV ready to be used can simply mean hooking it up to utilities and settling it down in a location. Under the statute, that installation must also be intended to be on a permanent or semi-permanent basis. However, the RV *cannot* be immobilized or permanently affixed to the lot under the definition of recreational vehicle. There is actually no conflict here – the vehicle must be installed on a permanent or semi-permanent basis, but not immobilized or permanently affixed to the lot.

B. Factual Requirements

At least two vehicles in this park meet the definition of "park model," under the facts found by the ALJ.

The ALJ found:

Barbara Hamrick has lived in the Park since at least 2003. Ms. Hamrick lives in a recreational vehicle. It is licensed and she can drive it away anytime. At least twice a year she needs to temporarily relocate, either within the Park, or outside of the Park, to avoid flooding. It

takes Ms. Hamrick approximately two hours to prepare to relocate. She needs to disconnect from the Park's utilities and remove the blocks and jacks. Ms. Hamrick considers her recreational vehicle to be her permanent home. She resides at the Park because that is where she can afford to live.

FF 4.29 – 4.31 (citations to testimony omitted).

The ALJ also found:

Mr. Shinkle has lived at the Park for approximately five years. This is his second term of residence at the Park. Mr. Shinkle has no plans to leave the Park but he could if he wanted to. Mr. Shinkle owns his unit, which is a 40-foot travel trailer. . . . Since locating at the Park in approximately 2010, Mr. Shinkle has never relocated, not even when the lower part of the Park was threatened with flooding. Mr. Shinkle's travel trailer bears a license plate but the tabs are not current. Nevertheless, he could move the travel trailer if he purchased a trip-permit. It would take him an hour or two to prepare to move.

FF 4.41 – 4.45 (citations to testimony omitted).

There are other findings about other residents, but the findings outlined above are sufficient to prove that Dan & Bill's RV Park rents to two "park models." Both Hamrick and Shinkle use a vehicle as a primary residence. Those vehicles are intended for permanent or semi-permanent installation on the premises, and they are not immobilized or permanently affixed to the lot.

Much has been made about the flooding situation at the park and the fact that some residents had to move their vehicles as a result. This is legally irrelevant, however, because the statute discusses both permanent and semi-permanent installation. Further, simply needing to move to another space in the same park would constitute an intention to install the RV "on the premises," the premises being the park, for a permanent or semi-permanent basis.

The ALJ found that Allen's unit was the only RV that qualified as a "park model". However, Allen's unit may be immobilized and unable to move. It sits on top of cinder blocks, and it may be destroyed or severely damaged if it is moved. That error does not have any bearing on this case, though, because Allen and all residents of the park obtain rights under the MHLTA, and the park bears responsibility under the MHLTA, if it hosts two park units on its premises. It does. The final order is reversed on this ground.

3. Issues Raised by the Park

The park raises five issues that this court will address only briefly, concluding that they have no merit.

First, the park asserts that the statutes are void for vagueness because they do not give a reasonable person notice of whether it is subject to the MHLTA in this situation. The Park has not met the very high burden to show that it is vague beyond a reasonable doubt, and that the statute is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Haley v. Medical Disciplinary Board*, 117 Wn.2d 720, 738 (1991) (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70

L.Ed. 322 (1926)). Simple textual analysis, coupled with one dictionary definition, yields a straightforward result. This law is not void for vagueness.

Second, the park asserts that this court is bound by a Pierce County Superior Court decision, in the context of an unlawful detainer proceeding, finding that it was not subject to the MHLTA. The park has not briefed the doctrines of res judicata or collateral estoppel, and this court will not apply those complex doctrines in the absence of evidence.

Third, the park claims that the Attorney General's Office has violated the prohibition on conducting warrantless searches. This issue was apparently the subject of a motion in limine regarding whether certain testimony could be received, if that testimony was derived from an unlawful search. This issue was not raised by either of the appellants, Allen and the AGO. The Park did not properly file a cross appeal. The document entitled "cross appeal" is not signed, and the park did not provide a necessary filing fee to raise its own issues on appeal. Nevertheless, in an abundance of caution this court has reviewed the briefing on this issue and concludes that, had this issue been properly perfected on appeal, it has no merit. The court adopts the reasoning offered by the AGO in its briefing on this issue.

Fourth, the park asserts that the Notice of Violation improperly exceeds the scope of the complaint. This issue was not resolved by the ALJ, and can be adjudicated below on remand.

Finally, the park asserts that there is no right to appeal because Allan did not seek a stay of the final order. It provides no law for this proposition and a stay is not a legal requirement to preserve appeal rights under the APA. Each of the issues raised by the park are without merit.

4. Attorney Fees

Allen asks for attorney fees for pursuing this appeal. The prevailing party to any action arising under the MHLTA is entitled to reasonable attorney fees and costs. RCW 59.20.110. Allan is the prevailing party and is entitled to reasonable fees and costs. She should submit a declaration detailing her fees and costs and either present an agreed order or note the matter on the Court's Friday civil motion calendar.

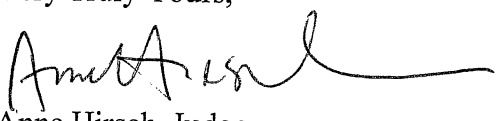
5. Conclusion

This court has been tasked with a fairly routine and straightforward legal job of engaging in statutory construction. This court must do so in an objective and neutral manner, under well-established rules, and has done so. The court would be remiss, however, if it did not acknowledge the important human interests at stake here. The Northwest Justice Project participated in this case because its clients, the poorest residents of this state, are directly affected by whether they gain protections under the MHLTA. As it explains, the ability to live cheaply in a recreational vehicle is a crucial safety net for those who would otherwise be homeless. The problems of homelessness and inadequate low income housing are major policy concerns for lawmakers, and major personal concerns for countless people living in Washington. Our Legislature was informed that people living permanently or semi-permanently in RV parks needed additional protections, and it set forth to protect them by including those living situations in the MHLTA. The Legislature may not have done a perfect job of crafting these statutes, but this court must give effect to every word that the Legislature set out in statute, unless doing so is impossible. The Legislature's intention here is clearly written into law, and that intention is that

RV parks such as Dan & Bills cannot operate as if it is hosting people on vacation. Its tenants have protection under the MHLTA because these parks are their homes.

The Court reverses the decision of the ALJ and as stated at the outset, remands for further proceedings consistent with this letter opinion. Either Allen or the State should prepare an order reflecting the ruling of the Court and note the matter for presentation on the Court's Friday civil motion calendar.

Very Truly Yours,



Anne Hirsch, Judge
Thurston County Superior Court

cc: Thurston County Clerk for Filing

RCW 4.84.340

Judicial review of agency action—Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 4.84.340 through 4.84.360.

(1) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law.

(2) "Agency action" means agency action as defined by chapter 34.05 RCW.

(3) "Fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of a study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case, and reasonable attorneys' fees. Reasonable attorneys' fees shall be based on the prevailing market rates for the kind and quality of services furnished, except that (a) no expert witness shall be compensated at a rate in excess of the highest rates of compensation for expert witnesses paid by the state of Washington, and (b) attorneys' fees shall not be awarded in excess of one hundred fifty dollars per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

(4) "Judicial review" means a judicial review as defined by chapter 34.05 RCW.

(5) "Qualified party" means (a) an individual whose net worth did not exceed one million dollars at the time the initial petition for judicial review was filed or (b) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed five million dollars at the time the initial petition for judicial review was filed, except that an organization described in section 501(c)(3) of the federal internal revenue code of 1954 as exempt from taxation under section 501(a) of the code and a cooperative association as defined in section 15(a) of the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party regardless of the net worth of such organization or cooperative association.

[1995 c 403 § 902.]

NOTES:

Findings—1995 c 403: "The legislature finds that certain individuals, smaller partnerships, smaller corporations, and other organizations may be deterred from seeking review of or defending against an unreasonable agency action because of the expense involved in securing the vindication of their rights in administrative proceedings. The legislature further finds that because of the greater resources and expertise of the state of Washington, individuals, smaller partnerships, smaller corporations, and other organizations are often deterred from seeking review of or defending against state agency actions because of the costs for attorneys, expert witnesses, and other costs. The legislature therefore adopts this equal access to justice act to ensure that these parties have a greater opportunity to defend themselves from inappropriate state agency actions and to protect their rights." [1995 c 403 § 901.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 4.84.350

Judicial review of agency action—Award of fees and expenses.

(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

(2) The amount awarded a qualified party under subsection (1) of this section shall not exceed twenty-five thousand dollars. Subsection (1) of this section shall not apply unless all parties challenging the agency action are qualified parties. If two or more qualified parties join in an action, the award in total shall not exceed twenty-five thousand dollars. The court, in its discretion, may reduce the amount to be awarded pursuant to subsection (1) of this section, or deny any award, to the extent that a qualified party during the course of the proceedings engaged in conduct that unduly or unreasonably protracted the final resolution of the matter in controversy.

[**1995 c 403 § 903.**]

NOTES:

Findings—1995 c 403: See note following RCW **4.84.340**.

Findings—Short title—Intent—1995 c 403: See note following RCW **34.05.328**.

RCW 59.20.110

Attorney's fees and costs.

In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs.

[**1977 ex.s. c 279 § 11.**]

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 298: 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**.

LAW OFFICE OF DAN R. YOUNG

August 09, 2019 - 4:41 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	49836-7
Appellate Court Case Title:	Edna Allen, Respondent v. Dan and Bills RV Park, Appellant
Superior Court Case Number:	15-2-02446-6

The following documents have been uploaded:

- 498367_Petition_for_Review_20190809163351D2161895_7688.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition for Review and Appendix 20190808.pdf

A copy of the uploaded files will be sent to:

- amyt2@atg.wa.gov
- clake@goodsteinlaw.com
- cprreader@atg.wa.gov
- deric@hbjlaw.com
- dpinckney@goodsteinlaw.com
- jan@olsenlawfirm.com
- kellyo@nwjustice.org
- lesliewowen@gmail.com
- sgoodstein@goodsteinlaw.com
- stevep@nwjustice.org
- walt@olsenlawfirm.com

Comments:

Sender Name: Camille Minogue - Email: camille@truthandjustice.legal
Filing on Behalf of: Dan Robert Young - Email: dan@truthandjustice.legal (Alternate Email: camille@truthandjustice.legal)

Address:
1000 Second Ave
Suite 3200
Seattle, WA, 98104
Phone: (206) 829-9947

Note: The Filing Id is 20190809163351D2161895