

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE, *ex rel.* )  
MATTHEW P. DENN, Attorney )  
General of the State of Delaware, )  
 )  
Plaintiff, )  
 )  
v. ) C.A. No. \_\_\_\_\_  
 )  
HOMETOWN AMERICA )  
COMMUNITIES, INC., a Delaware )  
corporation, )  
 )  
Defendant. )

**COMPLAINT**

Plaintiff State of Delaware, *ex rel.* Matthew P. Denn, Attorney General of the State of Delaware, brings this action through the Consumer Protection Unit of the Delaware Department of Justice, seeking declaratory and monetary relief, statutory penalties, investigative costs, and attorney’s fees for defendant Hometown America Communities, Inc.’s breaches of the Manufactured Home Owners and Community Owners Act, 25 DEL. C. §§ 7001–7027, and the Affordable Manufactured Housing Act, 25 DEL. C. §§ 7040–7046 (“Rent Justification Act”). For its complaint against Defendant, Plaintiff alleges as follows:

## **Background**

1. This action arises out of an investigation by the Consumer Protection Unit that revealed Defendant, owner and operator of three Delaware manufactured housing communities, has violated and continues to violate the Manufactured Housing Owners and Community Owners Act and the Rent Justification Act by issuing rent increase notices to its tenants that violate the requirements of both laws. The unlawful rent increase notices, as presented to Tenants in each of the three communities, improperly require Tenants to waive their statutory right to arbitrate the proposed rent increase in order to obtain a significant discount in the rent to which Defendant claims it is otherwise entitled.

2. Through this action, Plaintiff asks the Court, as more fully set forth in the Prayer for Relief, to (i) declare that the rent increase notices issued by Defendant are invalid because they are inconsistent with and include provisions prohibited by the Manufactured Housing Owners and Community Owners Act and the Rent Justification Act, (ii) require Defendant to issue new rent increase notices in compliance with the Manufactured Housing Owners and Community Owners Act and the Rent Justification Act, (iii) require Defendant to reimburse affected Tenants for rent improperly collected by Defendant pursuant to the defective and unlawful rent increase notices, and (iv) order Defendant to pay the statutory penalties, costs, and fees authorized under Delaware law.

### **The Parties**

3. Plaintiff State of Delaware, *ex rel.* Matthew P. Denn, Attorney General of the State of Delaware, brings this action through the Consumer Protection Unit of the Delaware Department of Justice. The Attorney General, through the Consumer Protection Unit, has standing to enforce the Manufactured Home Owners and Community Owners Act and the Affordable Manufactured Housing Act, and to commence and prosecute this action, pursuant to 25 DEL. C. § 7025, 29 DEL. C. § 2520(a)(4), and 29 DEL. C. § 2522(a).

4. Hometown America Communities, Inc. (“Defendant”) is a Delaware corporation, with a principal place of business in Chicago, Illinois. Defendant’s registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

### **Factual Allegations**

#### ***Manufactured Housing In Delaware***

5. Manufactured homes provide housing for over 40,000 Delawareans and are a significant part of the State of Delaware’s low- and moderate-cost housing pool. Manufactured homes are factory-built homes. Once they are placed on a site they are, for all practical purposes, permanently placed. The cost of moving a manufactured home may be prohibitive, as the average cost of removing

and relocating a manufactured home once placed upon a lot is approximately \$8,000.

6. Many manufactured home owners have improved their homes and lots such that in addition to the expense of removing and relocating a manufactured home, the improvements including porches, decks, landscaping and sheds would have to be moved or abandoned. A home may not meet the requirements of any other manufactured home community due to factors including age, size, physical characteristics, and roof design, such that the home could not be moved to another community. In many cases, the obstacles to moving a home may result in a forced sale to the landlord or abandonment of the home.

7. The term of a rental agreement in a manufactured housing community must be automatically renewed with the same terms upon expiration of the rental agreement's term. Absent agreement between the community owner and tenant, the only provisions which may be modified are the amount and payment of rent. *See* 25 DEL. C. § 7007(b). Moreover, rental agreements are forbidden from containing any provision that would require a tenant to waive or forego any right or remedy provided by law. *See* 25 DEL. C. § 7006(b)(2).

### ***Defendant's Manufactured Housing Communities***

8. Defendant owns three manufactured home communities in Delaware. Angola Beach & Estates is located in Lewes, Delaware and consists of

approximately 589 lots. Rehoboth Bay is located in Rehoboth Beach, Delaware and consists of approximately 589 lots. Barclay Farms is located in Camden, Delaware and consists of approximately 292 lots. Collectively, Defendant services over 1,400 residential manufactured home lots in Delaware.

9. Defendant rents manufactured home lots in the three communities to owners of manufactured homes (“Tenants”) who place their homes on designated lots under the terms of a land lease issued by Defendant.

### ***Delaware’s Rent Justification Law***

10. The Rent Justification Act became effective on June 30, 2013 when Governor Markell signed into law Senate Substitute No. 1 for Senate Bill No. 33, as amended by Senate Amendment No. 1 and House Amendment No. 2, creating a new subchapter in Delaware’s manufactured housing law (Chapter 70, Title 25). *See* 79 DEL. LAWS ch. 63.

11. The purpose for the Rent Justification Act is to “accommodate the conflicting interests of protecting manufactured home owners, residents and tenants from unreasonable and burdensome space rent increases while simultaneously providing for the need of manufactured home community owners to receive a just, reasonable and fair return on their property.” 25 DEL. C. § 7040.

12. The Rent Justification Act accomplishes this by allowing community owners to raise the rents charged to tenants by the average annual increase in the

Consumer Price Index For All Urban Consumers in the Philadelphia-Wilmington-Atlantic City Area (“CPI-U”) for the preceding 36-month period, but requiring community owners to go through a rent justification process if they want to increase the rent above the CPI-U. 25 DEL. C. § 7042.<sup>1</sup>

13. The Rent Justification Act, in relevant part, requires: (i) at least 90 days’ written notice to affected home owners and other necessary parties regarding the proposed rent increase, 25 DEL. C. § 7043(a); (ii) a face-to-face meeting between affected parties and the manufactured community’s owner, 25 *Del. C.* § 7043(b); and (iii) nonbinding arbitration between the affected tenants and the community owner if requested by either party, 25 DEL. C. § 7043(c). There is a right of appeal to Superior Court from the arbitrator’s decision. 25 DEL. C. § 7044.

14. In order for the rent justification process to be meaningful, the Rent Justification Act requires community owners to provide financial information to tenants to justify any rent increase above the CPI-U, and allows tenants to petition for arbitration if they do not agree with the justification provided by the community owner. Prior to the Rent Justification Act, Delaware law placed no restrictions upon community owners regarding annual rent increases. The rights granted by the Rent Justification Act to tenants provide significant protections for

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<sup>1</sup> The CPI-U is provided by the Delaware State Housing Authority to the Delaware Manufactured Home Relocation Authority. The current CPI-U is posted on the Delaware Manufactured Home Relocation Authority website and the figure is updated every other month.

tenants who were previously subjected to unpredictable and significant annual increases, as the General Assembly intended.

15. Consistent with its purpose, the Rent Justification Act also prohibits community owners under any circumstances from imposing “any civil penalty, criminal fine or litigation-related costs for rent related proceedings into rent charged under any circumstance.” 25 DEL. C. § 7042(c).

***Defendant’s Unlawful  
Rent Increase Notices For 2016***

16. On September 14, 2015, Defendant issued a rent increase notice (“Rent Increase Notice”) to each Tenant at Angola Beach & Estates, Barclay Farms, and Rehoboth Bay whose lease expires at the end of the 2015 calendar year.

17. The applicable CPI-U as of the date of the notice was 1.1%. Under the Rent Justification Act, Defendant is permitted to raise rents by this amount (“CPI-U Increase”).

18. ***Angola Beach & Estates.*** The proposed rent increase for Tenants at Angola Beach & Estates for the 2016 calendar year is \$19.70 per site per month above the CPI-U Increase, which Defendant claims is justified based on the following purported expenses:

Capital Improvements	=	\$16.86
Increased Operating and Maintenance Expenses	=	\$2.13
Increased Insurance and Financing Costs	=	\$0.53
Increased Taxes	=	\$0.18
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Total Increase Above CPI-U	=	\$19.70

For an Angola Beach & Estates Tenant whose 2015 monthly rent is \$500.00, the Tenant's 2016 rent would increase by \$24.75 per month to \$524.75, a 4.9% increase.

19. **Barclay Farms.** The proposed rent increase for Tenants at Barclay Farms for the 2016 calendar year is \$14.48 per site per month above the CPI-U Increase, which Defendant claims is justified based on the following purported expenses:

Capital Improvements	=	\$12.61
Increased Utility Charges	=	\$0.78
Increased Insurance and Financing Costs	=	\$0.52
Increased Taxes	=	\$0.57
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Total Increase Above CPI-U	=	\$14.48

For a Barclay Farms Tenant whose 2015 monthly rent is \$500.00, the Tenant's 2016 rent would increase by \$19.98 per month to \$519.98, a 4.0% increase.

20. **Rehoboth Bay.** The proposed rent increase for Tenants at Rehoboth Bay for the 2016 calendar year is \$13.23 per site per month above the CPI-U



Increase, which Defendant claims is justified based on the following purported expenses:

Capital Improvements	=	\$10.04
Increased Operating and Maintenance Expenses	=	\$1.81
Increased Utility Charges	=	\$0.79
Increased Insurance and Financing Costs	=	\$0.46
Increased Taxes	=	\$0.13
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Total Increase Above CPI-U	=	\$13.23

For a Rehoboth Bay Tenant whose 2015 monthly rent is \$500.00, the Tenant's 2016 rent would increase by \$18.73 per month to \$518.73, a 3.7% increase.

21. Defendant's annual rent increases for its Delaware properties have, over time, averaged less than 2.5% per year;<sup>2</sup> the proposed 2016 rent increases are higher than this historical average by 50% (Rehoboth Bay), 60% (Barclay Farms), and 100% (Angola Beach & Estates).

22. Defendant's Rent Increase Notices did not, however, stop with these steep increases and put Tenants to the decision of whether to seek arbitration after the required meeting, as the Rent Justification Act contemplates.

23. Instead, the Rent Increase Notices offered Tenants a second, significantly-reduced proposed rent increase—just 2.5%—but with a huge catch:

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<sup>2</sup> Barclay Farms increased rent 1.9% in 2014 and 1.69% in 2015. Angola Beach increased rent 2.67% in 2014 and 1.7% in 2015. Plaintiff does not have recent historical rent increase data for Rehoboth Bay.

in order to obtain this reduced rent increase, Tenants must agree to waive their statutory right to arbitrate a rent increase that exceeds the CPI-U.

24. Included as part of the Rent Increase Notices are two rental summaries, one for the “Full Increase” and one for the “Limited Increase,” along with an Acknowledgment of Receipt that includes the arbitration waiver. All of these documents are part of the rental agreement summary and lease under Delaware law.

25. Defendant’s alternative, reduced 2.5% rent increase is not based on any of the factors identified in the Rent Justification Act as the only factors permitting a community owner to seek a rent increase greater than the CPI-U Increase. *See* 25 DEL. C. § 7042(c). According to the Rent Increase Notices, the *only* basis upon which Defendant is offering the reduced rent increase is as an alternative to filing for arbitration for rent justification for 2016 rent.

26. At the community meetings held to discuss the reasons for the rent increase above the CPI-U, Defendant presented an additional alternative option to Tenants. Tenants could pay the full amount of the increase for the 2016 year and at the beginning of the 2017 year, the capitol improvement increase for 2016 would be subtracted from the base rent used for the upcoming 2017 rent increase. Tenants were again required to waive their right to arbitration to accept this alternative option.

27. Defendant advised Tenants at this meeting that Tenants must elect either rent reduction alternative within 21 days. After 21 days, the reduction offer would expire and Defendant would seek the full amount of the rent increase *even if* Tenants did not file a petition for arbitration.

28. Tenants had thirty days from the conclusion of the community meetings to file petitions for arbitration. *See* 25 DEL. C. § 7043(c).

29. Those Tenants who did not sign the waiver or petition for arbitration would be required to pay the full amount of the unreasonable and burdensome rent increase for the remainder of their tenancy. This unreasonable increase would create a significant financial burden for Tenants and diminishes the substantial investment Tenants have made in their homes.

### **Claims For Relief**

#### **Count I: Violation of 25 DEL. C. § 7006(b)**

30. Plaintiff incorporates the foregoing paragraphs by reference as if fully set forth herein.

31. The Manufactured Home Owners and Community Owners Act prohibits community owners from including in rental agreements any provision asking or requiring tenants “to waive or forego any right or remedy provided by law.” 25 DEL. C. § 7006(b)(2).

32. Defendant’s Rent Increase Notices purport to offer Tenants a choice between two proposed rent increase amounts, but do not explain how Defendant arrived at the lesser of the two proposed rent increase amounts.

33. Defendant does not base the lesser of the two proposed rent increases on any of the factors identified in the Rent Justification Act as the only factors permitting a community owner to seek a rent increase greater than the CPI-U Increase.

34. Instead, the only substantive difference between the two alternative rent increases—as the Rent Increase Notices themselves make plain—is that Tenants have to give up their statutory right to arbitrate the proposed rent increase in order to obtain the lesser of the two proposed rent increases.

35. Defendant has made a business decision that a 2.5% rent increase, which is roughly in line with its historical price increases, is an acceptable increase and has offered that reduced amount to Tenants in exchange for their waiving a statutory right.

36. The waiver was included as part of the rental agreement summary and acknowledgement of receipt sent to Tenants as required by the Rent Justification Act.

37. A lease is defined as a “written contract between a landlord and a tenant establishing the terms and conditions whereby a manufactured home is

placed upon or is allowed to remain upon a rented or lease lot in a manufactured home community.” 25 DEL. C. § 7003(10).

38. The waiver Defendant required Tenants to sign to obtain the discount rate is part of the lease.

39. Defendant is requiring Tenants to forego a legal right in order to elect a lower monthly rental amount.

40. By doing so, Defendant has violated 25 DEL. C. § 7006(b)(2).

41. Defendant’s actions also violate the public policy underlying the Manufactured Home Owners and Community Owners Act by attempting to circumvent the specific mechanisms the General Assembly and Governor put in place to balance the competing interests of community owners and tenants.

42. Defendant knew or should have known that its actions were prohibited by 25 DEL. C. § 7006(b), and its actions in proposing the unlawful Rent Increase Notices were willful.

**Count II:  
Violation of 25 DEL. C. § 7042(c)**

43. Plaintiff incorporates the foregoing paragraphs by reference as if fully set forth herein.

44. The Rent Justification Act prohibits community owners from incorporating the cost of a civil penalty, criminal fine, or litigation related costs for

rent-related proceedings into rent charged under any circumstances. 25 DEL. C. § 7042(c).

45. Defendant's Rent Increase Notices purport to offer Tenants a choice between two proposed rent increase amounts, but do not explain how Defendant arrived at the lesser of the two proposed rent increase amounts.

46. Defendant does not base the lesser of the two proposed rent increases on any of the factors identified in the Rent Justification Act as the only factors permitting a community owner to seek a rent increase greater than the CPI-U Increase.

47. Instead, the only substantive difference between the two alternative rent increases—as the Rent Increase Notices themselves make plain—is that Tenants have to give up their statutory right to arbitrate the proposed rent increase in order to obtain the lesser of the two proposed rent increases.

48. Defendant will save legal fees and expenses by having Tenants waive their statutory right to arbitration in order to obtain the significant discount to the first proposed rent increase.

49. In fact, Defendant's proposed discounted rent increase amount of 2.5% is roughly in line with Defendant's historical price increases, which suggests that the 2.5% rent amount increase has really been Defendant's goal all along, and Defendant is using the prospect of the massive first proposed rent increase to

coerce Tenants into accepting Defendant's lesser proposed rent increase offer while removing the risk that a Tenant will seek to arbitrate the lesser amount (which is still above CPI-U).

50. Defendant's actions violate 25 DEL. C. § 7042(c).

51. Defendants knew or should have known that its actions were prohibited by 25 DEL. C. § 7042(c), and its actions in proposing the unlawful Rent Increase Notices were willful.

**Prayer for Relief**

WHEREFORE, Plaintiff respectfully requests the Court grant the following relief:

A. Enter judgment in favor of Plaintiff and against Defendant on each count of the Complaint;

B. Enter an Order declaring Defendant's Rent Increase Notices null and void;

C. Enter an Order declaring that Defendant is prohibited from collecting the rent increase listed in the Rent Increase Notices;

D. Enter an Order declaring that Defendant is prohibited from issuing a proposed rent increase notice that requires Tenants to waive any of their legal rights in order to obtain a reduction in rent;

E. Enter an Order declaring that Defendant's Rent Increase Notices violate 25 DEL. C. § 7006(b)(2) and 25 DEL. C. § 7042(c);

F. Enter an Order finding that Defendant willfully violated 25 DEL. C. § 7006(b)(2);

G. Enter an Order directing Defendant to return to Tenants any monthly amounts collected from Tenants as rent that exceed the monthly rent collected from Tenants immediately prior to January 1, 2016;

H. Enter an Order, pursuant to 25 DEL. C. § 7006(d), directing Defendant to pay to Tenants three months' rent for having willfully violated 25 DEL. C. § 7006(b).

I. Enter an Order, pursuant to 29 DEL. C. § 2522(b), directing Defendant to pay a civil penalty of \$10,000 for each and every willful violation of 25 DEL. C. § 7006(b)(2);

J. Enter an Order, pursuant to 29 DEL. C. § 2522(d), awarding Plaintiff reasonable attorney's fees and costs;

K. Enter an Order, pursuant to 29 DEL. C. § 2522(c), directing Defendant to cease and desist from engaging in any future violations of the Manufactured Home Owners and Community Owners Act or the Affordable Manufactured Housing Act;



L. Award pre-judgment and post-judgment interest upon all monies awarded to Plaintiff or Tenants as a result of this action; and

M. Order such other and further relief as the Court deems just and proper.

DELAWARE DEPARTMENT OF JUSTICE  
CONSUMER PROTECTION UNIT



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Dated: November 13, 2015