Richard H. Levin, Attorney at Law
California State Bar No. 73398
130 South Main Street, Suite 202
P.O. Box 240
Sebastopol, CA 95472

Arbitrator

SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION

CITY OF PETALUMA

SANDALWOOD MOBILEHOME PARK ARBITRATION

In the Matter of the Arbitration Between Ms. Janice Frym and Sandalwood Estates, LLC Concerning the Mobilehome Space at 579 Birchwood, City of Petaluma

ARBITRATOR'S DECISION

I. Introduction

This matter came before the arbitrator for a public arbitration hearing on October 28, 2013. The arbitration hearing commenced at 10:00 a.m. and concluded at approximately 3:00 p.m. The parties appeared without counsel through their respective representatives: Mr. William Feeney for Sandalwood Estates, LLC ("Sandalwood"), and Mr. David Cormier for Ms. Janice Frym. The parties were given the opportunity to present evidence and argument regarding all of the issues they have identified in the case. Presenting testimony on behalf of Sandalwood were Mr. William Feeney and Ms. Kathleen Fiebiger. Testifying for Ms. Frym were Ms. Janice Frym, Mr. David Cormier, and Mr. Wayne M. Wilson.

II. Background

A. Motivations of the Parties

Both parties have strong motivations for their positions in this arbitration.
Sandalwood has put substantial amounts of money into improvements to the park, and has created what the parties appear to agree is an excellent mobilehome park. Having spent that money, Sandalwood seeks the opportunity to earn what it considers a fair return on its investment. Sandalwood feels that the Petaluma Mobilehome Park Space Rent Stabilization Program ordinance, Chapter 6.50 ("Petaluma Ordinance") operates as a disincentive to such

investment and does not permit Sandalwood an opportunity to earn a commensurate return. As a result, Sandalwood has endeavored where possible to avoid the Petaluma Ordinance by encouraging its tenants to sign long term leases, which Sandalwood says are tailored to individual budgetary circumstances. Tenants are also offered the option of month to month rental agreements subject to the Petaluma Ordinance. Sandalwood makes a concerted effort--which Sandalwood says has been quite successful--to market the long term leases and to discourage the signing of the month to month agreements subject to the Petaluma Ordinance. For those Sandalwood tenants who elect to remain on month to month rental agreements subject to the Petaluma Ordinance, Sandalwood states that it actively engages those tenants in arbitrations where it feels that rent increases are justified beyond the cost of living adjustments provided by the Petaluma Ordinance.

Ms. Frym is the trustee of the trust of her deceased father, Herman Jensen, who lived in a single-wide mobilehome at 579 Birchwood in the Sandalwood mobilehome park. Mr. Jensen passed away in February, 2013. According to Ms. Frym and her representative, it was Mr. Jensen's wish that, following his death, another person of limited means would obtain the benefit of the rent controlled space rent for the space which Mr. Jensen occupied. Ms. Frym says she suffered greatly with the loss of her father, and she is pursuing arbitration in order to carry out his wishes. She views the actions of Sandalwood management as inconsistent with the Petaluma Ordinance and the purposes for which it was adopted.

While the respective motivations of the parties are useful background for understanding the nature and course of the current dispute regarding the noticed base rent increase, the resolution of this matter revolves solely around the application of the law to the facts of this case. Therefore the motivations of the parties are not a factor in this decision.

In like manner, the arbitration is not concerned with provisions which either party might wish to have added to or modified in the Petaluma Ordinance or the state Mobilehome Residency Law, Civil Code Section 798 ("MRL"). The Petaluma City Council and the California Legislature have enacted measures which apply to mobilehome parks; and as a result of litigation, a settlement was signed in December, 2003, which also may apply to this matter ("Settlement

Agreement") (Resident Exhibit No. 1). The application of the Petaluma Ordinance, the MRL, and the Settlement Agreement to the facts of this case are the only issues to be decided here.

B. The Dispute

On July 23, 2013, Sandalwood sent a notice of a rent increase on the space occupied by Mr. Jensen's mobilehome to Ms. Frym, as heir or trustee of the estate of Mr. Jensen. Sandalwood sought to increase the rent by 128%, from $459.64 per month to $1,050.00 per month. Resident Exhibit No. 7. Sandalwood provided no cost justification or support for this increase, but relied instead on its argument that the Petaluma Ordinance does not apply to Ms. Frym as the trustee of Mr. Jensen's trust (or "heir," as Sandalwood denominates it). In the July 23, 2013 notice Sandalwood stated: "Please understand that since you are not a resident of Sandalwood Estates, you are not protected by the terms of the Petaluma Rent Control Ordinance."

Sandalwood claims that: (1) the Settlement Agreement, to which Mr. Jensen became a party by virtue of opting in, does not apply to heirs and trustees of deceased tenants subject to the Settlement Agreement; (2) Mr. Jensen's tenancy terminated on his death and no rights of a rent controlled space rent survived him; (3) the Petaluma Ordinance does not apply to heirs and is preempted by the MRL, and that as a result, Ms. Frym does not have standing to request arbitration; and (4) assuming that Ms. Frym originally did have the right to continued rent at the rate paid by Mr. Jensen under the Petaluma ordinance, that right disappeared because Ms. Frym did not place the mobilehome on the market for sale until September, 2013, approximately seven months after Mr. Jensen's passing.

Ms. Frym, as trustee of Mr. Jensen's trust, requested the arbitration as a result of the rent increase for the space announced by Sandalwood in July, 2013. Ms. Frym argues that: (1) the Settlement Agreement applies to trustees and heirs; (2) the tenancy did not terminate, for purposes of the Settlement Agreement or the Petaluma Ordinance, with Mr. Jensen's passing; (3) even if the Settlement Agreement did not apply, under the Petaluma Ordinance, Ms. Frym, as trustee of Mr. Jensen's estate, is entitled to rent the space at 579 Birchwood, Petaluma, at the rent controlled level which applied to Mr. Jensen; and (4) as trustee, Ms. Frym has the right to request arbitration under the Petaluma Ordinance. Ms. Frym notes that Sandalwood has previously

treated at least two heirs of other deceased tenants as entitled to the benefits of the rent controlled spaces which were occupied by their decedents. Ms. Frym testified that she did not put her deceased father's mobilehome on the market until September, 2013, because for the first two or three months after Mr. Jensen's death, she was unable emotionally to deal with the mobilehome in any respect. After that, it required several months for her to go through and clear out Mr. Jensen's effects and to prepare the mobilehome for sale.

When Ms. Frym put the mobilehome on the market in September, 2013, she referred to both the quality of the Sandalwood park and the rent controlled nature of the space in her marketing. After Ms. Frym put the property on the market, she was approached by Mr. Wayne Wilson and his son, Michael Wilson, who were interested in purchasing the mobilehome for occupancy by Mr. Wilson's son. Mr. Wilson's son is ill and needs a place to live in the Petaluma area, where he has many family members. Mr. Wilson and his son reached an agreement with Ms. Frym on the price they would pay for the mobilehome, subject to obtaining the approval by Sandalwood of the son's tenancy. Sandalwood subsequently approved Michael Wilson's tenancy subject to Mr. Wayne Wilson being a co-signor, which Mr. Wilson agreed to do.

However, when Mr. Wilson and his son discussed the rental rate for the mobilehome space with Sandalwood in October, 2013, Mr. Feeney advised them that the base rent would be re-set to what Sandalwood considered market rates, substantially more than a 100% increase over what Mr. Jensen was paying for the space. This was due to Sandalwood's position that Ms. Frym was not entitled to the benefit of the Petaluma Ordinance as trustee or heir of Mr. Jensen. Sandalwood was, however, willing to negotiate a graduated increase if Mr. Wilson and his son signed a lease not subject to the Petaluma Ordinance. Mr. Wilson, aware of the request for arbitration filed by Ms. Frym, decided to wait for the conclusion of this arbitration to determine what action to take.

Mr. Feeney, for Sandalwood, believes that Mr. Jensen's mobilehome is fairly valued at a fraction of what Mr. Wilson and his son agreed to pay, and that the difference between the fair market value and the amount that Mr. Wilson and his son agreed to pay is due to the representation by

Ms. Frym that the rent controlled rent level for the space would continue to apply upon sale of the mobilehome. Mr. Feeney termed this a "taking."

It is undisputed that: (1) Sandalwood has not provided any notice of termination of the tenancy to Ms. Frym because it takes the position that the tenancy was terminated by operation of law upon Mr. Jensen's demise; (2) there is no provision in the Petaluma Ordinance or the MRL which provides that an heir or trustee of an estate has any particular period of time within which to put a deceased's mobilehome on the market, after which a municipal rent ordinance no longer applies; (3) no cost support as required by the Petaluma Ordinance has been submitted by Sandalwood in support of the announced rent increase; (4) and the parties agree that the increase is not valid if Ms. Frym has standing to challenge the increase under the Settlement Agreement and/or the Petaluma Ordinance and, if the Petaluma Ordinance is applicable, it is not pre-empted by provisions of the MRL.

III. Analysis

I conclude that by its plain language the Settlement Agreement applies to the matter of Mr. Jensen's rent, and is to the benefit of his estate. However, under the Settlement Agreement, as to Mr. Jensen's estate, the provisions limiting rent increases do not apply. Therefore, an analysis of whether the Petaluma Ordinance applies is also necessary. I find that under the Petaluma Ordinance, Ms. Frym, as trustee of Mr. Jensen's trust or as his heir, has standing to challenge the July rate increase, and that arbitration is required in any event due to the size of the proposed increase in the base rent. I also conclude that in this respect at least the Petaluma Ordinance is not preempted by the MRL.

A. The Settlement Agreement

The Settlement Agreement applied to "Affected Residents" who are listed in an appendix to the Settlement Agreement, as well as those who opted into the Settlement Agreement, whom the parties to this arbitration agree included Mr. Jensen. The Settlement Agreement provided, among other provisions, that Sandalwood will not "bring any legal action against the City to alter or repeal the City's existing Rent Control Ordinance in any way" with certain limited exceptions.

The Settlement Agreement also provided that Sandalwood will not implement any rate increase while the Settlement Agreement is in effect for capital improvements, and that essentially the only rent increases permitted are Consumer Price Index adjustments provided for in the Agreement. There is no doubt therefore, that the rent increase proposed by Sandalwood in its July 23, 2013 Notice exceeds the rent increases permitted under the Settlement Agreement.

Therefore, to determine whether that proposed rent increase would violate the Settlement Agreement, requires a review of whether the Settlement Agreement applies to heirs or trustees of the estates of Affected Residents, including Mr. Jensen.

Section 11 of the Settlement Agreement provides in relevant part:

> Notwithstanding anything contained herein to the contrary, Owner shall be found to this Agreement its terms, covenants and conditions as to each Affected Resident and Affected Resident's space for only so long as such Affected Resident is living in the part at the subject space unless medically sublet as required pursuant to Civil Code Section 798. The benefits of this agreement are personal to each Affected Resident, and shall not be assignable or in any way (voluntarily or involuntarily) transferable.

Section 13 of the Settlement Agreement provides in relevant part:

> Except as set forth in this Section and in Section 2(g) above, this Agreement shall be binding on the heirs, administrators, executors, successors and assigns of each of the Parties; and except as provided in Sections 2(d) and 9 above, this Agreement shall inure to the benefit of the heirs, administrators, successors and assigns of each of the Parties.

Section 2(d) deals with rent increases, and Section 9 provides that the Settlement Agreement is not for the benefit of creditors and third parties.

I conclude that the Settlement Agreement inures to the benefit of Mr. Jensen's estate (but not to third parties or creditors), with the exceptions of rent increases. Therefore, the Settlement Agreement does not by its terms bar the proposed rent increase as to Mr. Jensen's trust or his heirs.

For this reason, we must determine whether the Petaluma Ordinance applies to the rent increase proposed and whether Ms. Frym, as the trustee of Mr. Jensen's trust or his heir, has standing to challenge the rent increase announced by the July 23, 2013 Notice.

B. The Petaluma Ordinance.

The Petaluma Ordinance provides that a "Mobilehome tenant" is a

> tenant, subtenant, lessee or sublessee *or any other person entitled to the use or occupancy of any mobilehome space* not otherwise a party to a rental agreement exempt from regulation under this ordinance subject to Civil Code Section 798.17.

Section 6.50.020(M)(emphasis added). The Petaluma Ordinance uses the term "Tenant" interchangeably with the above term. Section 6.50.020(W). An "Affected tenant" is a tenant whose lease is not exempt from rent control. Section 6.50.020(A). There is nothing in the Petaluma Ordinance which precludes an estate, a decedent's trust, or their representative from being a "person entitled to the use or occupancy" of a mobilehome space due to the passing of the tenant. In addition, because, as discussed below, the tenancy was not terminated by the death of Mr. Jensen, under the MRL the trust, estate and heirs are persons entitled to use or occupancy of the mobilehome space.

Moreover, I find that, on the facts presented at the arbitration hearing, Sandalwood has in effect conceded the right to or waived any objection to the use or occupancy of the space at 579 Birchwood by Ms. Frym as trustee of Mr. Jensen's trust, or as heir of Mr. Jensen, for the following reasons:

--Sandalwood gave Ms. Frym notice of the rent increase as required for an "Affected tenant," with knowledge that Mr. Jensen was deceased;

--Sandalwood has not given any notice of termination of the tenancy;

--Sandalwood continued to accept rent payments at the rate paid by Mr. Jensen during the period from March to July, 2013 without noticing any rent increase;

--Sandalwood conceded that Ms. Frym was protected by the Petaluma Ordinance so long as she put the mobilehome up for sale within what Sandalwood considered a reasonable period (though Sandalwood agreed that there is no provision of law which limits this to any particular period);

--Sandalwood did not initiate an unlawful detainer action against Ms. Frym or Mr. Jensen's trust or estate; and

--Sandalwood belatedly tried to characterize the rent payments it accepted from Ms. Frym as "storage fees" without reference to any provision of law which would permit a conversion of a rental arrangement to a storage arrangement without the consent of the owner of the mobilehome—but in so doing, Sandalwood has confirmed that the trust or estate as represented by Ms. Frym was entitled to the continued use or occupancy of the space at 579 Birchwood.

I note that Sandalwood also agreed that it has previously permitted the estates of other deceased tenants to continue to pay the rent controlled space rent following the death of the tenant, but has since changed its understanding of the requirements of law applicable in such instances. Accordingly, I do not view this as a factor in determining whether Sandalwood conceded or waived objection.

I also find that the trust and the estate of Mr. Jensen are an "Affected tenant" under the Petaluma Ordinance, and that Sandalwood has waived any objection to such standing. Therefore, I find that Ms. Frym has standing to initiate the present arbitration. In addition, due to the fact that the rent increase noticed exceeded 300% of the CPI, arbitration is automatic under the Petaluma Ordinance.

Finally, I find without merit Sandalwood's claim that a non-MRL provision of the Civil Code, Section 1934, governs the termination of the tenancy. There are specific provisions under the MRL governing the termination of tenancies, and the death of the tenant is not included among them. Civil Code Sections 798.55(b)(1), 798.56.

Section 798.55(b)(1) provides plainly that:

> The management may not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner, in the manner prescribed by Section 1162 of the Code of Civil Procedure, to sell or remove, at the homeowner's election, the mobilehome from the park within a period of not less than

> 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, as defined in Section 18005.8 of the Health and Safety Code, each junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, and the registered owner of the mobilehome, if other than the homeowner, by United States mail within 10 days after notice to the homeowner.

Even if there were some statutory ambiguity here--which there is not--the MRL is the more specific statute and applies to the termination of mobilehome tenancies under applicable standards of statutory construction. Moreover, if the Legislature had meant to include the death of the tenant in the list of conditions under which a mobilehome tenancy is or may be terminated in Section 798.56, it would have said so, and its non-inclusion of death as grounds for termination is understood to be intentional under the legal maxim of *expressio unius exclusio alterius*.

As noted, Sandalwood looks outside of the MRL to find this termination-on-death provision, notwithstanding its argument in the context of its pre-emption claim that the MRL is a comprehensive scheme exclusively governing relations between mobilehome tenants and park owners. We turn now to that pre-emption argument.

C. Pre-emption

Sandalwood argues that Ms. Frym is an "heir" of Mr. Jensen and that the only definition of "heir" is contained in the MRL. Based on that assertion, Sandalwood argues that, because the Petaluma Ordinance does not contain a definition of "heir" or use that language, the Petaluma Ordinance is therefore pre-empted by the MRL.

I see no indication that the Petaluma Ordinance is pre-empted in this respect by the MRL, even if Ms. Frym were properly characterized as an "heir" of Mr. Jensen, rather than as a the trustee of Mr. Jensen's trust, as she maintains. The MRL refers to local rent control ordinances, which it anticipates will deal with issues of rent levels in mobilehome parks in California where a local authority adopts such an ordinance, unless an exception applies. See Sections 798.17, 798.21, 798.74.4. Rather than pre-emption, this is evidence that the intent of the Legislature in enacting the MRL was to harmonize its provisions with those of these local rent control ordinances, including the Petaluma Ordinance.

Moreover, Section 798.78(a) of the MRL which contains the definition of "heir" specifically provides that the heir or personal representative of the estate of a deceased tenant stands in substantially the same relationship to park management as did the deceased for purposes of readying and marketing the mobilehome for sale.

> An heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the of the mobilehome who was a homeowner at the time of his death shall have the right to sell the mobilehome to a third party in accordance with the provisions of this article, but only if all of the homeowner's responsibilities and liabilities to the management regarding rent, utilities, and reasonable maintenance of the mobilehome and its premises which have arisen since the death of the homeowner have been satisfied as they have accrued pursuant to the rental agreement in effect at the time of the death of the homeowner up until the date the mobilehome is resold.

In mobilehome rent control jurisdictions like Petaluma, the "homeowner's responsibilities to the management regarding rent" are logically the deceased homeowner's rent responsibilities under the rent control ordinance; they are not new and different rent responsibilities of the heir or personal representative. Therefore I see no conflict of any kind between this provision of the MRL and the Petaluma Ordinance.

For these reasons, I see no basis on which to find that pre-emption of the Petaluma Ordinance is occasioned by Section 798.78 of the MRL.

IV. Conclusions

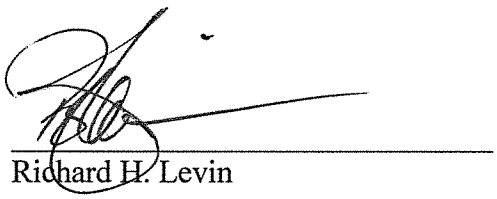
I find that Mr. Jensen's heirs and trust are beneficiaries of the Settlement Agreement under the express terms of that agreement; but the rent control provisions of that agreement do not apply to them due to an exception in the Settlement Agreement.

However, for the reasons explained above, I conclude that Ms. Frym has standing to challenge the rent increase noticed in July, 2013 by Sandalwood under the Petaluma Ordinance, and that the MRL does not pre-empt her right to do so. In addition, the increase plainly exceeds a CPI adjustment by more than three hundred percent, and so arbitration is required in any event. No cost support has been offered by Sandalwood for the proposed rate increase; Sandalwood's

justification for this particular increase consists solely of Mr. Feeney's testimony regarding competitive market prices under leases not subject to the Petaluma Ordinance. I find that Sandalwood's proposed rate increase for the mobilehome space at 579 Birchwood which is used and occupied by Mr. Jensen's trust or estate, and which was formerly occupied by Mr. Jensen, is inconsistent with the requirements of the Petaluma Ordinance. Therefore, I find that the proposed rent increase is unreasonable and unsupported by evidence.

I express no opinion as to the substantive or procedural rights of Mr. Wilson and his son, as those issues are not within the scope of this arbitration between Ms. Frym and Sandalwood.

Signed this 1st day of November, 2013 at Sebastopol, California, by Richard H. Levin, Arbitrator.



Richard H. Levin