EFiled: Jul 23 2015 03:11PM EDT
Filing ID 57598703
Case Number 221,2015D

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BON AYRE LAND LLC, a Delaware Limited Liability Company,	:	
Appellant,	:	No. 221-2015
v.	:	
BON AYRE COMMUNITY ASSOCIATION,	:	Appeal from the Superior Court in and for Kent County C.A. No. K14A-08-001 WLW
Appellee.	:	

APPELLANT'S REPLY BRIEF

RAMUNNO & RAMUNNO, P.A.
L. VINCENT RAMUNNO, ESQUIRE
(Bar ID No. 594)
903 N. French Street
Wilmington, DE 19801
(302) 656-9400
Attorney for Appellant

Dated: July 23, 2015

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

SUMMARY OF THE ARGUMENTS

I. THE LOWER COURT ERRED IN FINDING THE RENT JUSTIFICATION ACT TO BE CONSTITUTIONAL

II. THE ARBITRATOR ERRED IN EXCLUDING THE TESTIMONY OF APPEALLANTS'S EXPERT, WHICH WAS RELEVANT AND ADMISSIBLE EVIDENCE

III. THE ARBITRATOR ERRED IN NOT COMPLYING WITH THE LEGAL DOCTRINE OF COLLATERAL ESTOPPEL AS TO FACTUAL FINDINGS IN A PRIOR ARBITRATION DECISION

IV. THE ARBITRATOR'S DECISION WAS CONTRARY TO THE LAW AND THE EVIDENCE

V. THE LOWER COURT ERRED IN FINDING THAT APPELLANT HAD NOT COMPLIED WITH §7043(B) DESPITE APPELLEE'S STIPULATION TO THE CONTRARY AND THE ARBITRATOR'S RULING.

ARGUMENT

I. THE RENT JUSTIFICATION ACT IS UNCONSTITUTIONAL, INCONSISTENT AND UNWORKABLE

Question Presented

Whether the Rent Justification Act is unconstitutional? (Preserved in A88)

Scope of Review

The issue presented in this appeal is one of law, which is subject to plenary or de novo review by this Court. *Connell v. Baker*, 488 A.2d 1303 (Del.Supr.,1985); *Public Water Supply Company v. DiPasquale, et al.*, 735 A.2d 378; (Del. Supr., 1999).

Merits of Argument

The lower Court erred in its ruling finding the Act to be constitutional.

The Act as written denies a property owner who has the burden of justifying an increase in rent procedural due process in that it does not provide for subpoena power and the compulsory attendance of witnesses, while at the same time doing away with the relaxation of evidentiary rules which has been the practice in arbitrations.

In dealing with this issue, BACA contends that the statute itself does not require the strict application of the Delaware Rules of Evidence, but indicates that they "shall be used as a guide . . . for admissibility of evidence submitted at the arbitration hearing. 25 Del. C. §7043(e)(sic)." In keeping with the lack of clarity and consistency by the drafters of this statute, the phrase that it "shall be used as a guide" only creates

uncertainty and inconsistency. In this case, however, the Arbitrator strictly applied the Rules of Evidence and ruled:

> . . .evidence shall be entered into the record in accordance with the Delaware Uniform Rules of Evidence. Expert testimony shall be offered in accord with Article VII. Hearsay shall not be offered except with Article VIII. (Exhibit 10, A-86)

BACA further contends that the strict application of the Rules of Evidence by the Arbitrator and resulting exclusion of the Affidavit that Village Brook charged $573 was harmless because Village Brook was not comparable. BACA contends that the inability to submit an affidavit concerning Village Brook (and by implication the inability to subpoena the affiant) was not harmful because Village Brook was not a 55 plus community and was a "slummish trailer park", while Bon Ayre was "a vastly superior and exceptional community . . . not a trailer park or anything resembling that." Nevertheless, Village Brook was in Bon Ayre's competitive area and according to the owner's affidavit its rent was $573 for double wides while Bon Ayre was only seeking an increase to $379. Mr. Rostocki however testified Village Brook was actually charging as much as $636.

In fact, there were other "slummish trailer parks" with unpaved streets, no fire hydrants, no curbing or sidewalk or no community center, etc. that were charging $405 to $470. To argue that because they were vastly inferior to Bon Ayre they cannot be used as comparables is a warped application of the law. Taken to its logical extreme,

Bon Ayre's only solution would be to degrade itself so it also was slummish and could be compared to Village Brook and also charge $573. It cannot be that the Legislature would intend such a perverse, illogical and unfair result.

BACA also quotes the Arbitrator's decision that "Both Landlord and BACA called witnesses to discuss Wild Meadows and Barclay Farms" and therefore, only these two communities were 'in play' as being comparables." On the contrary, Bon Ayre's witness, Mr. Draper testified and provided comparable information along with amenities, location and rents, etc. as to 8 communities in Bon Ayre's competitive area.

Without subpoena power, the application of the Rules of Evidence is not only inconsistent, but also denies a party, especially the party with the burden of proof, i.e., the landlord, the ability to satisfy its burden and due process.

In *Goldberg v. Rehoboth Beach*, 565 A.2d 936 (Del. Super. 1989), citing *Matthews v. Elderidge*, 424 U.S. 319 (1976) the Court recognized that procedural due process required the "means of presenting evidence" which should include the ability to subpoena witnesses. In *Matthews*, the United States Supreme Court required a balancing of the affected private interest and the value of the requested safeguard (in this instance, the right to subpoena witnesses) with resulting "burden" (fiscal or administrative) to the government to provide said safeguard. Obviously, the right to subpoena witnesses is clearly necessary in presenting evidence and does not result in

any burden to the State. Moreover, when dealing with such an extraordinary and substantial infringement of constitutionally protected property rights, the balancing scale must tile in favor of the property owner.

The Act is also inconsistent in that it provides for "non-binding arbitration" that in fact is binding unless reversed on appeal. BACA does not address this additional obvious inconsistency in the statute in requiring "non binding arbitration" which in fact is binding. Did the Legislature intend for the arbitration to be non-binding or binding? It can't be both. Would they have provided for subpoena power if they realized it was really binding?

BACA also does not address the lack of adequate qualifications for an attorney to act as a judicial officer as an Arbitrator in "binding" arbitrations which in this case resulted in an elected official being the Arbitrator.

There are other inconsistencies and vagueness with the statute which will be discussed hereafter or are not applicable in this appeal. The statute was drafted with very little thought to its practical application resulting in vagueness and inconsistencies rendering it unworkable and subject to numerous inconsistent applications by a non judicial officer. The Court should find that the statute denies due process, is vague and inconsistent and therefore unconstitutional.

II. THE ARBITRATOR ERRED IN EXCLUDING RELEVANT AND ADMISSIBLE EVIDENCE

Question Presented

Whether the arbitrator erred in excluding an Appraiser's report? (Preserved in A17-A18)

Scope of Review

The issue presented in this appeal is one of law, which is subject to plenary or de novo review by this Court. *Connell v. Baker*, 488 A.2d 1303 (Del.Supr.,1985).

Merits of Argument

The Arbitrator erred in excluding the Appraiser's report and his testimony.

BACA contends that the report and testimony of Bon Ayre's real estate appraiser, James Rostocki was "irrelevant, incomplete, inconsistent and illegal." However, BACA's only objection for excluding Mr. Rostocki's report and testimony before the Arbitrator was that "It did not exist. [prior to the meetings] That's the problem." (T.p. 103, A-17)

The Arbitrator ruled that although the report was "very probative and remarkably helpful" Mr. Rostocki could not testify about his findings or opinions or any reference to a "definitive" value conclusion, but only because his report was not "disclosed" to the tenants at the time of the meeting even though it did not exist.

BACA contends that Bon Ayre's appraiser erred in using the standard definition

of market rent as the "rental income" that a property would most probably command in the open market. BACA contends that is different than the statutory definition of market rent "as that rent which would result from market forces absent an unequal bargaining position between community owner and home owners." (Emphasis added) BACA's contention ignores the fact that the statute makes it clear that the problem that the Legislature was seeking to resolve or account for is the fact that a tenant is in an "unequal bargaining position" because the tenant cannot easily move if he does not like the rent increase. However, ABSENT that "unequal bargaining position" the tenant and landlord are then in an equal bargaining position in an open market and either party can walk away if the rent or other terms are not acceptable.

Absent such an unequal bargaining position "market rent" is the same as "rental income" in an open market since the parties are on level ground. That was recognized by the amendment adding to the definition of market rent: "rents charged to recent new homeowners entering the subject manufactured home community." §7042(c)(7).

BACA also argues the appraiser erred in considering "location". The statute is certainly not a model of clarity or consistency for that matter, but as the Arbitrator ruled that argument ". . flies in the face of the first law of real estate, namely "location, location, location." The benefits of location cannot be ignored and are certainly included in the "services" or "amenities" offered by Bon Ayre. Being in Smyrna

provides local police protection and fire protection, nearby shopping and medical facilities, etc. However there is a price to pay for such benefit, namely substantial property taxes paid by Bon Ayre. Owners of vastly inferior communities without paved streets, *etc.* that are located in rural areas paid much less for the land and pay much less in property taxes but are charging much more rent. [1]

BACA also contends that Mr. Rostocki did not properly value the amenities but the appraiser listed all the various amenities and services offered by the communities he included in his analysis and adjusted them in reaching his conclusion that Bon Ayre should be charging $465. (A46)

The Arbitrator erred in interpreting the statute so as to exclude Mr. Rostocki's testimony. The statute does not provide that only the evidence or material that is presented at the meeting is admissible. §7043(b) simply states that "At the meeting the community owner shall, in good faith, disclose all of the material factors resulting in the decision to increase the rent." [2] That simply means that an owner has to disclose which "factor" or factors of the 7 enumerated factors in §7042(c) it is relying on to increase the rent but it does not exclude evidence that is not available or presented at the meetings.

---

[1]The tenants' homes are treated as motor vehicles and the tenants do not pay property taxes.

2 The July 15, 2014 amendment now requires that the disclosure be "in writing".

III. THE ARBITRATOR ERRED IN NOT COMPLYING WITH THE LEGAL DOCTRINE OF COLLATERAL ESTOPPEL

Question Presented

Whether the Arbitrator erred in not complying with the legal doctrine of Collateral Estoppel? (Preserved in A84 and A104)

Scope and Review

The issue presented in this appeal is one of law, which is subject to plenary or de novo review by this Court. *Connell v. Baker*, 488 A.2d 1303 (Del.Supr.,1985); *Public Water Supply Company v. DiPasquale, et al.*, 735 A.2d 378; (Del. Supr., 1999)

Merits of Argument

The Arbitrator erred in not complying with Collateral Estoppel.

At a prior arbitration hearing the Arbitrator's factual finding as to market rent that comparables were over $400 was controlling since, the issues were identical, the parties were the same (Bon Ayre and BACA) as was the evidence. BACA had a full and fair opportunity to litigate the issue of comparables and it was litigated on its merits. That is in accordance with BACA's citations and authorities which cannot be further discussed and countered because of page limitations.

The Arbitrator erred in not ruling that pursuant to collateral estoppel the factual finding in the prior arbitration as to comparables was binding.

IV. THE ARBITRATOR'S DECISION WAS CONTRARY TO THE LAW AND THE EVIDENCE

Question Presented

Whether the Arbitrator's decision was contrary to the law and the evidence? (Preserved in the Notice of Appeal to the Superior Court)

Scope of Review

The issue presented in this appeal is one of law, which is subject to plenary or de novo review by this Court. *Connell v. Baker*, 488 A.2d 1303 (Del.1985); *Public Water Supply Company v. DiPasquale, et al.*, 735 A.2d 378; (Del. 1999).

Merits of Argument

The Arbitrator's decision was contrary to the law and the evidence.

The Arbitrator found that "An increase in rent above the consumer price index is justified based on comparable market rent." However, the Arbitrator erred in ruling that an increase in rent to $379 was justified for some tenants but not others without any legal or factual support. BACA was apparently content with the Arbitration ruling raising the rents to $379 for 3 tenants and $339 for the remaining tenants and did not appeal or cross appeal the Arbitrator's decision. Nevertheless, BACA now contends the Arbitrator erred in granting any rent increase above CPI despite the fact that BACA's attorney agreed that if the increase was supported by comparables it was justified.

As stated by the Arbitrator in his letter of May 18, 2014:

> "The parties have agreed that if Landlord can prove a comparable market rent, then Landlord winds. In other words, by proving one factor alone, Landlord wins.
> I am not going to disrupt what the parties have agreed to. And I will make my final decision in accordance with their logic." Exhibit 6 A 103

Nevertheless, the Arbitrator did not comply with his commitment to honor the parties' agreement. The undisputed and overwhelming evidence was that all comparable communities including vastly inferior communities charged from $405 to as much as $636 per month. BACA does not address that issue even though that evidence as to comparables clearly justifies an increase to $379.

The evidence was also undisputed that when those tenants entered into a lease in 2005 Bon Ayre rent was $50 to $75 less than the comparable communities used by the Arbitrator. The evidence was also undisputed that presently Bon Ayre's present rent of $379 is still $58 to $91 less than the other comparable over 55 communities. With everything being equal and without any change in "facilities, amenities, services and management", Barclay Farms now charges $456 or $77 more than Bon Ayre. Wild Meadows charges $438.75 or $58 more than Bon Ayre and Southern Meadows charges $470 which is $91 more than Bon Ayre.

Bon Ayre also contends that the increase to $379 per month was justified pursuant to the statute since that was Bon Ayre current rent for new tenants who

were in an equal bargaining position. The Legislature clearly intended that the market rent factor was satisfied upon a showing of the community's current rent for new tenants since they could walk away. That is supported by the Legislature's amendment which defined market rent as rents charged to new homeowners.

The evidence was undisputed that $379 was Bon Ayre's current rent which new tenants were paying. The Arbitrator at Page 7 found that "Bon Ayre lots are currently leasing for $379. In other words, comparable lots within Bon Ayre are at $379." That alone would certainly serve to justify and support the requested increase to $379 in accordance with the statute. BACA does not address this issue.

The market rent factor was also satisfied by Mr. Rostocki's analysis and finding that Bon Ayre would be justified in charging $465 per month. His finding and opinion was erroneously excluded as previously discussed.

BACA does state that for the tenants now paying only $309 the requested increase amounts to a 22% increase. However, BACA ignores the fact that these tenants have not had a rent increase for 3 years unlike all other communities that have yearly leases and were able to increase their rent yearly. If the 22% is divided over 3 years, the increase would be only 7% per year. That however is not relevant since the statute does not place a cap on the percentage of the rent increase if the market rent factor is satisfied which as stated it is undisputed that it was satisfied.

The Arbitrator also erred in not awarding $40 for premium lots in accordance with the parties' agreement and the lease. The Arbitrator stated at page 9 that there was "no evidence into the records explaining what a 'premium' lot is." However, regardless of what a premium lot is, the record was clear the parties had agreed that the Reuben lot was a premium lot and he had agreed to pay $40 more than the regular rent as stated in the lease which was admitted as Exhibit 38.[3]

The Arbitrator's function was to decide if the rent increase to $379 was justified which, as to Mr. Reuben's lot, he so found but contrary to the parties agreement that it was a premium lot he did not award an additional $40 as the parties' agreement provided. The Arbitrator realized that his ruling "doesn't seem fair". He stated "Common sense says that the Reubens live on a larger lot than say Ms. Zane" whose rent was also increased to $379.

Having found that $379 was justified for some tenants the Arbitrator erred in finding that only $339 was justified for other tenants without any legal or factual support. That finding was contrary to the undisputed and overwhelming evidence that market rent clearly justified an increase to $379 for all affected tenants, not just a few.

---

3 The Stipulated Facts also note that the Reubens pay "$40 more." B24

ARGUMENT

V. APPELLEE STIPULATED THAT APPELLANT HAD COMPLIED WITH §7043(b) AND THE SUPERIOR COURT ERRED IN RULING OTHERWISE.

Question Presented:

Whether the appellee stipulated that appellant had complied with §7043(b) and whether the Superior Court erred in ruling otherwise? (Preserved in A83-A84)

Scope of Review

The issue presented in this Appeal is one of law, which is subject to plenary or *de novo* review by this Court. *Connell v. Baker*, 488 A.23d 1303 (Del.Supr., 1985)

MERITS OF ARGUMENT

The Appellee stipulated that Appellant had complied with §7043(b).

As it relates to this Court's scope of review, BACA contends at page 11 of its Answering Brief that:

> "Bon Ayre seeks to have this Court review the Superior Court's finding on the issue 'of whether BACA had stipulated and agreed that Bon Ayre had complied with the requirements of Section 7043(b)' and not the Arbitrator."

That is not correct. Bon Ayre believes and contends that this Court's scope of review should be the same as the review of an administration agency's decision. However, either way the Court's scope of review is de novo.

As to the merits of this issue, the record and the facts are clear that BACA's

counsel stipulated, agreed and admitted that Bon Ayre had complied with the requirements of §7043(b). BACA however contends that:

> "...at the initial telephone conference prior to the arbitration in this matter, BACA's counsel put Bon Ayre and the Arbitrator on notice that BACA intended to take issue with the lack of disclosures made by Bon Ayre."

However, the Arbitrator who was actually a witness to BACA's counsel's agreement or concession made it clear in his decision as to what actually occurred and why he gave "this [BACA's] argument no consideration."

> "On May 7, I conducted a teleconference between Mr. McGiffin and Mr. Ramunno. Mr. McGiffin immediately stated that he was going to make a challenge on the validity of the 7043(b) meeting. At which point, Mr. Ramunno countered saying that Landlord was only going to argue comparable market rent and that, in fact, comparable market rent was discussed at the meeting. Mr. McGiffin said okay, and my own sense from Mr. McGiffin was that if Landlord was *only* going to argue comparable market rent, then the 7043(b) meeting was valid. I chimed in, warning Mr. Ramunno of the dangers of arguing only one factor. Mr. McGiffin then flatly stated that if Mr. Ramunno could prove comparable market rent, Landlord wins."

After the teleconference the Arbitrator's letter to counsel of May 18, 2014 stated:

> "The parties have agreed that if Landlord can prove a comparable market rent, then Landlord wins. In other words, by proving one factor alone, Landlord wins." Exhibit 6 A103

BACA's attorney did not respond or object to the above statement.

On May 23, 2014 Bon Ayre's counsel in a letter to the Arbitrator with a copy to

BACA's attorney stated:

> "Moreover, as you noted in your preliminary opinion, it is agreed or conceded that if comparables exist the landlord wins..." Exhibit 8 A88

Again, BACA's attorney did not respond or object.

In his decision, the Arbitrator confirmed that BACA;'s counsel never objected or disputed the fact that he had so agreed.

> "Over the next three weeks, there was considerable back and forth of letters and emails between the parties and myself, enough correspondence for ten exhibits. There was no mention by Mr. McGiffin of a challenge to the 7043(b) meeting.
>
> The morning of the hearing I circulated via email a 'Stipulated Facts' sheet. The last fact reads: 'A meeting between the parties was held pursuant to 25 Del. C. 7043(b).' I wrote that fact specifically because I thought the validity of the 7043(b) meeting was settled."

At the very beginning of the hearing the Arbitrator confirmed on the record the stipulation and agreement that Bon Ayre had complied with §7043(b).

> "Arbitrator Poppiti: Do the parties agree a meeting was held in accordance and pursuant to Title 25, Delaware Code 7043(b).
> Mr. McGiffin: Yes. Two meetings because it is two groups, but yes."
> T.p. 16 A83

BACA also contends that "BACA's counsel raised this issue during the Arbitration on May 20, 2014." In fact, BACA's counsel raised this issue at the very end of the hearing in closing arguments when all the testimony was concluded. That is also true as to the proffer of the 2 *Tunnell* Arbitrator's decisions. Moreover, BACA's

counsel did not question Mr. Draper concerning the meetings and only questioned his witness briefly as to the meetings after Mr. Draper had been excused and left.

BACA also contends:

> "...counsel also raised the disclosure issue during the arbitration before Bon Ayre completed its case and rested. (A-15) Indeed, Bon Ayre made clear that it was aware of this issue during the arbitration but argued that the non-disclosure was non-prejudicial. (A-17)."

That statement is simply not true. The referenced discussions had absolutely nothing to do with whether the meetings were in compliance with §7043(b) or not. What was discussed on the record is simply whether the report or testimony of Bon Ayre's expert Mr. Rostocki was admissible or not. BACA's counsel simply argued that his report was not admissible because it was "ex post facto and it is not relevant." T.p.96 A15 Bon Ayre's counsel responded that:

> "It's not prejudicial in any way. He knew that comparables is what we were talking about. And the fact that he comes up with $465, as long as it's a number that's over the $379, how are they prejudiced in any way?" T.p.103 A17

BACA contends that BACA's counsel only stipulated that the Good Faith meeting took place "within 30 days." That contention is disingenuous at the very best and completely contrary to the record as related above. Moreover, there would be no need to stipulate that a meeting occurred since without it there would be no arbitration. Moreover, it cannot be ignored that the two letters addressed to the Authority confirm

that a meeting took place on a certain date without any reference to 30 days or any other defect. B22, B23 More importantly there would be no need to simply stipulate that a meeting took place in 30 days since that was easily ascertained by the date of the letters and the date of the meetings.

BACA contends at Page 15 of its Answering Brief that:

> "Despite the statutory mandate to 'disclose all of the material factors resulting in the decision to increase the rent' and 'disclose financial and other pertinent documents and information supporting the reasons for the rent increase.' Bon Ayre provided nothing."

Unfortunately, the statute's lack of clarity and consistency allows BACA to make this meritless argument. The statute lists 6 factors that would allow the landowner to increase the rent and those factors deal with additional expenses for "improvements", "taxes", "utility charges", "insurance or financing", "operating or maintenance expenses" or "repairs". Bon Ayre is not relying on any of these factors.

§7043(b) reference to the disclosure of "financial ... information..." obviously and necessarily deals with the application of one or more of those 6 expense factors. It cannot deal with the 7th factor, market rent, because that is proven by the current rent or comparable rent not expenses. Bon Ayre did have such expenses but chose to utilize only the market rent factor. That is why BACA's counsel initially stated he was going to contend the meetings were defective but then when he found out that Bon Ayre was only going to rely on comparables he agreed that if Bon Ayre proves comparables it

wins because with comparables there is no financial information to disclose.

For market rent the only 2 items that are relevant were Bon Ayre's current rent of $379 which was disclosed in the letter sent to the tenants scheduling the meetings and comparables which BACA's witnesses admit were discussed by Mr. Draper. BACA's contention is that the "financial or other pertinent documents" were not produced but as discussed financial documents were not relevant to market rent. They would only be relevant for the other 6 factors which deal with expenses or repairs.

BACA cites T*unnell Companies, L.P. v. Greenawalt,* 2014 WL 5173037 (Del. Super. Oct. 14, 2014) in support of its position. However, in that case the owner clearly did not comply in good faith. In fact, even though the owner's only basis for increasing the rent was the appraiser's report and even though he had the report at the meeting he refused to show it to the tenants who wanted to see it.

The Arbitrator did not accept BACA's improper "gotcha" defense and ruled that he would decide the case on the merits:

> "Mr. Ramunno was under the reasonable impression that the 7043(b) meeting was settled. I write that the impression was 'reasonable' because, in fact, I held that same impression.
>
> * * * * *
>
> It was the reasonable impression of Mr. Ramunno (and myself) that the 7043(b) meeting was settled. Mr. McGiffin had ample opportunity to dispel that impression. He did not.
>
> * * * * *
>
> As such, the 7043(b) meeting is deemed settled. I will only consider the merits of comparable market rent."

The Arbitrator's decision that BACA's counsel stipulated that Bon Ayre had complied with §7043(b) and had agreed that proof of comparables was all that was needed was not only supported by "sufficient evidence" but the Arbitrator was actually a witness to the agreement. Consequently, pursuant to *Levitt v. Bouvier,* 287 A.2d 671 (Del.Supr. 1972), this Court should affirm that decision.

The Legislature recognized the value of manufactured homes as providing affordable housing and tried very hard to balance the competing interests of the tenants and landlords. The Legislature made it clear that the statute seeks to protect not only tenants but also the landowners and to achieve an equitable and fair resolution for both the tenant and the landlord. It did not contemplate or provide for a "gotcha" approach or such maneuvers or tactics. That is not conducive to fostering the goal of providing affordable manufactured housing by landowners.

A rent increase of $5.56 (the applicable CPI increase) for a tenant who has only been paying $309 for 3 years with no rent increase whatsoever for 3 years while the current rent is $379 and comparable communities including vastly inferior ones charge $405 to $636 violates the statute and is neither equitable, fair or just especially in the factual circumstances of this case and in light of BACA's stipulation/concession.

CONCLUSION

The evidence is overwhelming that the Arbitrator correctly found that BACA had agreed and stipulated that Bon Ayre had complied with §7043(b) and that comparables alone would justify the requested rent increase.

The record is also clear that the rent increase Bon Ayre is seeking is justified by Bon Ayre's current rent and comparables and that the Arbitrator erred in not granting the requested rent increase of $379 for all the involved tenants. The Arbitrator also erred in violating the parties' agreement by not awarding the $40 premium rent.

The Court should also find that the statute is vague, inconsistent and unworkable and needs to be corrected for the Act to function in a fair and equitable manner as intended by the Legislature.

RAMUNNO & RAMUNNO, P.A.
/s/ *L. VINCENT RAMUNNO*
(Bar ID No. 000594)
903 N. French Street
Wilmington, DE 19801
(302) 656-9400
Attorney for Appellant