Hometown Colony, LLC, et al. v. City of Rancho Mirage, et al.
5:20-cv-02259-JVS-AGRx

TENTATIVE Order Regarding Petition for Writ of Administrative Mandamus

Plaintiff Hometown Colony, LLC ("Hometown") filed its opening trial brief regarding its petition for a writ of administrative mandamus. Pl. Brief, Dkt. No. 133. Defendants City of Rancho Mirage ("Rancho Mirage") and the City of Rancho Mirage Mobilehome Fair Practices Commission (the "Commission") (collectively, "Defendants") opposed Hometown's arguments. Opp'n, Dkt. No. 136. Hometown responded. Reply, Dkt. No. 139.

Hometown also attached an appendix of the extra-record evidence that it seeks to admit ("Proposed Appendix"). Dkt. No. 117-2. Defendants raised evidentiary objections to the materials contained within the appendix. Dkt. No. 119. Hometown responded to the evidentiary objections. Dkt. No. 123.

For the following reasons, the Court **GRANTS** in part and **DENIES** in part Hometown's petition for writ of administrative mandamus.

I. BACKGROUND

This case concerns compliance with a city rent control ordinance. Hometown operates a mobilehome park ("The Colony") within the city of Rancho Mirage. Compl., Dkt. No. 1 ¶ 2. The Colony is subject to Rancho Mirage's Mobilehome Rent Control Ordinance, codified in the Rancho Mirage Municipal Code ("RMMC") at Chapter 9.58 (the "Ordinance"). Id. ¶ 3; see RMCC Chapter 9.58, Dkt. No. 1, Ex. A, at 26–38. The Ordinance provides for rent control of spaces in mobilehome parks leased for periods of twelve months or less. RMMC § 9.58.020(C). The Ordinance also establishes a Commission, and grants it limited jurisdiction to administer the Ordinance. Id. §§ 9.58.060, 9.58.070. The Commission consists of seven members appointed by the City Council, five of whom are voting members. Id. § 9.58.060.

In early 2019, four Colony residents (the "Petitioners") submitted Petitions for Determination (the "Petitions") to Rancho Mirage, requesting determinations

of whether Hometown's rent was in conformity with the Ordinance. See Administrative Record ("AR"), Dkt. No. 15, at 32–261.[1] The Ordinance permits one annual rent increase not to exceed "three-fourths of the increase in the cost of living as indicated in the latest available Consumer Price Index" ("CPI"). RMMC § 9.58.010(C). Hometown calculated the rent increase by taking 75 percent of the CPI, rounding that number to the nearest tenth decimal, and then taking that percentage of the average parkwide rent to calculate the rent increase for that year. Petitioners challenged two of these practices: the "rounding up" of the CPI and the use of the average parkwide rent, as opposed to individual space rent, for calculating the rent increase.

City Attorney Steven Quintanilla ("Quintanilla") authored two separate Staff Reports and recommended that the Commission issue orders in favor of the Real Parties in Interest. See AR 476–484; AR 863–874. Hometown objected to the Petitions, arguing that allowing the Petitions to proceed directly violated specific terms of the Ordinance. See AR 267–275; AR 383–393; AR 558–571. The Commission conducted three hearings on the Petitions in late 2019, and on December 17, 2019, the Commission issued four final decisions (the "Decisions), all of which were adverse to Hometown. See AR 668–673; 763–767; 857–861; 951–955.

The Commission made the following four findings:

1. Hometown violated the Ordinance by rounding up the annual CPI rent increases;

2. Hometown violated the Ordinance by using the average base rent of all units in the Park as the basis for annual rent increases;

3. Owing to findings (1) and (2), Petitioners were owed reimbursement of rent as damages, treble damages, as well as civil penalties;[2] and

[1] Citations to the Administrative Record reference the pagination of the Administrative Record that can be found at Dkt. No. 15-1 through Dkt. No. 15-11.

[2] This was not one of the three findings listed as civil penalties were incorporated into the findings regarding the improper rent increases. The Court identifies it separately because it is at issue.

4. Petitioners should be provided a rent decrease under the Ordinance provision for "Reduction in Services."

Id.

On October 28, 2020, Hometown filed its complaint, bringing a total of five causes of action. See generally Compl. The first four causes of action allege violations of Hometown's federal constitutional rights and seek declaratory relief. Id. ¶¶ 68–85. The fifth cause of action seeks a Writ of Administrative Mandamus ("Writ Action") under California Code of Civil Procedure section 1094.5 to overturn the four Decisions issued by Rancho Mirage in December 2019. Id. ¶¶ 86-90. On January 28, 2021, the Court bifurcated the case into two phases. See Dkt. No. 83. Before the Court is the first phase briefing submitted as part of the bench trial on the Writ Action on a closed administrative record. See Dkt. No. 113. It will be followed by a jury trial on the remaining causes of action beginning on October 18, 2022. See Dkt. No. 107.

II. LEGAL STANDARD

Because the Court is exercising pendent jurisdiction over the Writ Action, it applies California law. Hillery v. Rushen, 720 F.2d 1132, 1138, n.5 (9th Cir. 1983) ("Federal courts exercising pendent jurisdiction over state law claims must apply state law as the state's highest court would.") (citing Commissioner v. Estate of Bosch, 387 U.S. 456, 465 (1967)).

California Code of Civil Procedure section 1094.5 authorizes parties to bring writ proceedings to challenge "the validity of any final administrative order or decision." Cal. Civ. Proc. Code § 1094.5(a). "The inquiry in such a case shall extend to the questions whether the [agency] has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." Id. § 1094.5(b). "Abuse of discretion is established if the [agency] has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." Id.

"[R]eview of the factual basis behind a decision by a rent control board or agency is governed by the substantial evidence standard . . .." El Rovia Mobile

Home Park, LLC v. City of El Monte, 48 Cal. App. 5th 113, 124 (2020) (internal quotations and citation omitted). Courts "consider all relevant evidence in the administrative record, beginning with the presumption that the record contains evidence to sustain [the agency's] findings of fact." Id. (citing Colony Cove Properties, LLC v. City of Carson, 220 Cal. App. 4th 840, 865–866 (2013)). To find an abuse of discretion, the Court must determine that the findings at issue "are not supported by substantial evidence in the light of the whole record." Cal. Code Civ. P. § 1094.5(c).

"To the extent that the administrative decision rests on the hearing officer's interpretation or application of the Ordinance, a question of law is presented for our independent review." MHC Operating Ltd. P'ship v. City of San Jose, 106 Cal. App. 4th 204, 219 (2003). "However, a rent control board's interpretation of a rent control ordinance and its implementing guidelines is entitled to considerable deference. The burden is on the appellant to prove the board's decision is neither reasonable nor lawful." Colony Cove, 220 Cal. App. 4th at 866 (internal quotations and citations omitted); see also Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd., 70 Cal. App. 4th 281, 290 (1999) ("[T]he contemporaneous construction of a statute by an administrative agency charged with its administration and interpretation, while not necessarily controlling, is entitled to great weight and should be respected by the courts unless it is clearly erroneous or unauthorized . . .").

"To summarize, we review the hearing officer's factual determinations for substantial evidence. We independently review the hearing officer's interpretation of the Ordinance, according that interpretation due deference." MHC, 106 Cal. App. 4th at 220 (citing Carson, 70 Cal. App. 4th at 287).

III. EVIDENTIARY FINDINGS

A. Requests for Judicial Notice

Hometown requests judicial notice of meeting minutes from the Mobile Home Fair Practices Commission on February 12, 2019, staff report by the Commission dated March 14, 2019, and Ordinance No. 1155 adopted September 19, 2019 effecting a change in the applicable CPI under rent control. Pl. Request for Judicial Notice ("Pl. RJN"), Dkt. No. 128. Defendants request judicial notice

for a provision of the Rancho Mirage City Charter and seven provisions of the Rancho Mirage Municipal Code ("RMMC"). Def. Request for Judicial Notice ("Def. RJN"), Dkt. No. 138.

Courts "may take judicial notice of a record of a state agency not subject to reasonable dispute." City of Sausalito v. O'Neill, 386 F.3d 1186, 1223 n.2 (9th Cir. 2004); United States v. 14.02 Acres of Land More or Less in Fresno Cnty., 547 F.3d 943, 955 (9th Cir.2008) ("Judicial notice is appropriate for records and 'reports of administrative bodies.'"). Municipal ordinances are proper subjects for judicial notice. See Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1025 n. 2 (9th Cir.2006). The evidence is appropriate for judicial notice and both requests are unopposed. The Court grants the requests in full.

B. Motions to Augment the Evidentiary Record

"Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced, or was improperly excluded at the hearing" the court may remand the case for reconsideration "or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case." Cal. Code Civ. Proc. § 1094.5(e); see also City of Fairfield v. Superior Court 14 Cal. 3d 768, 771–72 (1975).

Hometown seeks to introduce extra-record evidence for the Court to consider when ruling on the Writ Action. This includes emails between city officials and the Real Parties in Interest, as well as excerpts of depositions of Carol Mulvihill ("Mulvihill"), one of the Real Parties in Interest, and Marcus Aleman ("Aleman"), Rancho Mirage's person most knowledgeable. See Index of Proposed Appendix, Dkt. No. 117-2, at 2–6. Hometown argues that this evidence should be admitted because it was not available prior to the hearings, and supports their allegations of bias. Mot. to Supplement Record, Dkt. No. 117, at 7–12. Defendants argue that it should not be considered because it does not meet the standard established by section 1094.5(e) to allow for consideration of extra-record evidence.

"In the absence of a proper preliminary foundation showing that one of the exceptions noted in section 1094.5, subdivision (e) applies, it is error for the court

to permit the record to be augmented." Pomona Valley Hosp. Med. Ctr. v. Superior Court, 55 Cal. App. 4th 93, 101 (1997). Both of the exceptions in section 1094.5(e) are limited to "relevant evidence." Cal. Code Civ. Proc. § 1094.5(e). Hometown alleges that Quintanilla impermissibly favored the Real Parties in Interest, and it argues that the emails included within the Proposed Appendix are relevant because they support its theory of bias. Similarly, Hometown argues that the depositions transcripts of Mulvihill and Aleman are relevant because they provide background information to inform the meaning of those emails.

The Court previously granted Hometown's discovery requests because it found that it was possible that they may produce evidence that "could demonstrate potential bias." Dkt. 99 at 10. The extra-record evidence may demonstrate the bias of the City and the City Attorney, see Dkt. No. 117-2 at 3, but it does not demonstrate the bias of the Commission, which was the decisionmaker. Breakzone Billiards v. City of Torrance, 81 Cal. App. 4th 1205, 1207 (2000). ("To prevail on a claim of bias violating fair hearing requirements, a party must establish an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over the claims."). Accordingly, the extra-record evidence is not relevant. See Stallworth v. Cty. of Santa Clara, No. 11-cv-04841-WHO, 2013 WL 5345452, at *12 (N.D. Cal. Sept. 24, 2013) (denying motion to augment the record with respect to certain exhibits, in part because of their minimal relevance).

IV. DISCUSSION

To determine whether to issue an administrative writ of mandamus courts look to "whether the [agency] has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." Cal. Civ. Proc. Code § 1094.5(b). Hometown argues that each of those prongs are satisfied here, for multiple reasons. The Court considers its contentions in turn.

A. Whether the Commission Acted within its Jurisdiction

First, Hometown contends that Defendants acted in excess of their jurisdiction. Pl. Brief at 17–21. "An administrative agency may not validly act in excess of, or in violation of, the powers conferred upon it. If it does so, the action

taken is void and subject to being set aside through a proceeding in administrative mandate." Larson v. State Personnel Bd., 28 Cal. App. 4th 265, 273–74 (1994).

Hometown contends that Defendants acted in excess of their jurisdiction in four ways: (1) by failing to abide by the notice requirements of the Ordinance; (2) in awarding civil penalties and treble damages; (3) in enforcing the California's Mobilehome Residency Law, Civil Code section 798 et seq.; and (4) by waiving the petitioner filing fees.

i. Notice Requirements of Ordinance

The Ordinance provides that Petitions must contain either proof of service or "a statement that a copy of the petition has been personally served or mailed to the mobilehome park owner." RMMC § 9.58.080(A). Hometown argues that Defendants acted outside the scope of their authority by considering the Petitions because "none of the Petitions contain either a proof of service or a statement indicating that a copy was served upon Hometown or its representative." Pl. Brief at 18.

The City argues that Hometown received notice of the Petitions and then appeared in three hearings to dispute the case on the merits, thereby waiving any objection to service of process. Opp'n at 23-24. The Court agrees. Under both state and federal law, Hometown's appearance demonstrated sufficient notice of the Petitions such that any defect or irregularity in the service was waived. See, e.g., Tate v. Superior Ct., 45 Cal. App. 3d 925, 927 (1975) ("The appearance of a party at the hearing of a motion, and his or her opposition to the motion on its merits, is a waiver of any defects or irregularities in the notice of the motion or the lack of any notice."); Benny v. Pipes, 799 F.2d 489, 492 (9th Cir.1986) ("A general appearance "ordinarily is an overt act by which the party comes into court and submits to the jurisdiction of the court. This is an affirmative act involving knowledge of the suit and an intention to appear."); United Food & Commercial Workers Union v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir.1984) ("Rule 4 is a flexible rule that should be liberally construed so long as a party receives sufficient notice of the complaint.").

ii. Imposition of Civil Penalties and Treble Damages

Hometown argues that the Commission lacked jurisdiction to impose civil penalties and treble damages. Pl. Brief at 18–19. Hometown selectively quotes part of the Ordinance titled "Powers and duties" which states that "the commission shall have no authority to fix or award civil penalties, damages or attorney's fees." Pl. Brief at 18 (citing RMMC § 9.58.070(B)). The complete provision states, in relevant part:

> [T]he commission shall have no authority to fix or award civil penalties, damages or attorney's fees, but shall have the authority to assess against a mobilehome park owner appearing in such proceeding the actual cost, in whole or in part, of the conduct of such proceedings in those cases where the commission shall find and determine that the mobilehome park owner has, in fact, violated the terms of this chapter.

Id. The Commission's findings and determinations are then made available for use in any judicial proceeding that may be brought pursuant the Ordinance. Accordingly, it is clear that the Commission acted in its authority in hearing the Petitions, making findings that there were violation of the terms of the Ordinance, and then assessing civil penalties regarding the violations of the Ordinance. The propriety of those penalties will be discussed further below.

iii. Enforcement of California's Mobilehome Residency Law by the Commission or the City Attorney

Hometown argues that the Ordinance does not grant any power to the Commission with respect to the enforcement of California's Mobilehome Residency Law, Civil Code section 798, et seq. (the "MRL"), nor does it give the Commission any right to direct the City to initiate nuisance or "failure to maintain' actions against any park owner. Pl. Brief at 19. In support, Hometown points to the City's website, which states that commissions "cannot commit City resources, direct staff, or establish policy for the City." Pl. Brief at 19.

The Ordinance establishes the scope of authority of the Commission and gives it limited authority to, in relevant part, interpret the Ordinance and hold hearings regarding its violation. RMCC § 9.58.070(B). Hometown is correct that

the Ordinance does not give the Commission the power to enforce the MRL, nor commit resources to bring an action. The City argues that the Commission did not run afoul of this because it did not commit resources or direct staff to bring an action. Rather, the Commission approved of the Staff Report, an act that the City Commission was authorized to take, and made its own findings pursuant to its authority under the Ordinance. Opp'n at 23. The Commission had the authority to hear the petitions, interpret the Ordinance, and make findings, which is what it did. It did not exceed its jurisdiction.

Although not relevant to the Commission's jurisdiction, the City and City Attorney also acted within their authority. Section 400 of the City Charter "General Law Powers" authorizes the City to "enforce all legislation, laws and regulations and to take all actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority." Ranch Mirage City Charter § 400, Def. RJN, Ex. A, Dkt. No. 138-1. Accordingly, the City has the power and authority to enforce the MRL, including to bring a civil action to abate a declared nuisance and collect its fees and costs, pursuant to Section 400 of the City Charter. Defendants cite to the City's website, which states that "the City Attorney represents the city in legal proceedings to enforce city ordinances, and provides, either directly or through special counsel, for the representation of the city in civil matters." Opp'n at 23.

iv. Waiver of Filing Fee

In order to initiate proceedings under the Ordinance, the Ordinance requires payment of a filing fee or approval of a filing fee waiver. RMMC § 9.58.080. Under subsection (D), the city manger or his or her designee may waive the filing fee if the resident meets certain income and residency requirements, state in writing the reason for the waiver request, and provide proof of income. RMMC § 9.58.080(D).

Hometown argues that there is no evidence in the Administrative Record regarding whether the Real Parties in Interest who requested fee waivers provided the proof of income as required by subsection (D). Pl. Brief at 20. Hometown further asserts that there was no evidence that any of the Real Parties in Interest actually qualified for a fee waiver. Consequently, Hometown argues that "[i]t

should be presumed from the failure of the City and Commission to address the substance of Hometown's objection that the [] petitions were improperly and unlawfully filed." Pl. Brief at 21.

The Record does not contain the proof of income documentation on which the City based its decision to waive some fees and not others, only that some of the fees were waived and others paid. Opp'n at 25. The City asserts that personal financial information not disclosed or included in the record was not done so for privacy reasons, and if Hometown was dissatisfied, it did not bring a motion to compel its disclosure. Id. Ultimately, there is no evidence or legal authority to say that the City Manager or the Commission was required to justify the decision to waive a filing fee, or that such evidence constituted a jurisdictional requirement. This Court finds that this was no jurisdictional requirement and that the choice to waive the fees, even if based on documentation not in the Record, did not preclude the Commission exercising jurisdiction here.

B. Fairness of the Hearing

Hometown argues that the City and Commission denied Hometown a fair hearing because the bias of the City Attorney and the City infected the proceedings before the Commission. See Pl. Brief at 27-28.

To prevail on a claim of bias violating fair hearing requirements, a claimant must establish "an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over their claims." Breakzone Billiards v. City of Torrance, 81 Cal. App. 4th 1205, 1236 (2000) (citing U.S. v. State of Or., 44 F.3d 758, 772 (9th Cir. 1994)). A mere suggestion of bias is not sufficient to overcome the presumption of integrity and honesty. Id. The burden is on the party asserting bias to "come forward with specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias." Morongo Band of Mission Indians v. State Water Res. Control Bd., 45 Cal. 4th 731, 741 (2009). Further, the California Supreme Court has held that in an administrative proceeding, the combination of adjudicating functions with prosecuting or investigating functions will not ordinarily constitute a denial of due process. Griggs v. Bd. of Trustees of Merced Union H. S. Dist., 61 Cal. 2d 93, 94 (1964).

Here, the bias asserted is largely on the part of the City Attorney and the City, which committed time and resources to assist the Petitioners throughout the Process. Hometown points to ample evidence of the bias of the City and its attorney, but does not point to evidence that the decision-maker, the Commission, was biased. Without evidence of the Commission's bias, it is not enough to suggest that the City Attorney and the City's bias infected the proceedings. See Morongo Band, 45 Cal. 4th at 741 ("Unless such evidence is produced, we remain confident that state administrative agency adjudicators will evaluate factual and legal arguments on their merits, applying the law to the evidence in the record to reach fair and reasonable decisions."). In fact, one of the Commissioners was actually a manager at Hometown. Hometown has not borne its burden to demonstrate that the Commission was so biased that Hometown was deprived of a fair hearing.

C. Abuse of Discretion

Hometown argues that Defendants abused their discretion in the findings made by the Commission. Pl. Brief at 21–27. "Abuse of discretion is established if the [agency] has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." Cal. Code Civ. P. § 1094.5(b).

Defendants argue that the Commission properly exercised its discretion and that substantial evidence supports its decisionmaking. Opp'n at 11–12. Petitioners raise five issues based on the Commission's findings and determinations. The Court considers whether there was an abuse of discretion regarding each of these issues in turn.

i. Application of the Ordinance With Respect to Rounding

Hometown calculates the rental increase by taking 75 percent (three-fourths) of the CPI and rounding to the nearest tenth decimal. For example, the CPI for March 2018 was 4.1 percent. Three-fourths of that would have been a rent increase of 3.075 percent of the prior year's base rent, but Hometown rounded that number and imposed a rent increase of 3.1 percent. Opp'n at 12-13; AR at 478-79. Hometown argues that its practice is lawful because the Ordinance is silent as to the issue of rounding the CPI adjustments. Pl. Brief at 21–22; Reply at 1–3.

Interpretation of the Ordinance presents a question of law for the Court's independent review, though the Court accords the Commission's interpretation due deference. MHC, 106 Cal. App. 4th at 220.

The Ordinance provides:

> [N]o mobilehome park owner of any mobilehome space covered by this chapter shall request, demand or receive a rent increase **in excess of three-fourths of the increase in the cost of living** as indicated in the latest available Consumer Price Index for the twelve-month period preceding the date of a rent increase.

RMMC § 9.58.010(C) (emphasis supplied). This expressly prohibits a rent increase that exceeds three-fourths of the CPI index. As rounding up the calculated number would exceed three-fourths of the CPI, the Ordinance clearly prohibits that practice. Accordingly, the Commission's finding that rounding was unlawful is supported by the law and the Record.

ii. Choice of Base Rent

The Ordinance is silent as to the issue of whether the CPI percentage rent increase should be applied space-by-space or upon an average of the rent collected. Pl. Brief at 21. Hometown argues that the Commission's finding that Hometown violated Section 9.58.010(C) by using the average rent of all spaces rather than the actual rent for each individual space was wrong for two reasons. First, Hometown argues that this finding did not comport with the express language of the although the Ordinance. Second, Hometown asserts that this finding contravenes prior guidance regarding the City's interpretation of the Ordinance and is therefore void. Pl. Brief at 22.

As to Hometown's first argument, section 9.58.020 of the Ordinance provides that in case a space is voluntarily vacated, the rent may be increased upon re-rental based on the "average rental rate for comparable space rent in the park." 9.58.020(D). The Commission found that this provision regarding "comparable space rents" is not applicable to the annual rent increase provisions of Section 9.58.010. The Commission explained:

> The Commission found and determined that "comparable space rents" is an issue when establishing the new space rent after it has been vacated. In such cases, the Park Owner is required to use the average rent of all rent-controlled spaces when determining the space rent that will be rented for a term less than 12 months. **Under Section 9.58.010 C, the CPI increase should be tied to the actual rent paid rather than either the average rent or comparable rent spaces** in the Park.

AR at 671 (emphasis added).

Due to the deference that the Commission is entitled in its interpretation of the rent control ordinance, Hometown bears the burden of proving that the Commission's decision was neither reasonable nor lawful. Colony Cove, 220 Cal. App. 4th at 866. Other than Hometown's argument that a separate provision in the Ordinance allows using the "average rental rate for comparable space rents" when calculating a rent increase for newly vacated spaces, Hometown does not make arguments regarding the validity of the interpretation. The City argues that Commission's interpretation is supported by the fact that the Ordinance specifically distinguishes between the rental rates of rent controlled properties versus non-rent controlled properties. Opp'n at 15. Petitioners requested that the Commission consider defining "comparable space rent" in the park as the average rent spaces in the park that have continuously been subject to rent control. AR at 480. The Court finds that the Commission's interpretation of the Ordinance adopting this reasoning was reasonable, particularly in light of the weight owed to the Commission's interpretation of the Ordinance as the agency charged with its administration and interpretation. See Carson, 70 Cal. App. 4th at 290.

As to Hometown's second argument, Hometown contends that the rent increase based on the average rental space is a practice spanning over a decade and received the approval the City on prior occasions. AR at 1427-28. Hometown argues that the City is estopped from asserting to the contrary given this prior position.

Hometown has used the average rental space as part of its rental increase calculation since 2009. In an email dated June 9, 2009 between Hometown and City representatives, including City Attorney Quintanilla, Hometown attaches a draft letter that explains to its residents the new base rate for calculating the rental

increases. AR at 1427-1428. The letter states that prior to that year, Hometown had been incorrectly using a base rate of the average rent for the years 1980, 1981, and 1982 to calculate the rental increase, but that it would begin correctly using the prior year's average current rent as the basis for this calculation. Id. at 1428. In the email responding to the letter, the City representative Paul Franco approves of Hometown's letter and states: "I would again apologize that staff relayed the incorrect base year information (some time ago) to you/The Colony." Id. at 1427.

The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. City of Goleta v. Superior Ct., 40 Cal. 4th 270, 279 (2006). The elements of the doctrine are that:

> (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.

Id.

This communication was not official guidance. Nor does it squarely address the issue of whether the rent increase should be based on the average of all rents in the Park as opposed to actual rent per space or some other method of determining the base rent figure. Without more context surrounding this email it is not clear what "average" rent the parties are referring to in the email communication. It could be the average parkwide rent, as Hometown asserts, but it could also be referring to the average rent-controlled figure. Accordingly, it is unclear whether the City was fully "apprised of the facts" or intended Hometown to act upon the statement in that email as it did, as required by the first two elements of estoppel.

But even if the email did squarely address the issue, it provides no basis for estoppel that precludes the Commission's interpretation of the Ordinance as set forth in the December 2019 decisions. "Equitable estoppel will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy." Id. (citing

Bib'le v. Committee of Bar Examiners, 26 Cal.3d 548, 553 (1980) ("Estoppel will not ordinarily lie against a governmental agency if the result will be the frustration of a strong public policy.")). The email alone is not strong evidence that this practice had been affirmed and approved over the intervening decade, as Hometown asserts. AR at 387-89. Based on the evidence in the Record, it is just as likely that the issue, never having been squarely addressed, was simply ignored until Petitioners raised the challenge. There is no grave injustice in applying the Commission's interpretation. And insofar as this interpretation governs rental increases from December 2019 on, Hometown has no rights in the previous representation regarding the City's interpretation of the Ordinance.

The Commission and the City seek to apply this retroactively to impose civil penalties and damages on Hometown. The Court will address that issue further in the following section.

iii. Recovery of Improper Rent Increase and Imposition of Civil Penalties and Treble Damages

Where a mobilehome owner is found to have imposed improper rental increases, the Ordinance authorizes residents to recover the sum of the improper increase as well as treble that amount as damages, along with a civil penalty of five hundred dollars per violation and reasonable attorney's fees and court costs as determined by a court of competent jurisdiction. RMMC § 9.58.100.

The Commission found two practices improper with regards to the rent increase: the rounding up of the CPI calculation and the use of the average parkwide rent in that calculation. As discussed above, the Court agrees with the Commission that the practice of rounding up was improper given the Ordinance's plain language and lack of ambiguity regarding that aspect of the calculation.

However, the second practice of using the average parkwide rent was not necessarily improper. Petitioners claimed that from 2000 to 2007 the base rent used for the annual increase was $269.00, but in 2008, the base rent was increased to $569.93, which "presumably was based on the average rents throughout the Park." Opp'n at 14; AR at 682. In other words, Petitioners, the Commission, the Staff Report, and the City in opposition all are presuming that this dramatic leap in the base rent in the rental increase calculation was due to the decision to use an

average of parkwide rent rather than distinguish between rent-controlled and non-rent controlled rents. But there is evidence to contradict this explanation. In the July 2009 email between Hometown and City representatives, Hometown attaches a draft letter that explains to its residents the new base rate for calculating the rental increases. AR at 1427-28. That letter states that prior to that year, Hometown had been incorrectly using a base rate of the average rent for the years 1980, 1981, and 1982 to calculate the rental increase, but that it would begin correctly using the prior year's average current rent as the basis for this calculation. Id. at 1428. The Court notes, therefore, that the increase in the base rent used for calculating the rental increase, which notably more than doubled between 2007 and 2008, was not due to Hometown's switch to average parkwide rents, as presumed by the Commission and Petitioners. Rather, this was owed to using the rent average of the prior year, presumably the year 2006, rather than the rent average of the years 1980-82.

Hometown argues that it was improper to apply the December 2019 Decisions retroactively. The application of a new law is impermissibly retroactive if it improperly "change[s] the legal consequences of past conduct by imposing new or different liabilities based upon such conduct." Californians for Disability Rts. v. Mervyn's, LLC, 39 Cal. 4th 223, 231 (2006). Although the email communication did not constitute estoppel, it either approves of Hometown's interpretation of the Ordinance, or at least supports Hometown's argument that the Ordinance is ambiguous and its interpretation was not unwarranted. Further, the accompanying letter contradicts the City and Petitioners' theory on why rents increased from 2007 to 2008. Indeed, there is no evidence in the Record to suggest that Hometown's interpretation of the Ordinance up to that point was inconsistent with the City's interpretation. Until the Petitions required the Commission to interpret the Ordinance, there was no reason to believe that Hometown's practice in that regard was improper.

Requiring Hometown to repay any of the increases based on the use of the average parkwide rent would be improper retroactive application of the new interpretation of the Ordinance. See id. Similarly, imposing civil penalties, including the treble damages, based the use of the average parkwide rent for calculating the rent increase would constitute an impermissible retroactive application of the new interpretation.

Accordingly, the Court finds that the Commission could properly require Hometown to pay back improper rent increases based only on Hometown's practice of rounding up the CPI percentage. Similarly, any civil penalties imposed could only be based on that practice.

iv. Reduction in Services

The Commission found that Hometown should be required to disclose the current conditions of The Colony in the Park Rental Agreement, and order a reduction of Petitioners' rent according to Petitioners' "estimated lost value of each such common area, common facility and/or service." AR 860. Hometown argues that the City and Commission did not follow the Ordinance with respect to the reduction in services provision under the Ordinance section 9.58.050, entitled "Reduction in Services." Pl. Brief at 24-26. The Court first considers the question of law presented and then whether the Commission's factual findings are supported by substantial evidence.

The relevant section of the Ordinance provides:

> No mobilehome park owner shall reduce or eliminate any service to any mobilehome space and/or any common area of the mobilehome park such as streets, sewage systems, utility systems, [etc.] ... , unless and until any proportionate share of the cost savings resulting from such reduction or elimination is passed on to the resident in the form of a decrease in space rent.

RMMC § 9.58.050(A). For example, if a mobilehome owner provided a service in the form of a utility but later eliminated that utility, the cost savings must be passed on to the resident in the form of a rent decrease. "The computation of such cost savings shall be based upon the average monthly charge for such service for the prior year or such other period as the parties shall mutually agree or determined by the commission to be representative of such cost savings." Id. Hometown argues the Ordinance allows for a decrease in rent based only on the cost savings to a park owner realized from the reduction in services, and therefore the "lost value" measure advanced by the Commission and the City is vague, subjective, and not the computation required by the Ordinance. Pl. Brief at 25. Further, Hometown argues that the Rental Agreements govern Petitioners' claims

regarding any "reduction in services." Id.

The Commission found that the Petitioners were entitled to recover the "lost value" of the reduction in services "as valued in Petitioners' Petition" as well as three times the amount of any lost value of those common areas and facilities, dating back to October 2015. The Commission also found that the Park owner would be required to pay a $500 civil penalty for each time the lost value was included in Petitioners' monthly rent. AR at 672.

Petitioners valued the "lost value" of the services and facilities at $155 per month. AR at 685. The Administrative Record contains several photos of the deficiencies with the facilities. These include cracks in community walkways and driveways, and outdated conditions of common areas and facilities. Hometown contends that these asserted deficiencies do not prevent the facilities from being in working order, which was all that was required. Pl. Brief at 19-20. There is substantial evidence to indicate, however, that the conditions of amenities and facilities were not in working order and that the deficiencies were more than brand preferences in appliances or differences regarding landscaping choices. The Petition by Stephen and Beatrice Gillard contains a detailed table including a 'cost value' and list of each of the asserted reduced services. AR at 698-701. This includes actual lost services, such as the elimination of certain Clubhouse services (e.g., closing the Clubhouse early and non-functional hot tubs or pools).

Even if the Court accepts that this was sufficient evidence to support the Commission's finding that this constituted a reduction in services under the Ordinance, the Commission failed to justify the adoption of Petitioners' own value estimate of the reduced services. The Ordinance provides instructions for the computation of the "cost savings" of reduced services that must be returned to the residents in the form of reduction in rent. Here, imposing the Petitioners' proposed reduction based on perceived "lost value" was based on an incorrect application of the Ordinance. Cal. Civ. Proc. Code § 1094.5(b). With no findings on this front, the Court finds that the Commission abused its discretion in blindly adopting the Petitioners' valuation of reduction in services, which was based on a different calculus than that in the Ordinance.

v. Interpretation of the Statute of Limitations

Hometown contends that the City and the Commission utilized the wrong statute of limitations with respect to purported damages and penalties. The Decisions provide that the applicable statute of limitations is four years under California Code of Civil Procedure section 337 governing written contracts, obligations, or liabilities. Pl. Brief at 26. Hometown argues that the appropriate statute of limitations was the three-year period found in California Code of Civil Procedure section 338(a), which provides for liability based on statute. Id. at 27. The Court agrees. The Petitions were brought pursuant to the Ordinance, based on violations of the Ordinance. Accordingly, the appropriate limitations period was the three-year period provided in California Civil Code section 338(a) for statutory liability. See Fisher v. City of Berkeley, 37 Cal. 3d 644, 697 (1984), aff'd sub nom. Fisher v. City of Berkeley, Cal., 475 U.S. 260 (1986) ("[C]ourts have suggested that the term "statute" embraces local ordinances."). Hometown further contends that the one-year statutory period provided in California Code of Civil Procedure section 340 applies to the statutory penalty claims. By its terms, that section applies to "[a]n action upon a statute for a penalty or forfeiture, if the action is given to an individual." Cal. Code Civ. P. § 340. As Hometown is not an individual, that code section does not apply.

The City does not provide an explanation for why the four-year statute of limitations period was applied. The Court finds that this was unlawful and that the three-year statute of limitations period applies.

IV. CONCLUSION

Findings of Fact

1. Petitioners experienced reduced services under the Ordinance.

Conclusions of Law

1. The Commission had jurisdiction over the Petitions.

2. Hometown was not deprived of a fair hearing.

3. The Commission did not abuse its discretion in finding that the practices of rounding up the CPI percentage and use of the average parkwide rent as base for calculating rent increase were improper, prospectively.

4. The Commission did not abuse its discretion in assessing penalties against Hometown for its practice rounding up the CPI percentage, including repayment of past rent improperly imposed under that practice within the applicable statute of limitations period; and civil penalties authorized by the Ordinance ($500 per violation)

5. The Commission abused its discretion in assessing penalties retroactively for the interpretation of the Ordinance regarding the use of parkwide average rents.

6. The Commission abused its discretion in relying on Petitioners' recommendations for the value of the reduction in services based on "lost value" rather than the computation prescribed by the Ordinance.

7. The Commission abused its discretion in applying the incorrect statute of limitations period of four years. The proper statutory period is three years as prescribed by Cal. Code Civ. P. § 338(a).

For the foregoing reasons, the Court **GRANTS** in part and **DENIES** in part Hometown Colony's petition for writ of administrative mandamus. The Court **REMANDS** this matter to the Commission to make findings consistent with this Opinion.

IT IS SO ORDERED.

The Court **VACATES** the August 15, 2022 hearing. Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. on Tuesday, August 16, 2022, stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted.