

**MONTGOMERY COUNTY, STATE OF MARYLAND**

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

**ESPRIT, A CONDUMINIUM**

Complainant,

v.

Case No. 06-07

**August 22, 2007**

**LENNOX AND PAMELA ABRIGO,**

Respondents.

**JUDGEMENT OF DEFAULT**

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland (the "Commission"), for hearing pursuant to Chapter 10B of the Montgomery County Code 2004, as amended. The duly appointed Hearing Panel considered the evidence of record and finds, determines and orders as follows:

**PROCEDURAL BACKGROUND**

On January 23, 2007 the Complainant, Esprit, a Condominium ("Esprit"), filed a complaint with the Commission alleging that Respondents Lennox and Pamela Abrigo ("Abrigo") had installed a satellite dish on the common area of Esprit, and had refused to remove it. Esprit sought an order requiring Abrigo to remove the satellite dish from the Esprit common area, and if the satellite dish was reinstalled, that installation be in accordance with Esprit's relevant published Guidelines. The record shows that Esprit mailed a copy of its Complaint to Abrigo on January 22, 2007.

On January 26, 2007 Commission staff mailed a copy of the Complaint to Abrigo with the usual notice about the need to file a response within 30 days. No response was received from Abrigo.

On March 7, 2007 Commission staff sent notice to Esprit and Abrigo about the use of the Commission's Default Judgment Procedures in the circumstances where a respondent does not respond to a complaint. (These are posted at the Commission's website. *See* <http://www.montgomerycountymd.gov/content/ocp/ccoc/pdf/defaultjudgmentprocedures.pdf>.) On March 15, 2007 Esprit filed its Request for Order of Default. Also on March 15, 2007 Commission staff sent notice to the parties that the Commission would consider this case at the Commission meeting scheduled for April 11, 2007. On April 11 the Commission concluded that jurisdiction had been properly pled and entered an Order of

Default against Abrigo. Both parties were notified of the Commission action by Commission staff on April 12, 2007, with Abrigo also being notified of the right to move to vacate the Order of Default within 30 days.

No response was received by the Commission from Abrigo. Thereafter, on June 1, 2007 Esprit filed its Request for Entry of Judgment by Default. There is no evidence in the record that this Request was served on Abrigo.

### **FINDINGS OF FACT and CONCLUSIONS OF LAW**

There is no doubt that all of the Commission's Default Judgment Procedures have been satisfied and that Esprit is entitled to a Judgment of Default.

The subject of the Complaint is clearly within the Commission's jurisdiction. The Complaint alleged that the Abrigo satellite dish was installed on the condominium's common area and thus was not installed "on property within the exclusive use or control of an antenna user where the user has a direct or indirect ownership or leasehold interest in the property". *Compare* 47 C.F.R. Section 1.4000(a) 2007 (Federal Communications Commission rule). Abrigo never disputed the allegation that the satellite dish was installed on common area.

Abrigo was repeatedly served with the papers in this case and had ample opportunity to appear and contest the allegations of the Complaint, including the allegation that the satellite dish was installed on common area. Abrigo did not do so.

The only remaining issue is the nature of the relief to be ordered by the Panel. As noted, the Esprit Complaint requested that Abrigo be ordered to remove the satellite dish from the Esprit common area. The Complaint also requested that Abrigo be ordered to follow the relevant Esprit Guidelines if the satellite dish was reinstalled.

However, the initial Complaint does not mark the end of Esprit's relief requests. In its June 1, 2007 Request for Entry of Judgment by Default Esprit, perhaps sensing victory, greatly expanded its request for relief. It now asked the Commission to order, *inter alia*, the payment by Abrigo of removal expenses and storage fees, and that in addition Abrigo be ordered to pay all of Esprit's expenses incurred "in connection with this matter."

A Complaint to the Commission always contains a description of the relief sought by the Complainant. A request for relief is part of the Complaint. Therefore, Esprit's June 1 expanded request for relief amounts to a proposed Amendment to its original Complaint.

Passing over questions of whether the proposed Amendment was served on Abrigo and whether the Panel would be obliged to reopen the record to take evidence on the requests for expense payments, the Panel finds that the Esprit effort to amend the Complaint at this late date – months after the Complaint was filed – is untimely and will not be permitted. The relief to be ordered will be that sought in the original Complaint.

## **ORDER**

Within 30 days from the effective date of this Order, the Respondent must:

1. Remove its satellite dish from the Esprit common area; and
2. If Abrigo reinstalls a satellite dish, such installation must be in accordance with the relevant Esprit Guidelines insofar as those Guidelines are in accordance with the rules, policies and procedures of the Federal Communications Commission.

Commissioners Gelfound and Negro concur in this Opinion and Judgment.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days of the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals.

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Robert S. Thorpe, Panel Chair  
August 22, 2007