

In the Matter of x
Board of Directors x
Charles Baron, President x
MacArthur Park Condominium, Inc. x
Complainant x

Vs.

Gillian Austin, Owner of
7630 Tomlinson Avenue, #25
Cabin John, Maryland
Respondent

The Complainant sought an order directing the Respondent to (1) remove her two ceiling fans, (2) pay \$100.00 in fines imposed by the Complainant for failure to remove the ceiling fans, and (3) pay all attorney's fees incurred by the Complainant in litigating this dispute.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On February 5, 1992, the Commission voted to hold a public hearing, which commenced and concluded on April 27, 1992.

FINDINGS OF FACT

Based on the evidence of record, the Commission makes the following findings:

1. The Respondent installed two ceiling fans in her dwelling unit in October, 1989, which were in place as of April 27, 1992.
2. The fans were installed utilizing existing wiring in the unit with no construction work, other than the completion of electrical connections, occurring in the Complainant's common elements.
3. The Respondent's installation of ceiling fans in her dwelling unit did not materially increase the cost of operating or insuring the condominium.
4. Operation of the fans created noise and vibration which was annoying to Erna Breustal, the owner of unit #35, which is the unit directly above the Respondent's unit.
5. The Complainant's intent in passing the January, 1987 House Rule #11 regarding electrical and mechanical equipment was to regulate installation of equipment with electrical requirements in excess of the electrical system in place in the Condominium.
6. Prior to the initiation of this complaint, the Complainant has received other complaints from members regarding noise generated by ceiling fans in other units in the condominium.
7. The MacArthur Park Condominium building has multiple stories, and is of wood frame construction, and is susceptible to inter-floor noise transmission.
8. The Complainant notified members of the condominium of the proposed 1990 House Rule regarding ceiling fans on June 19, 1990, and adopted the rule on July 18, 1990, after a twenty-nine day period to receive comments. The May 1, 1990, Annual Meeting Minutes reflect discussion of the issue of prohibiting the installation and operation of ceiling fans. The minutes further reflect a vote of the membership to prohibit ceiling fans with seventeen voting in favor and one against.
9. There was no evidence entered into the record indicating the existence of any other ceiling fans in use that are currently creating noise, vibrations, or a source of annoyance for another member of the Condominium or which interfere with the peaceful use and possession of any other unit.
10. The Complainant imposed a fine of \$50 per month after notifying the Respondent of the violation of the 1990 House Rule on September 29, 1990, and providing her with an opportunity to contest the violation on October 15, 1990.

11. Neither party's behavior in the course of the dispute illustrates a pattern of bad faith, refusal to participate in the mediation process, or intent to hinder or delay the dispute resolution process of this Commission.

DECISION AND CONCLUSIONS OF LAW

Based upon a preponderance of the evidence, it is the Decision of the Commission that the Respondent violated Article X, Section 3(a) of the Bylaws of MacArthur Park Condominium, Inc. and the Condominium's 1990 House Rule regarding ceiling fans. The Commission concludes that Section 1 of Article XIV of the Bylaws and the Condominium's 1987 House Rule regarding electrical and mechanical equipment are inapplicable to the Respondent's installation and operation of ceiling fans, and therefore she did not violate those provisions. Furthermore, the evidence does not support any allegation that the Complainant has failed to uniformly enforce its governing documents.

Article X, Section 3(a)

Article X, Section 3(a) of the Bylaws prohibits offensive activities within the Condominium or individual units. Verbatim, the section provides that:

"No noxious or offensive trade or activity shall be carried on within the Condominium or within any unit situate [sic] thereon, nor shall anything be done therein or thereon which may be or become an annoyance to the neighborhood or the other owners. No nuisances shall be permitted within the Condominium, nor shall any use or practice be permitted which is or becomes a source of annoyance to the members or which interferes with the peaceful use and possession thereof by the members."

Testimony before the Commission established that the Condominium is of wood frame construction between floor levels. The owner of the unit above the Respondent's unit testified that she was able to hear noise and experienced annoying vibration in the floor of her unit, which is above the ceiling to which the Respondent's ceiling fans are attached. She testified that the noise and vibration of the fans were severe enough to interrupt her sleep on several occasions. Additionally, there was testimony that, in general, noise transmission between floors in the Condominium is a continuing problem because the wood frame construction method and materials do not confine many sounds to the unit in which they are generated, and specifically that there had been past instances of neighbors annoyed by noise from ceiling fans in units below them.

Based on testimony regarding the effect on at least one unit owner of noise and vibration generated by the fans, the wood frame construction of the building, and other evidence in the record, the Commission concludes that the Respondent's fans created noise and vibration which were a source of annoyance for another member of the condominium, and which interfered with the peaceful use and possession of her unit, violating Article X, Section 3(a).

The 1990 House Rule

The Commission concludes that the Complainant adopted the 1990 House Rule regarding ceiling fans in compliance or substantial compliance with its own bylaws (Article X, Section 4) and the Maryland Condominium Act (Section 11-111). This conclusion is based on the findings of fact recited above regarding the publication and voting on the rule and other evidence in the record.

Inasmuch as the Respondent was properly notified of the Rule and cited for a violation by the Complainant, and that she admitted that she had not removed the fans, the Commission also concludes that the Respondent violated the Rule.

Similarly, the Commission concludes that the fines imposed by the Complainant were imposed in compliance with Section 11-113 of the Maryland Condominium Act. The parties testified at the hearing that the total fines in this dispute would be limited to \$100.00.

The Commission also concludes that the Rule is consistent with Article X, Section 3(a) of the Bylaws, and because of the Condominium's past negative experiences with ceiling fans and the characteristics of the building's construction, the rule is reasonably related to the common good of all unit owners.

The Commission rejects the Respondent's argument that the Rule is invalid because her fans were installed prior to the adoption of the Rule. The Respondent took ownership of her unit with the knowledge of the declaration of condominium, and therefore with the knowledge that the other unit owners could exercise their right to make such a change in the provisions of the Declaration.

Article XIV, Section 1

The Commission concludes that Article XIV, Section 1 is not applicable to the Respondent's installation of ceiling fans. Testimony at the hearing indicated that installation of the fans did not require the type of an alteration of the unit or the common elements that is addressed by this section of the Bylaws. Because this section emphasizes structural changes and alterations significant enough to change the terms of insurance coverage of the common elements, the Commission concludes that the installation of the ceiling fans, which was likened in the record to changing a lighting fixture, does not violate Article XIV, Section 1 of the Bylaws.

The 1987 House Rule Regarding Mechanical and Electrical Equipment

The Commission concludes that the 1987 House Rule regarding Mechanical and Electrical Equipment is not applicable to the installation of ceiling fans because a witness for the Complainant testified that the intent of the rule was to prohibit clothes washers and dryers, and any other equipment requiring upgraded wiring. Testimony at the hearing established that the ceiling fans required no such wiring. Additionally, if the rule had been intended to cover ceiling fans, there would have been no need for the Complainant to have contemplated and adopted the 1990 House Rule specifically addressing ceiling fans.

Attorney's Fees

The Commission concludes that neither party evidenced a pattern of behavior which would justify the award of attorney's fees in this matter. To the contrary, the record reflects numerous meetings, conversations, letters, and other documents in which the efforts of the parties to resolve this dispute are evidenced. The overall conduct of the parties in this matter clearly does not fall within the criteria in Section 10B-13(d) of the Montgomery County Code, 1984, as amended, for award of attorney's fees by this Commission. Consequently, the Commission denies both parties' requests for the award of attorney's fees.

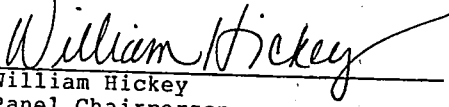
ORDER

In light of the foregoing, and based on the evidence of record, the Commission orders the following:

1. The Respondent must remove the two ceiling fans within her dwelling unit within thirty (30) days of the date of this Decision and Order; and
2. The Respondent must pay \$100 in fines to the Complainant within 60 days of the date of this order; and
3. The Complainant must compensate the Respondent for the removed fans in accordance with the 1990 House Rule.

The foregoing was concurred in by panel members Hickey, Auvil, and Sullivan.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.



William Hickey
Panel Chairperson
Commission on Common Ownership
Communities