

Before the  
Commission on Common Ownership Communities  
for Montgomery County, Maryland

In the Matter of	x	
Francis & Susan Cameron,	x	
Owners of	x	
7562 Westlake Terrace	x	
Complainants	x	Case No. 135-O
	x	July 30, 1992
Vs.	x	
	x	
Board of Directors	x	
Jim Carlo, President	x	
Westlake Terrace Condominium	x	
Respondent	x	

Decision and Order

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 30th day of July, 1992, found, determined and ordered as follows:

On September 13, 1991, Francis and Susan Cameron, owners of 7562 Westlake Terrace, Bethesda, Maryland, hereinafter the Complainants, filed a formal dispute with the Office of Common Ownership Communities. The Complainants alleged that Westlake Terrace Condominium Board of Directors, Governing Body of Westlake Terrace Condominium, hereinafter the Respondent, does not have the authority to enforce Article VIII, Section 4 of the Community's Rules and Regulations, by ordering them to prevent their cats from "running free" within the Community. The Complainants additionally alleged that the Respondent was not uniformly enforcing Article VIII, Section 4 of the Community's Rules and Regulations, inasmuch as other pets within the Community were being allowed to "run free." The Complainants also alleged that the Respondent does not have the authority to enforce Article VIII, Section 5 of the Community's Rules and Regulations, by designating their cats as a nuisance and permanently banning their cats from the Community.

The Respondent maintained that it is within its authority to enforce Article VIII, Section 4 of the Community's Rules and Regulations, by ordering the Complainants to prevent their cats from running free within the Community, and that it uniformly enforces this provision against all other homeowners with pets within the Community. The Respondent additionally maintained that it does have the authority to enforce Article VIII, Section 5 of the Community's Rules and Regulations, by designating a pet as a nuisance and permanently banning it from the Community when necessary, while noting that action pursuant to Article VIII, Section 5 has not yet been taken against the Complainants.

The Complainants sought an order invalidating Article VIII, Section 4, of the Community's Rules and Regulations regarding "pets running free;" and an order preventing the Board of Directors from enforcing Article VIII, Section 4, of the Community's Rules and Regulations.

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 April 1, 1992, the Commission voted to hold a public hearing, which commenced and concluded on June 30, 1992.

#### FINDINGS OF FACT

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

1. The complainants have resided within the community since 1985.
2. The Complainants currently own four (4) cats.
3. The Complainants' cats are on occasion allowed to roam free within the community.
4. The Respondent has received complaints from resident James Peters, 7550 Westlake Drive, about the Complainants' cats roaming free.
5. As a result of complaints received from resident James Peters, the Respondent Board of Directors has worked with the Complainants and resident James Peters, attempting to resolve the dispute.
6. As part of its attempt to resolve the dispute between the Complainants and resident James Peters, the Respondent Board of Directors held a special executive session meeting on August 22, 1991. At that meeting both the Complainants and the complaining resident, James Peters, were given an opportunity to present their respective positions relative to the dispute.
7. On September 3, 1991, after hearing from both the Complainants and resident James Peters, the Respondent Board of Directors sent correspondence to the the complainants advising them that continued failure to adhere to the Community's Rules and Regulations would result in enforcement action.

#### CONCLUSIONS OF LAW

Accordingly, the Commission concludes based upon a preponderance of the evidence, including, but not limited to testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

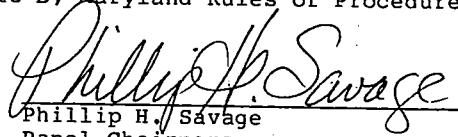
1. The Complainants have been directed by the Respondent Board of Directors based on its authority under Article VIII, Section 4 of the Community Rules and Regulations, to keep their cats from roaming free within the community. The Complainants continue to allow their cats to roam free.
2. The Respondent Board of Directors has not taken final action, such as the imposition of sanctions or fines, against the Complainants for their alleged continued violation of the Community's Rules and Regulations, and all association remedies and procedures have not yet been exhausted.
3. Therefore, the Commission on Common Ownership Communities must conclude that the Complainants have not been injured by the Respondent Board of Directors.
4. The Complaining party must demonstrate that they have been injured due to action taken or failure to act by the Respondent Board of Directors, in order for the dispute to be a matter properly reviewed and decided by this Commission.

ORDER

In view of the foregoing, and based on the evidence of record, the Commission orders that Case No. 135-O is dismissed without prejudice.

The foregoing was concurred in by panel members Kerstetter, Savage 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.

  
Phillip H. Savage  
Panel Chairperson  
Commission on Common Ownership  
Communities

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