

**MONTGOMERY COUNTY
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

Michelle Sherman,
Complainant

v.

CCOC No. 14-13
April 16, 2013

Plymouth Woods Condominium Association,
Respondent

Ruling on Motion to Lift Automatic Stay

This matter comes before a hearing panel of the Commission on Common Ownership Communities (“CCOC”) pursuant to a motion filed under Section 10B-9A of the Montgomery County Code to lift the automatic stay imposed by Section 10B-9(e) of the Code.

Pursuant to section 10B-9A(e), in order to grant relief from a stay, the panel must find that enforcing the stay would result in undue harm to the community association and lifting the stay will not result in undue harm to the rights or interests of any opposing party.

The record before us on which we base our decision consists of the following:

1. Complaint;
2. Notice of Violation dated January 28, 2013;
3. Notice of Violation Hearing dated February 14, 2013;
4. Result of Violation Hearing dated March 6, 2013;
5. IKO Memorandum dated July 5, 2012 and October 15, 2012;
6. Letter from Respondent to CCOC dated April 2, 2013;
7. Motion To Lift Automatic Stay;
8. Emails from Complainant to CCOC dated April 9, 2013.

The Complaint alleges that the Respondent has acted prejudicially towards her and, without legal justification, ordered her to remove her dogs from her property (the “Property”). The Respondent denies the Complainant’s charges, asserting that, after proper due process was afforded,

the Complainant was found in violation of the Respondent's governing documents, and regulations passed pursuant to those documents, relating to leash requirements and the Respondent's prohibition of pit bull and pit bull mix dogs in the community. In its Motion to Lift Automatic Stay, the Respondent claims that the Complainant's dogs have been observed off-leash and that her dogs are likely to injure other dogs and/or people if the dogs are allowed to remain in the community. The Complainant has explained the incident (the "Incident") that gave rise to the violation at issue and has denied that her dogs have been off-leash subsequent to the Incident.

The Association has not provided any specific facts to support its allegations that injuries are likely if the dogs are not removed and that the dogs have been off-leash since the Incident. Accepting, for the purpose of the pending motion, that a leash violation occurred and that a biting incident occurred, there are no facts alleged that would support a conclusion that another violation is likely or that injuries are likely to occur. The Panel finds it significant that the Incident was, apparently, reported to the City of Rockville, that Rockville prescribed action to be taken by the Complainant, and that such action has, in fact, been taken. There is no allegation that Rockville ordered the dogs removed from the Property. In light of the foregoing, and with facts in dispute and the Respondent's allegation unsupported, the movant has not met its burden to show that the stay will result in undue harm to the Respondent. Additionally, the Complainant will have to make arrangements for the care of her pets and will be deprived of their company. As such, it appears that lifting the stay will result in undue harm to the Complainant.

The Respondent provided information that after learning about the *Tracey v. Solesky* case, which held a landlord strictly liable for an attack by its tenant's pit bull, the Respondent amended its rules to ban pit bulls and pit bull mix dogs, effective December 1, 2012. We note that although the Court initially found both pit bull and pit bull mix dogs to be inherently dangerous animals, the Court later reconsidered its opinion and excluded mixed breed pit bulls from its ruling. It is undisputed that the Complainant's dogs are mixed breed, and thus the Respondent should not be facing strict liability exposure if a further incident occurred regarding the dogs.

The hearing panel concludes that the Respondent has not demonstrated that it will suffer undue harm, while the Complainant has demonstrated that lifting the stay will result in undue harm to her rights or

interests. The Panel denies the Respondent's Motion to Lift Automatic Stay, without prejudice. If a further incident should occur at the Property, or additional facts are presented, then the Panel will consider a renewed motion.

It is therefore ORDERED:

that the motion to lift the automatic stay is denied without prejudice,

Commissioners Molloy and Farrar concur.



Mitchell Alkon, Panel Chair