

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

In the Matter of  
George E. Parris, Owner of  
10135 Ridgeline Drive  
Gaithersburg, MD 20879  
Complainant

Vs.

Middle Village Homes Corporation  
Respondent

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Case No. 147-0  
December 3, 1992

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER GRANTING MOTION TO DISMISS

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on the 28th day of October, 1992, pursuant to Sections 10B-9(a), 10B-5(i), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Complainant having presented his testimony, and the case file and Respondent's Exhibit No. 1 having been entered into evidence, together with all of Complainant's documentation, the Panel makes the following findings of fact and conclusions of law in granting the motion to dismiss the Complaint made by the Respondent at the conclusion of Complainant's case:

1. The Panel finds that it is bound by the governing documents of the Association recorded in the Land Records of Montgomery County, Maryland, and on deposit with the Homeowners Depository in Montgomery County, Maryland.

2. The Panel finds that the issues stated by the Complainant to be involved in his complaint are (1) whether the Association had the power to adopt unified trash collection, (2) if such power existed whether, in order to exercise such power, the Association needed to amend its covenants requiring an affirmative vote of two-thirds of the owners, or merely amend its rules requiring a majority vote of a quorum of the Board of Directors of the Association; and (3) whether the vote required for the Association to adopt the change, including the assessment increase, was an affirmative vote of two-thirds of all owners or a vote of two-thirds of all persons present and voting.

3. The Panel finds that the Complainant presented no evidence to support that there exists language in the covenant declaration or supplementary covenants or any by-law which either specifically prohibits the Association from requiring unified trash collection or which specifically allows the lot owners their own choice of method of trash collection; therefore, the Panel concludes that no covenant found in the declaration or supplementary covenants or any by-law needed to amend in order for the Middle Village Homes Corporation to effectuate its rule for unified trash disposal.<sup>1</sup>

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<sup>1</sup> The only reference to trash collection being controlled by a "covenant" is a letter dated January 29, 1991, from Edward I. Wirkman, Manager of Middle Village Homes Corporation. Based on the uncontroverted testimony of Mr. Wirkman, as part of the Complainant's case-in-chief, the Panel finds that his use of the word "covenant" in the letter was merely an inappropriate use of language, since the reference should have been to a Rule, not a covenant.

4. The Panel finds that the Supplementary Covenants No. 15, 16 and 19 do not preclude, and in fact support, the authority asserted by the Association in providing for unified trash in the Middle Village Homes Corporation.

5. The Panel finds that the only reference in Association documents to the method of trash collection is found in the Rules and Regulations adopted by the Association.

6. The Panel finds, therefore, that an amendment to the Rules and Regulations was necessary to adopt unified trash collection, provided that the funding was made available.

7. As to issue number (1), the Panel finds that there was sufficient evidence presented by the Complainant which showed that the Board of Directors had the power to amend the Rules and Regulations, specifically including the power to amend the Rules and Regulations concerning the method of trash disposal within the Middle Village Homes Corporation, whether based on its plenary power, or on the basis of being related to the health, safety and welfare of residents.

8. The Panel finds that the Board of Directors exercised, in good faith, its powers and authority, including reliance on counsel's advice, and that, therefore, the Board is awarded the protection of the Business Judgment Rule.<sup>2</sup>

9. As to issue number (2), the Panel finds that the vote requirement requested by the Complainant, that being two-thirds of all homeowners in the Association, was not necessary due to the fact that no covenant, declaration or by-law was amended, or needed to be amended, to enact the unified trash rule in accordance with the Association documents.

10. As to issue number (3), the Panel finds that the vote required by the Association documents to increase the assessment was an affirmative vote of two-thirds of those present and voting at a duly called meeting of the Association at which a quorum was present.

11. The assessment increase was voted on properly at a duly called meeting of the Association and the panel finds as a matter of law, and the Complainant has conceded, that the vote was sufficient to increase the assessment in the amount necessary to fund the contract for unified trash removal at Middle Village Homes Corporation.

12. The Panel finds that the assessment increase was properly accomplished in accordance with the Association documents and applicable law.<sup>3</sup>

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<sup>2</sup> The Panel finds that the exclusion of Complainant's expert, James Daley, was proper based on Respondent's objection, in that Complainant's proffer of evidence from this witness as to the existence or advisability of other methods employed by other Associations for trash collection was not related to the issues outlined by the Complainant. Further, the Panel, pursuant to the Business Judgment Rule, need not inquire into the wisdom of the decision of the Board of Directors or the Association, merely as to whether the procedure followed in deciding and implementing the change was within the authority of the Board in exercising its good faith discretion in accordance with the Association documents and with applicable law.

<sup>3</sup> The Panel notes that the Rule change cannot be enforced by the Association from this point forward unless and until the Rule is on file, together with all other Rules, in the Homeowners Association Depository pursuant to Sections 11B-112 and 11B-113 of the Real Property Article of the Annotated Code of Maryland. The Panel is without knowledge as to whether or not it is or has been recorded in the past, as this issue is beyond the scope of the relief requested and defenses raised in this dispute.

13. The Panel finds that the Complainant has failed to show that the enactment of the unified trash proposal was outside of the authority of the Association or that the covenants or Declaration needed to be amended in order to provide such authority to the Association.

14. Considering all the facts presented by the Complainant as being true, and all evidence in the light most favorable to the Complainant, we find evidence that the Board of Directors acted within its authority under the Association's documents, in good faith, and with adequate information, including but not limited to, reliance on counsel's opinion, in what it considered to be in the best interests of the Association, and in accordance with its interpretation of the Association documents. The evidence does not show any bad faith, fraud or incompetence on the part of the Respondent, and, therefore, the Panel will not substitute its judgment for that of the Association's Board of Directors as to the wisdom of the decision, as the Panel has concluded that the Association exercised its authority properly.

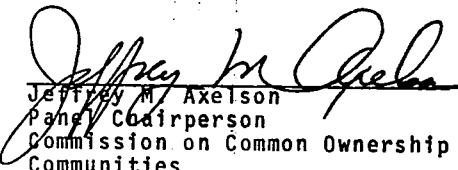
THEREFORE, it is hereby ORDERED that the Motion to Dismiss the complaint made by Respondent, Middle Village Homes Corporation, is hereby GRANTED and the power of the Association to enact and continue its unified trash collection rule is affirmed.

The foregoing was concurred in by panel members Axelson, Chester and Kerstetter.

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.

Date

12/3/92

  
Jeffrey M. Axelson  
Panel Chairperson  
Commission on Common Ownership  
Communities

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