

1. Hunting Woods is a community of 106 single-family houses and 69 townhouses. A Declaration of Covenants, Conditions and Restrictions for Hunting Woods ("Declaration") established the community as a homeowners association and provided rules for the operation of the community. The Hunting Woods Homeowners Association, Inc. was incorporated in Maryland in 1984. Bylaws for the corporation were adopted in 1985.

2. Article VI of the Declaration, entitled "Use Restrictions and Easements", at Section 6.01 "Permitted Uses" states:

The Lots shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a single-family dwelling, except that a professional office may be maintained in a dwelling, provided that such maintenance and use is limited to the person actually residing in the dwelling and, provided, further, that such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation. As used in this Section, the term "professional office" shall mean rooms used for office purposes by a member of any recognized profession, including doctors, dentists, lawyers, architects and the like, but not including medical or dental clinics. The terms "dwelling" or "dwelling unit", as used in this Declaration, shall include a townhouse. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant from the use of any Lot or dwelling, or improvement thereon, for promotional or display purposes, or as "model homes", a sales office or the like.

At Section 6.02, "Prohibited Uses", the Declaration states:

No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes, except Declarant may use the Property for model home sites and display and sales offices during the construction and sales period.

3. On or about April 22, 1990, while participating in a community Earth Day project, Mr. Marhamati had a conversation with Diane Quinn, who was then President of the Hunting Woods Homeowners Association. The present perceptions of the two parties to that conversation are quite different. Mr. Marhamati says that he described his wife's intended home studio to Mrs. Quinn and asked her approval of the activity. Mrs. Quinn says that Mr. Marhamati asked about including an entry in the community directory for his wife's business. Mr. Marhamati clearly understood that approval or agreement of the Association Board of Directors was necessary before his wife could begin operating a home business. Mr. Marhamati testified that he understood that Mrs. Quinn approved his wife's proposed business. Mrs. Quinn did not understand that approval was being requested and knew that she did not have the authority alone to grant such approval.

4. On or about April 25, 1992, Mrs. Marhamati began to operate a studio in her home providing a variety of cosmetic services.

5. At a later date, a flyer advertising Mrs. Marhamati's Flair Studio came to Mrs. Quinn's attention, and on June 14, 1990, as President of the Association, she sent a letter to the Marhamatis requesting that they stop performing services in their home and stop distributing the flyer until the Association Board had had the opportunity to review a formal request "to operate a professional office from the home." The flyer described the business as "Flair Facial and Nail Studio/Make-up & Waxing" and included prices for a variety of cosmetic services.

6. On June 16, 1990, Mrs. Marhamati sent a letter to the Hunting Woods Board of Directors requesting permission to operate a beauty studio in her home.

7. The minutes of the Hunting Woods Board meeting of June 18, 1990, reflect a discussion of Mrs. Marhamati's request to conduct a business in her home. The Board wanted to consult their attorney regarding the Association covenants and applicable County regulations and thus did not approve Mrs. Marhamati's request at that meeting.

8. On June 21, 1990, after consultation with the Association attorney, Mrs. Quinn wrote to Mrs. Marhamati denying her request to operate a beauty studio from her home as not in accordance with Section 6.01 of the Association's Declaration.

9. On July 4, 1990, Mrs. Marhamati sent a letter to Mrs. Quinn requesting that the Board reconsider its decision to deny approval of Mrs. Marhamati's home studio. In this letter Mrs. Marhamati indicated that it was her understanding that the listing in the Hunting Woods Community Directory of services available from residents of the community included businesses being operated out of homes in the community. Mrs. Quinn testified that it is her understanding, and that of the Board, that those listings are for services, such as baby sitting and snow shoveling, which residents will perform at the homes of their neighbors or services offered by members of the community in an office outside of the community.

10. The minutes of the July 16, 1990, meeting of the Hunting Woods Board of Directors indicated that the Association attorney was present and the Marhamatis were in attendance. Mrs. Marhamati's request for a home studio was discussed. After the Marhamatis had left the meeting, the Board unanimously voted to confirm its earlier decision to deny Mrs. Marhamati's request for approval to operate a studio in her home.

11. The decision of the board was conveyed to Mr. and Mrs. Marhamati in a letter from the Association attorney dated July 23, 1990. In that letter, the Association attorney stated that it was the understanding of the Board from the discussion with the Marhamatis that the studio was no longer being operated in their home, and that in reliance upon that understanding the Board contemplated no further action. The Marhamatis were also advised that they could bring a dispute before the Dispute Resolution Bureau in Montgomery County's Office of Consumer Affairs, and a telephone number was provided.

12. A letter dated August 15, 1990, from an attorney representing Mrs. Marhamati, responded to the July 23rd letter from the Association attorney. Mrs. Marhamati's attorney pointed out that the Board could have taken a different approach to the question of Mrs. Marhamati's studio and asked that the Board review their decision. The Association attorney replied to the Marhamati's attorney in a letter dated August 21, 1990, stating that the Association Board had considered the approach suggested by the Marhamatis and had not found it persuasive in light of the language in the community's Declaration.

13. Mrs. Marhamati's studio did not come to the attention of the Hunting Woods Board of Directors again until December 1991 or January 1992. The minutes of the January 6, 1992 meeting of the Hunting Woods Board indicated that the Board voted to have the Association attorney send a letter to the Marhamatis, directing that they cease operation of the studio in the home.

14. A letter dated January 21, 1992, was sent to the Marhamatis by the Association attorney on behalf of the Association Board asking that the Marhamatis stop the operation of the business in their home and that they sign an agreement that they would not operate this business in their home. In the absence of such an agreement, the Attorney indicated that the Board would file a complaint with the Montgomery County Commission on Common Ownership Communities.

15. Mrs. Marhamati contacted the Association attorney on or about January 27, 1992. She told him that she did not intend to stop the operation of the business in her home and that she intended to circulate a petition in the community which would indicate the support of her neighbors.

16. On February 5, 1992, Mrs. Quinn, at the direction of the Board, filed the complaint in this matter with the Office of Common Ownership Communities.

17. There are records in evidence indicating that the Complainant has enforced the use provisions of the Declaration when it was aware of potential noncompliant uses in homes in the community.

18. The record includes a petition in support of allowing continued operation of the Respondent's studio which has approximately 130 signatures. It was alleged in the hearing that some of those who signed have since asked the Board to disregard their signatures and that some of those who signed may be renters rather than homeowners. This petition has not yet been presented to the Board for consideration and does not ask for a change in the Declaration. Additionally, up to ten community residents attended the hearing in order to testify in support of the Respondents' continued operation of the studio in their home.

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 Declaration of the Hunting Woods Homeowners Association prohibits any nonresidential use in the community except rooms used for "office purposes" by a member of a "recognized profession".

2. Mrs. Quinn, as President of the Board of Directors, did not have the actual, implied, or apparent authority to approve or agree to an activity not in strict conformance with the Association documents without agreement from the Association Board.

3. The Complainant has considered and determined that Respondents' use does not fall within the permitted uses as set forth in the community Declaration.

4. Complainant's determination must be reviewed under a "business judgment" rule, recently applied and discussed by the Court of Special Appeals of Maryland in Black, et ux. v. Fox Hills North Community Association, Inc., 90 Md. App. 75, 599 A.2d 1228 (1992). The Court said:

"This rule requires the presence of fraud or lack of good faith in the conduct of a corporation's internal

affairs before the decisions of a board of directors can be questioned.... If the corporate directors' conduct is authorized, a showing must be made of fraud, self-dealing or unconscionable conduct to justify judicial review. This presents an issue of law rather than of fact.... Although directors of a corporation have a fiduciary relationship to the shareholders, they are not expected to be incapable of error. All that is required is that persons in such positions act reasonably and in good faith in carrying out their duties.... Courts will not second guess the actions of directors unless it appears that they are the result of fraud, dishonesty or incompetence." (Citations omitted).

5. There is no testimony or evidence in the record suggesting the presence of fraud or the absence of good faith or competence. The Board's interpretation of the language of the Declaration and application of that language in this case is reasonable.

6. Respondents allege that Complainant took enforcement action in contravention of the County Code, Section 10B-9(e), by circulating a newsletter in the community which described the Respondents' business, the Board's action and the reasons for that action. This does not fall within the conduct intended to be regulated by that provision. It might perhaps have been preferable had the article not included the Respondents' name and address but the damage which might have been done by the Board in including this information is minimal in light of the broad circulation in the community by respondents of a petition which included the same information.

7. The extraordinary circumstances which would justify the shifting of costs and fees are not found to be present in this record.

ORDER

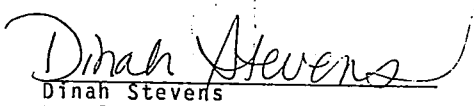
In view of the foregoing, and based on the evidence of record, the Commission orders the following:

1. That Respondents cease and desist from operating a studio offering cosmetic services in their home.

2. Complainant's request for costs and fees is denied.

The foregoing was concurred in by panel members Mechak, Pruitt and Stevens.

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.


Dinah Stevens

Panel Chairperson
Commission on Common Ownership
Communities