

Before the  
Commission on Common Ownership Communities  
for Montgomery County, Maryland  
March 9, 1993

In the Matter of  
Wanda Emine, Owner of  
20547 B Shadyside Way  
Germantown, Maryland 20874  
Complainant

VS.

Louis Charlier, President  
Board of Directors  
Waters House Condominium  
Respondent

X  
X  
  
X  
X  
X  
X  
X  
X  
X  
X

Case No. 188-0

### 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 9th day of March, 1993, found determined and ordered as follows:

On July 17, 1992, Wanda Emine, owner of 20547 B Shadyside Way, Germantown, Maryland, hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleged that the Waters House Condominium, Inc., Board of Directors, (hereinafter the Respondent), refused to pay a \$1,000.00 insurance deductible payment which would allow her to pay for repairs to a heating/air conditioning unit that serviced her dwelling unit and that was destroyed by lightning on April 24, 1992. The Complainant alleged that it was the responsibility of the Respondent Board to cover the cost of the deductible as well as all amounts in excess of the deductible, pursuant to the terms of the Maryland Condominium Act as well as the Condominium Declaration and Bylaws.

The Respondent Board contends that the Complainant's heating/air conditioning facilities are not part of the common elements and that the Complainant is responsible for the repair of those facilities.

The Complainant sought an order requiring the Respondent Board to reimburse her for the \$1,000.00 deductible expense that she incurred for the repair of the unit.

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 24, 1993, the Commission conducted a public hearing in this case.

#### FINDINGS OF FACT

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

1. The Complainant is the owner of 20547 B Shadyside Way, Germantown, Maryland 20874, a unit within the Waters House Condominium, Inc.
2. On or about April 24, 1992, the heating/air conditioning unit that services the dwelling owned by the Complainant was damaged in the amount of \$1,150.00, as a result of a lightning strike.
3. The Master Condominium Policy for Respondent paid for all damages to the heating/air conditioning unit in excess of the deductible amount of \$1,000.00, namely, \$150.00.
4. The damage that occurred to this heating/air conditioning unit is not a mere mechanical failure, rather, it was the result of a sudden loss caused by a peril normally covered by insurance.
5. The Complainant made proper demand upon the Respondent for reimbursement of the \$1,000.00 deductible and the Respondent refused to reimburse the Complainant in that amount.

#### 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. Pursuant to Real Property Article, Section 11-114(a) of the Annotated Code of Maryland, it is the duty of the Council of Unit Owners to maintain, to the extent reasonably available, property insurance on the common elements and units, exclusive of improvements and betterments installed in units by unit owners, insuring against those risks of direct physical loss commonly insured against, in amounts determined by the Council of Unit Owners but not less than any amount specified in the Declaration or Bylaws. Further, pursuant to Section 11-114(g)(2) "(t) he cost of repair or replacement in excess of insurance proceeds and reserves is a common expense." (emphasis added)

2. In addition to the requirements of the Condominium Act, the Bylaws of the council of Unit Owners of Waters House condominium, Inc., provides at Article XII, Section 2, that "(i)n the event that the proceeds of insurance are not sufficient to repair damage or destruction by fire or other casualty, or in the event such damage or destruction is caused by any casualty not insured against, then the repair or reconstruction of the damage shall be accomplished promptly by the Council of Unit Owners at common expense...". As such, that language tracks the language of the Maryland Annotated Code and treats all such losses in excess of insurance proceeds as a common expense.

3. The Respondent had an obligation to maintain insurance coverage in an amount and with a deductible it deemed appropriate. However, as the cost of repair or replacement of Complainant's damaged heating/air conditioning unit exceeded the amount of the insurance proceeds by \$1,000.00, that expense is a common expense to be born by Respondent, pursuant to Real Property Article, Section 11-114(g)(2) and Article VII, Section 2 of the Respondent's Bylaws.

#### ORDER

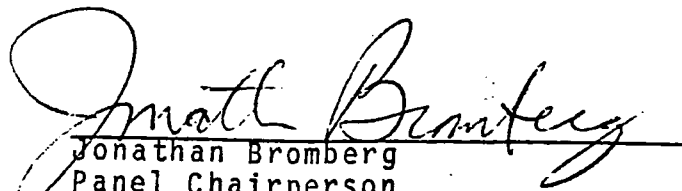
In the view of the foregoing, and based on the evidence of record, the Commission orders that:

1. The Respondent reimburse the Complainant in the amount of \$1,000.00, that being the deductible amount of the Master Insurance Policy maintained by Respondent.

2. The Respondent is to treat said expense as a common expense or pay the amount out of its reserves pursuant to the Maryland Condominium Act and the Condominium's bylaws.

3. The foregoing was concurred in by panel members Auvil, Blumberg, and Bromberg.

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.

  
Jonathan Bromberg  
Panel Chairperson  
Commission on Common  
Ownership Communities