

Before the  
Commission on Common Ownership Communities  
for Montgomery County, Maryland  
March 30, 1994

In the Matter of	x	
Joseph B. FitzGerald, President	x	
Board of Directors	x	
Hunting Ridge Homeowners Association, Inc.	x	
21609 Gentry Lane	x	
Brookeville, MD 20833	x	
Complainants	x	
	x	
Vs.	x	Case No. 234-G
	x	
Shuh Wei Huang	x	
21310 Ridgcroft Drive	x	
Brookeville, MD 20833	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 March, 1994, found, determined and ordered as follows:

Background

By correspondence dated May 17, 1993, the Board of Directors, Hunting Ridge Homeowners Association, governing body of Hunting Ridge Homeowners Association, hereinafter the "Complainant" or "Association", filed a formal dispute with Office of Common Ownership Communities, in which it alleged that Shuh Wei Huang, owner of 21310 Ridgcroft Drive, Brookeville, Maryland, hereinafter the Respondent, failed to properly cover the exposed, parged surfaces of the foundation of her dwelling in violation of paragraph no. 1 of the Association's Declaration of Covenants, which states in part:

DECLARATION OF COVENANTS

\* \* \*

"1. ...No parged surface shall be exposed on the exterior of any building, nor shall any aluminum awnings be used on the front or sides of any house. Stucco surfaces must be approved by the Architectural Review Committee."

Specifically, the Complainant contended that the Respondent had at one time received approval of her plans to bring her residence into compliance, but then failed to implement those plans.

By correspondence dated May 18, 1993, July 6, 1993, and July 26, 1993, the Office of Common Ownership Communities requested that the Respondent forward a written response to the issues by the Complainant however, the Respondent failed to respond to the Office.

Inasmuch as this matter was not resolved through mediation, the dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On September 1, 1993 the Commission voted to hold a public hearing which commenced and concluded on February 16, 1994.

#### FINDINGS OF FACT

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

1. The Hunting Ridge Homeowners Association, the Complainant, is a community group composed of 56 single family homes located in Brookeville, Maryland.
2. Mrs. Shuh Wei Huang, who since 1986 has resided at 21310 Ridgecroft Drive in one of the homes covered by the mentioned Association, is the Respondent.
3. The Complainant's Declaration of Covenants establishes, inter alia, requirements for the covering of exposed, parged surfaces of the Foundation of residences in the community.
4. The Respondent admitted that she knew of the Covenants and the requirement concerning the covering of exposed, parged surfaces and that she was aware that the foundation of her home was not in compliance with the Association's Covenants.
5. The Respondent, since 1986, admitted receiving various correspondence from officials of the Association concerning the non-complying exposed, parged surfaces of the foundation of her home.
6. The Respondent, in a letter dated February 10, 1986, admitted that she was aware of the problem with the exposed, parged areas of her home, that she was aware of the dimensions of the exposed areas, and that she intended to have the three involved areas stuccoed, thereby bringing them into compliance with the Association's Covenants.
7. The Complainant notified the Respondent, in correspondence dated March 12, 1993, that the foundation of her home was still in non-compliance with the Association's Covenants.
8. On May 17, 1993, the Complainant filed a formal dispute with the Office of Common Ownership Communities, alleging that the Respondent failed to cover properly the exposed, parged surfaces of the foundation of her residence, in accordance with the Association's Covenants.

9. The Respondent, in a letter to the Office of Common Ownership Communities, dated September 6, 1993, stated that a contractor, Mr. Steve Hood, had "...completed... work on the exterior basement wall [of her home] the 28th of May [1993]..."

10. Mr. Hood testified that he stuccoed only the side wall of the Respondent's home, although he told her that the Association's instructions to her also required the covering of the front and back exposed parged surfaces.

11. At the time of the hearing, the Respondent's home was still in non-compliance with the Association's Covenants.

#### DISCUSSION

At the hearing, the Respondent presented three defenses to the Complainant's argument that the Respondent's house had exposed, parged surfaces in violation of the Association's Covenants:

1. That when Respondent purchased the property, she had the involved surfaces that are in contention in this dispute, stuccoed;

2. That Respondent placed shrubbery in front of the parged areas of the house, thereby covering them. Respondent alleged that she was told by an Association official that such action would bring her property into compliance with the Association's Covenants; and,

3. That Respondent did not know which areas of her house were to be stuccoed because the Association had never specifically identified such areas for her; however, in any case, her house's outside surfaces were in compliance with the Association's Covenants, at the time of the hearing.

Respondent's arguments are confusing, contradictory, and lacking merit and credibility. Respondent testified that, after she purchased her house, she was informed by an official of Hunting Ridge Associates, the builders of her home, that the "foundation of her home does not meet the requirements of the Covenants..." In a February 10, 1986 letter, Respondent acknowledged her awareness of the problem as well as of the dimensions of the areas where she said in her letter that "[stucco] will be used..." by her to bring her home into compliance with the Association's Covenants. At the time, Respondent had had two or more of her outside walls parged, not stuccoed, assumingly by the builder.

Mr. Steve Hood testified at the hearing that, in his professional opinion, parging was similar to stuccoing, except that parging is normally put on in a thinner layer than stucco and that parged surfaces are usually smooth rather than rough like stuccoed ones. It is noted that Respondent, in a July 4, 1986 letter to the Association, proffered, "A stripe of stucco sample (from the supplier's booklet:

#8565, Light Coffee) and its finished look are enclosed herewith (see below). I hope this shall meet the requirement of the [Association's] committee." The Association, on September 25, 1986, responded to her: "The Committee has concluded that your house would be in compliance with the Covenants if the parged surfaces are covered with stucco as you indicated [in your July 4, 1986 letter]." The two pieces of correspondence referenced here show that the Respondent was aware that the surfaces of her home were parged, not stuccoed; that there was a difference between parging and stuccoing; that her house was in non-compliance with the Association's Covenants; and that to bring it into compliance she needed to stucco it as proposed in her July 4, 1986 letter.

Respondent's testimony that an official of the Association told her that the placing of shrubbery in front of two of the parged areas of her house would comply with the Covenants, is belied both by the record and the testimony of witnesses at the hearing. First, the record shows that on two occasions the Association made clear to Respondent that the placing of shrubbery in front of the parged areas would not result in her complying with the Covenants. See July 11, 1986 and May 8, 1990 letters from Joseph B. FitzGerald to Respondent, which Respondent at the hearing admitted receiving. Thus, the record accords no support for Respondent's contention that an Association official told her that using shrubbery to hide exposed, parged surfaces of her house would bring her house into compliance with the Covenants. In fact, the record as reviewed here shows the contrary.

The only testimony, that an official of the Association told her that shrubbery would suffice to comply with the Covenants, came from Respondent, when she testified at the hearing. Prior to the hearing, she had not written any such statement in any of her letters to the Association contained in the record; nor had she raised the issue at any time with the Commission in any of her letters to that body. Further, at the hearing, Joseph B. FitzGerald, the President of the Association, who formerly served as Chairman of the Architectural Review Committee of the Association and who, in the latter capacity had written earlier to Respondent concerning using shrubbery as a substitute for stucco, testified that neither he nor any other official of the Association had told Respondent that shrubbery would comply with the Covenants.

Therefore, the failure of Respondent to raise prior to the hearing a contention of what she was allegedly told concerning the placing of shrubbery by an official of the Association, seems contrived and thus, not credible. In conclusion, Respondent knew or should have known that the placing of shrubbery in front of the exposed parged areas of her property, would not bring her house into compliance with the Covenants.

At the hearing Respondent alleged that she did not know which areas of her house had exposed, parged surfaces, as averred by the Association. Here, Respondent's testimony becomes confusing and contradictory. For example, she testified that she had the surfaces of her home stuccoed by the builder after she bought it. We conclude that Respondent had the surfaces parged, not stuccoed, based on the February 10, 1986 letter and testimony at the hearing concerning the present condition of the surfaces in question.

Respondent also knew that the surfaces were parged, in that she later proffered a sample of stucco to the Association that she intended at the time to use to bring her surfaces into compliance with the Covenants. The Association also agreed that the proffered stucco sample would comply with the Covenants whenever Respondent had the stucco applied to the involved surfaces. The record and testimony at the hearing rebut conclusively Respondent's contention that she was unaware of the surfaces to be stuccoed.

Respondent's position about her lack of knowledge concerning the surfaces to be stuccoed relates to her uncorroborated statement that an official of the Association had told her that placing shrubbery in front of the parged areas would bring her house into compliance with the Covenants. Having placed shrubbery in front of the parged areas would, therefore, result in no parged areas now being exposed, according to Respondent's testimony. As previously stated, this argument by Respondent lacks merit, because the Association had never informed her that shrubbery, rather stuccoing, would bring her property into compliance. Further, at the hearing, Mr. FitzGerald testified that another residence with parged surfaces had been brought into compliance by stuccoing them, after the Association had informed the owners of the property that they would have to stucco their surfaces or be in non-compliance with the Covenants. Thus, the Association has been consistent on the issue of parged surfaces with all of its residents.

Finally, Respondent's own witness, Mr. Hood, testified that he concluded and expressed to Respondent that all the exposed, parged surfaces would have to be stuccoed to bring her house into compliance with the Association's instructions to her. Thus, although Respondent's own witness disagreed with the Association about whether a surface was parged or stuccoed, Mr. Hood, the witness, nevertheless informed Respondent at the time that three, not one, surface was at issue. Despite this fact, Respondent had Mr. Hood stucco only one of the surfaces in the same manner as she had proposed earlier to the Association, thereby bringing that one surface into compliance with the Covenants. Presently, Respondent's property has two other surfaces, albeit hidden by shrubbery, not in compliance as required by the Association.

For the foregoing reasons, we conclude that Respondent failed to comply with paragraph no. 1 of the Association's Declaration of Covenants, which states in relevant part that, "No parged surface shall be exposed on the exterior of any building..." The Complainant has demonstrated that Respondent knowingly permitted parged surfaces to be exposed on three surface areas on the exterior of her residence. The Complainant has been consistent in not permitting exposed parged surfaces on other residences in accordance with paragraph no. 1 of the Association's Declaration of Covenants.

ORDER

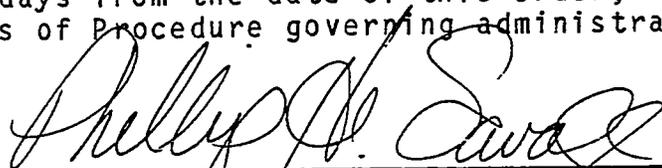
In view of the foregoing and based on the evidence of record and the conclusions of law stated herein, the Commission hereby ORDERS that:

1. Respondent shall have the front and rear exposed, parged areas of her house stuccoed, as proffered by her in her July 4, 1986 letter to Mr. Joseph B. FitzGerald.

2. This work shall be paid for by Respondent and completed within thirty (30) days after issuance of this Decision and Order.

The foregoing was concurred in by panel members Savage, Gick, and Glancy.

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 the Maryland Rules of Procedure governing administrative appeals.



Phillip H. Savage, Panel Chair  
Commission on Common Ownership Communities