

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

In the matter of:

<b>Kia Jacobson</b>	:	
Unit 230	:	
609 Hudson Avenue	:	
Takoma Park, Maryland 20912,	:	
	:	
<b>Complainant,</b>	;	
	:	
v.	:	<b>Case No. 24-15</b>
	:	December 1, 2015
<b>Sligo Station Condominium Association</b>	:	
c/o Paul Associates, Inc.	:	
Suite 400	:	
6935 Wisconsin Avenue	:	
Chevy Chase, Maryland 20815,	:	
	:	
<b>Respondent.</b>	:	

**DECISION AND ORDER**

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, and the Commission having considered the testimony and evidence of record, finds, determines and orders as follows:

**Background**

Kia Jacobson, Complainant, filed her complaint with the Office of Consumer Protection on June 17, 2015. In her complaint she alleged that the board of directors of Sligo Station Condominium Association ("Association"), Respondent, had undertaken to paint a number of areas in the community including some she alleged were limited common elements and was using community funds for the limited common elements in contravention of the Association bylaws. She also objected to the failure of the board to reply responsively to her many communications objecting to their action.

Ms Jacobson also alleged that the board and one member in particular had acted in bad faith to the extent that they should be disqualified from indemnification under the Association Directors and Officers liability insurance policy.

The Association replied that the bylaws do not explicitly identify the railings as limited common elements and that painting them benefits the community as a whole.

Complainant declined mediation. The dispute was presented to the Commission on Common Ownership Communities for consideration on September 2, 2015 and the Commission accepted jurisdiction at that time. The matter was scheduled for public hearing on October 21, 2015 and a public hearing was conducted on that date. The record was left open to receive some additional documents from the Association. The Association agreed to provide the email exchange by which they decided to go forward with the painting without addressing the concerns raised by Ms Jacobson and to provide the painting contract. An email discussion of Ms Jacobson's concerns was provided. Despite reminders from Commission staff the painting contract was not provided.

### Discussion

In early June 2015, the Association announced to the community, by posting a memo dated June 2, 2015, in common areas, that an exterior painting project would begin on June 4th. Ms Jacobson saw the memo on June 3<sup>rd</sup> and, believing that some of the areas to be painted were limited common areas for which the unit owners were responsible, sent email messages to the board and to management stating this belief. The following day she received a dismissive message from the community manager. She testified that she had not received a response from the board.

Ms Jacobson believed that, as described in the memo announcing the commencement of the painting, "the railings in front of sliding glass doors" and "lintals [sic] under the tops of all of the windows" are limited common elements and thought that "metal support bars under the outer edge of the 3<sup>rd</sup> floor patios" might also be limited common elements. Ms Jacobson provided some photographs in the record. From the photographs it is clear that the lintels under the tops of windows and the metal support bars are integral parts of the building and not limited common elements.

Following Ms Jacobson's email messages, the board did have an informal email discussion regarding the painting contract. In the board's email discussion, Mr. Vijay Kaul, the Association President, recognized the issue regarding the sliding glass door railings and asked whether there was precedent that would provide guidance. Board member Patrick Sorenson pointed out the complications of allowing unit owners to paint their own railings in accordance with the community's specifications for scraping, primer and specific paint. Apparently, the email exchange resulted in inaction and the painting simply went forward.

Mr. Kaul asked if there was any precedent that would address the ambiguity he had recognized but apparently did not look further for an answer. He testified that he thought the Association has counsel on retainer but did not know much about whatever agreement they had. He did not raise the question Ms Jacobson had asked with counsel. There was some discussion about a previous Commission case that cost the Association a lot of money, which

may have been the expense of counsel to represent them. However, in this case a consultation might have been helpful.

### **Findings of Fact**

The Sligo Station Condominium Association Declaration at Article IV, Section 2, describes Limited Common Elements. The section includes many features that do not exist in this community, but in relevant language says that, “[t]he Limited Common Elements shall be any...balconies, ...and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the units [sic] boundaries.”

The Association by-Laws at Article XIII includes sections related to the “Duty to Maintain” and to “Windows and Doors”.

Section 4, which covers the Duty to Maintain, says in pertinent part:

the owner of any Condominium unit shall, at his own expense, maintain...its other appurtenances (including, without limitation, any balcony,...or the like appurtenant to such Condominium unit,...and appurtenances located outside such unit which are designed, designated or installed to serve only that unit),...

Section 5, relating to Windows and Doors, says:

The owner of any Condominium unit shall, at his own expense, clean and maintain both the interior and exterior surfaces of all windows of such Condominium unit and shall at his own expense, clean and maintain both the interior and exterior surfaces of all entry doors of the Condominium unit, including the interior and exterior surfaces of any door leading to any balcony, deck, terrace, fenced area, courtyard, patio or the like appurtenant to such Condominium unit and designated herein or in the Declaration or the Condominium Plat as a limited common element reserved for the exclusive use of the owner of that particular Condominium unit.

The lintels under the tops of windows and the metal support bars are integral parts of the building and not limited common elements.

### **Conclusions of Law**

The Sligo Station Condominium Association bylaws clearly were not tailored to this development. There are numerous references to features that were not included in this community. It is not surprising that the railings outside the sliding glass doors are not specifically addressed in the documents. Had the board formally addressed the issues raised by Ms Jacobson and come to resolution, the Commission might have reviewed their decision

under the “business judgment rule”. However, in order to apply that rule, there must have been a business judgment. In this case the issue was not addressed and decided.

The railings across sliding glass doors that do not have exterior useable space are primarily for the safety of the user of the unit. They are appurtenances located outside the unit, designed and installed to serve only that unit. Under the bylaws it is the responsibility of the unit owner to maintain them.

As a practical matter, as Mr. Sorenson pointed out, getting the railings painted by unit owners in accordance with Association specifications would be complicated and in the longer term may best be addressed by amending the bylaws to permit the Association to do this in a manner similar to that permitted, in language not quoted here, for exterior window washing or ask the unit owners for a delegation of authority to do this on their behalf.

However, in this case, the painting was done without addressing the duty to maintain. But since this duty is a responsibility of the unit owners, the cost must be assessed to them in proportion to the number of such door railings that are appurtenant to their unit.

While the board was negligent in not addressing Ms Jacobson’s issues more seriously, there is no evidence in this record that rises to the level of bad faith.

The Panel notes that by posting its painting notice only two days before the work was scheduled to begin, the board provided insufficient time for residents to lodge concerns about the planned work, and for the board to address those concerns, in a timely, thoughtful and informed manner.

The Panel believes that the board could benefit greatly from instruction in good governance strategies, the interpretation and implementation of governing documents and alternative dispute resolution techniques, and urges that each member avail him or herself of this opportunity at the earliest possible date. The Commission can provide guidance on training options.

#### **ORDER**

1. The Association must collect from the owners of units that have railings the cost of painting those railings in proportion to the number of railings appurtenant to the unit, within six months after the date of this order.
2. The Association must pay Ms Jacobson the cost of filing the complaint in this dispute, within 30 days of the date of this order.
3. The Association must deliver a copy of this decision to each unit owner within 30 days after the date it is issued.

The foregoing was concurred in by panel members Cromwell, Fishbein and Stevens.

Any party aggrieved by the action of the Commission may file an 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.

  
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Dinah Stevens  
Panel Chairwoman