

BEFORE THE COMMISSION ON COMMON OWNERSHIP COMMUNITIES FOR  
MONTGOMERY COUNTY, MARYLAND

YEON KIM

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Complainant

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v.

\* Case No: 28-13

MONTROSE WOODS CONDOMINIUM  
UNIT OWNERS ASSOCIATION

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Respondent

DECISION AND ORDER

Yeon Kim ("Complainant") filed a dispute with the Commission on Common Ownership Communities against the Montrose Woods Condominium Unit Owners Association ("Respondent") alleging that Respondent has violated the rules of the Association to which they belong by arbitrarily and unreasonably imposing fines of \$3,950 on him because it concluded that the deck he constructed was not properly constructed. The Complainant requested that the Commission declare the fines invalid.

A hearing was conducted on April 30, 2014, and the Hearing Panel ("the Panel") considered the testimony and evidence of record, and finds, determines, and orders as follows:

FINDINGS OF FACT

1. The Complainant, Yeon Kim, is an owner of the Condominium located at 6404 Montrose Road, Rockville, Maryland. Mr. Kim's property is located in and he is a member of the Montrose Woods Condominium Unit Owners Association.

2. The Respondent, Montrose Woods Condominium Unit Owners Association is a condominium association which was created in 1976, and is located on Montrose Road in Rockville, Maryland.

3. Complainant challenges the fines Respondent imposed upon him in the amount of \$3,950.00, computed at the rate of \$50.00 per day (79 days total), for Complainant's alleged failure to repair the deck behind his condominium.

4. On February 2, 2012, the Respondent wrote to Complainant advising him that he was in violation of the Respondent's governing documents because his deck was in need of repair and that said repairs should be made within thirty days. Complainant failed to respond to this letter. *See* Commission Exhibit 1 at 83, hereinafter referred to as "CE 1".

5. The Respondent's Policies and Procedures Handbook provides that if a violation continues after the first warning, the alleged violator will be called to a hearing of the Board of Directors to discuss the alleged violations and the applicable fines. The notice of the hearing shall contain, among other things, the proposed sanction to be imposed. *See* CE 1 at 133.

6. On March 20, 2012, Respondent sent Complainant a notice of hearing that scheduled a violation hearing on Thursday, April 5, 2012, regarding his alleged violation of the Declaration of Covenants for failure to keep his deck in good repair. The notice did not state the proposed sanction that could be imposed against the Complainant. *See* CE 1 at 84.

7. On March 23, 2012, Complainant responded to the hearing notice by contacting the Respondent's managing agent and informing him that he intended to repair his deck in May 2012 when his business income increased. *See* CE 1 at 87.

8. On April 5, 2012, Respondent held the scheduled violation hearing but Complainant did not attend. The Respondent's Policies and Procedures provide that the minutes of the meeting shall contain a written statement of the hearing results and the sanction imposed, if any. *See* CE 1 at 133. However, no April 5 Board meeting minutes exist regarding the Respondent's consideration of Complainant's violation.

9. On April 20, 2012, Respondent sent Complainant a letter informing him that the Board found him in violation of the Declaration of Covenants for failing to keep his deck in good repair. The letter also required Complainant to provide copies of a contract and County permit to replace the deck within ten (10) business days of the letter or "...the Board could impose fines..." against him. *See* CE 1 at 99. Complainant contends that he did not receive the April 20 letter.

10. On May 14, 2012, Complainant signed a contract to replace his deck and the work was completed soon thereafter at a cost of \$1,300.00.

11. On June 12, 2012 Respondent sent a letter to Complainant informing him that a Montgomery County (the "County") inspector had informed the Respondent that Complainant did not obtain a permit for replacement of the deck. Respondent required

Complainant to obtain the required permit, make any required modifications, and to obtain the County's final approval within fifteen (15) days. *See* CE 1 at 88.

12. The June 12 letter also informed the Complainant that the Board had previously required him to provide copies of a contract and a permit for replacement of the deck by May 1, 2014 and since neither document was provided, the \$50.00/day violation fee continued until the requested documents were provided. *See* CE 1 at 88. This letter was Complainant's first notice that a \$50.00 daily sanction had been imposed.

13. On July 2, 2012, the Complainant forwarded to Respondent a construction plan for his deck prepared by Alpha Construction. *See* CE 1 at 92. On July 5, 2012, Respondent's managing agent sent the request to the Board and informed it that the County would not issue Complainant a permit without the Association's approval of the construction plan. *See* Complainant's Exhibit 24.

14. On July 23, 2012, the Condominium forwarded a statement of account to the Complainant indicating that he had been fined \$3,950.00 through July 18, 2012, for issues relating to his deck. *See* CE 1 at 96.

15. The Respondent's Policies and Procedures Handbook assigns violations to two different classes (primary and secondary) for which different sanctions are available. The sanction for a primary violation is \$50.00 and \$100.00 for each subsequent or continuing violation. The sanction for a secondary violation is \$25.00 and \$50.00 for each subsequent or continuing violation. *See* CE 1 at 131.

16. No evidence was presented to explain which class Complainant's violation was assigned, why the Respondent ceased imposing fines on July 18 or how the Respondent determined the number of days Complainant was in violation.

17. On July 26, 2012, upon receipt of Respondent's violation notice, Complainant wrote Respondent disputing the fine because he never received the April 20 violation letter and because he was unfamiliar with the permit requirements and process. *See* CE 1 at 97.

18. Meanwhile, Complainant and his contractor, Alpha Construction, forwarded to Respondent multiple deck plans for approval, and on August 13, 2012, the Respondent finally approved Complainant's deck application. In September, the County issued the building permit for the deck and it was constructed within the next week. *See* CE 1 at 91, 93, and 103-105.

19. The Complainant subsequently requested that the Respondent remove the fines. Respondent offered to reduce the fines to \$1,000. *See* CE 1 at 112. The filing of Complainant's formal complaint with the CCOC followed.

### CONCLUSIONS OF LAW

The Panel concludes, based upon the evidence presented at the April 30, 2014 hearing, that the Respondent failed to properly follow its own Policies and Procedures Handbook (CE1 at 122, 133) by failing to provide Complainant proper notice of the proposed fines that could be imposed against him for failing to maintain his deck. In fact, the evidence presented indicates that Complainant was not notified that fines had been imposed upon him until he received Respondent's June 20, 2012 letter, and that letter did not indicate what dates the fines began to accrue nor did it calculate the present value of the fines.

The Panel further concludes that the fines imposed upon Complainant were arbitrarily imposed. The Respondent failed to properly follow its own Policies and Procedures Handbook (CE 1 at 132, 133) in imposing the fines because it failed to record minutes of the meeting regarding its consideration Complainant's violation. There is no evidence to show how the Respondent classified Complainant's violation, how it determined the number of days to impose the daily fines, and why it ceased imposing fines upon Complainant on July 18, 2012.

The Panel also finds that the Respondent's notice of decision of April 20, 2012 (CE1 at 99) fails to comply with Section 10B-9(d) of the Montgomery County Code because it fails to inform the Complainant of his right to dispute the decision by filing a complaint with the CCOC.

The Panel further concludes that the fines imposed upon Complainant are excessive and unreasonable. The evidence indicates that, at all times, Complainant was acting in good faith in attempting to repair his deck, proceeding to do so expeditiously once fully aware of the Board's wishes. Complainant indicated his willingness to comply with the Respondent's directives and retained two (2) separate contractors to repair his deck. Respondent failed to provide evidence that would justify imposition of fines during the time Complainant was seeking permission from Respondent to complete the repairs to his deck.

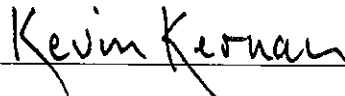
### ORDER

Upon consideration of the foregoing, it is this 25th day of July 2014, the Panel orders the following:

1. Respondent shall remove all fines imposed upon Complainant within 45 days from the date of this Decision.
2. Respondent shall reimburse Complainant his \$50.00 fee for the filing of his Complaint with the Commission within 45 days from the date of this Decision.
3. Respondent is directed to hold a discussion of this decision at the Association's next regularly scheduled monthly meeting and to attach this decision to the approved meeting minutes.
4. Respondent's Board of Directors is directed to keep accurate and complete minutes of all meetings and to provide proper and timely notice of all Board decisions to affected parties.

Commissioners Fishbein and Winegar concurred in the foregoing Decision and Order.

Any party aggrieved by this Decision and Order may, within 30 days after the date of this Decision, file an appeal with the Circuit Court for Montgomery County pursuant to the rules of court for judicial review of the decisions of administrative agencies.

  
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Kevin Kernan, Panel Chair