

MONTGOMERY COUNTY, STATE OF MARYLAND

Maurice Glenn, :
 : COMMISSION ON COMMON
Complainant : OWNERSHIP COMMUNITIES
 : Case No. 29-11
vs. :
 : November 30, 2012
Park Bradford Condominium, :
 :
Respondent :
 :

DECISION AND ORDER

This case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended. The Hearing Panel conducted hearings on December 21, 2011, June 13, 2012, and July 19, 2012. The Hearing Panel considered the testimony and evidence of record and finds, concludes and orders as follows:

SUMMARY OF THE PROCEEDINGS

A. Parties

This is a complaint brought by a unit owner in a condominium, Maurice Glenn ("Mr. Glenn" or "Complainant"), against his condominium Park Bradford Condominium (Park Bradford), Respondent. Park Bradford Condominium is a condominium organized under the laws of Maryland, in particular the Maryland Condominium Act, Real Property Article Title 11, Annotated Code of Maryland.

B. Issues Presented

Mr. Glenn presented a number of issues in his complaint. He filed little or no

corroboration of his numerous allegations. Many of allegations involved the conduct of the property manager, the Respondent's attorneys, individual members of the board of directors, and other residents of the condominium association. The Montgomery County Commission on Common Ownership Communities (CCOC) rejected most of these issues on the grounds that it lacked jurisdiction over them under Section 10B-8 of the Montgomery County Code. For example, that section says that the only parties to a complaint are the members and residents of an association, and the council of unit owners. By implication, employees and agents of the condominium association cannot be parties. Moreover, all "disputes" must involve the authority of the governing body to take an action or not to take an action, and this of necessity excludes the actions or failures to act of individual residents and individual board members. The Montgomery County Commission on Common Ownership Communities took jurisdiction over the following seven issues:

1. that the Respondent created conditions which caused personal injury to the Complainant and property damage to his unit;
2. that the Respondent failed to conduct an election properly because it misused proxy ballots;
3. that the Respondent failed to conduct its meetings properly because it allowed its manager to vote on matters pending before the board of directors, although the manager was not a director;
4. that the Respondent has failed to issue an annual financial report and has failed to honor a membership petition to have an audit performed by an independent accountant;
5. that the Respondent has failed to make its books and records available for inspection upon reasonable request;
6. that the Respondent has approved contracts for improvements in excess of \$25,000 without the approval of the vote of the membership;

7. that the Respondent has improperly held the Complainant in violation of a rule banning the posting of signs.

Issue No. 1 involves multiple types of claims. In it, Mr. Glenn includes claims in the nature of intentional infliction of emotional distress, for which he claims compensation. It also includes claims for property damages to Mr. Glenn's unit, in particular, to the front door to his unit.

Issue No. 2 involves the interpretation of "proxy ballots" in an election. Complainant's Exhibit 11 is an example of the proxy ballot for the March 7, 2011 election which Mr. Glenn challenges.

Issue No. 3 involves Mr. Glenn's allegation that Park Bradford allowed its manager at the time, Terry Anderson, to vote as a director at meetings of the Board of Directors of Park Bradford.

Issue No. 4 involves Park Bradford's failure timely to obtain an annual audit as required under its By-laws for the fiscal year ending May 31, 2011. At the hearing on June 13, 2012, Park Bradford presented the completed audit in question as Respondent's Exhibit 1. Consequently the Panel takes the position that this issue is moot, with the admonition to Park Bradford that it should make a good faith effort in the future to complete its annual audits in the time frame required under its By-laws.

Issue No. 5 involves the request by Mr. Glenn to inspect the books and records of Park Bradford. At the first hearing of this matter, on December 21, 2011, Mr. Glenn testified that he had inspected all of the books and records of the condominium with the exception of its monthly bank statements for the various accounts that Park Bradford holds. At the hearing on June 13,

2012, Mr. Glenn testified that he had inspected those bank statements. Mr. Glenn therefore inspected all of the records that were the basis of his complaint. The Panel therefore considers this issue to be moot as well, again with the admonition that Park Bradford not place obstacles in the way of unit owners attempting to exercise their right to inspect books and records.

Issue No. 6 involves the interpretation of Article X, Section 7 of the Park Bradford By-laws, which states:

“Additions, Alterations or Improvements by Board of Directors. Except in cases of bona fide emergencies involving manifest danger to life, safety or property, or the interruption of essential services to the condominium, wherever in the judgment of the Board of Directors the common elements of the condominium shall require additions, alterations or improvements requiring the expenditure of funds of the Council of Unit Owners in excess of Twenty-five Thousand and * * * No/100 Dollars (\$25,000.00), such additions, alterations or improvements shall not be made until the same shall have been approved by (a) unit owners representing a majority of the total votes of the Council of Unit Owners at a meeting of the Unit owners duly called for such purpose; and (b) the institutional holder of any mortgages or other obligations secured by any condominium unit or units in the aggregate principal sum of more than \$150,000.00, which approval shall be in writing.”

Issue No. 7 involves a citation of Mr. Glenn by Park Bradford for an alleged violation of Article X, Section 3(f) of the Park Bradford By-laws, which provides:

“except for such signs as may be posted by the Declarant or the Council of Unit Owners for promotional or marketing purposes, traffic control or the like, **no signs of any character shall be erected, posted or displayed upon, in, from or about any condominium unit or the common elements without the prior consent in writing of the Board of Directors** and under such conditions as they may establish. (Emphasis added)

C. Testimony and Evidence

Mr. Glenn presented testimony by himself and by the following witnesses:

-Barbara Rayner, President of Park Bradford until shortly after the hearing of December 21, 2011;

-Gregory A. Burke, a resident of Park Bradford;

-Terry Anderson, Manager of Park Bradford during the incidents which are the subject of this complaint;

-Arthur Dubin, President of Zalco, the management company for Park Bradford;

-Richard Stang, a partner in the accounting firm of Deleon and Stang that prepares the financial statements and audits for Park Bradford;

-Nancy Russ, a Board member and resident of Park Bradford;

-Sharon Bovell, current President of Park Bradford Condominium and a resident;

-Thomas E. Anderson, Jr., a contractor who performed work for Park Bradford Condominium.

Mr. Glenn is not an attorney, and perhaps he was at a disadvantage with respect to the procedures for presenting a case before the Hearing Panel. Mr. Glenn attempted to present through other witnesses information that might better have been presented through his own testimony or through argument. Mr. Glenn's questioning therefore consisted more of statements of his case and argument than of actual questioning of witnesses.

Mr. Glenn began his case by calling Barbara Rayner. When it became apparent that Mr. Glenn was ineffectively attempting to introduce his own exhibits and his testimony through Ms. Rayner, the chair suspended Ms. Rayner's testimony temporarily and Mr. Glenn then testified and introduced his documentary evidence.

Mr. Glenn testified on each of the seven issues before the Panel and was cross-examined

by counsel for Park Bradford.

Regarding issue No. 1, the substance of Mr. Glenn's testimony was that the condominium had taken certain actions with respect to the painting of his door and the clearing of water and sewer lines related to the unit above him that had injured his property. Mr. Glenn also testified that these and other actions of the condominium had caused him personal stress. Such actions include the expenditure of funds for various items identified below and the citation of Mr. Glenn for the sign on his door and for posting a letter about the annual audit on the common elements. He did not perform or pay for any repainting of the door or the clearing of the waste line and did not allege or provide evidence of any damage to his unit apart from the need to repaint the door.

Regarding Issue No. 1, Mr. Glenn at first claimed \$55,000.00 in injuries to his person and ~~\$2,000.00, later reduced to \$1,500.00, for attorney's fees. Mr. Glenn also sought \$100,000.00~~ against the condominium for breach of the condominium's contract to its owners regarding the actions alleged under the various seven issues. He later modified these amounts upward when he testified on July 19, 2012. He did not provide testimony from a physician or from any other witness to corroborate his claims of mental or physical injury.

Regarding Issue No. 2, Mr. Glenn identified a proxy for an annual meeting of the members naming Terry Anderson, then manager, as proxy for a unit owner, Complainant's Exhibit 11. Mr. Glenn's position is that this was not an appropriate action because the proxy allowed Terry Anderson to vote when she was not a unit owner. He also stated that it was also inappropriate to allow Terry Anderson to assist in collecting and counting the ballots at the annual election on March 7, 2011.

Regarding Issue No. 3, Mr. Glenn testified that Terry Anderson did not actually vote at

any Board or annual meeting. She was only asked to vote but declined to do so. The substance of his claim therefore was that Park Bradford should not have “asked” Terry Anderson to vote. In her testimony Barbara Rayner denied that Terry Anderson had ever been asked to or allowed to vote at any Board meeting or at any annual meeting. Terry Anderson also testified that she had never voted or been asked to vote at a board or membership meeting.

Regarding Issue No. 4, Mr. Glenn testified that Park Bradford had failed to produce a timely audit for the fiscal year ending May 31, 2011. The Park Bradford By-laws, Article XIII, Section 4 require an annual audit which is to be completed within ninety days after the end of each fiscal year. In fact the audit for fiscal year ending May 31, 2011, was not completed until June of 2012. This audit was received into evidence as Respondent’s Exhibit 1 at the June 13, 2012 hearing.

Regarding Issue No. 5, Mr. Glenn testified at the December 21, 2011 hearing that he was denied access to bank statements but had received access to the other books and records he wanted. That matter was cured between the December 31, 2011 and the June 13, 2012 hearings when Mr. Glenn ultimately received access to those bank records prior to the June 13, 2012 hearing.

Regarding Issue No. 6, Mr. Glenn identified expenditures on the following items that he believes involve expenditures requiring a vote of the unit owners under Article X, Section 7 of the Park Bradford By-laws because the amounts spent were over \$25,000.00:

- The Mendoza/Ribas study for a proposed ventilation system;
- Repair of the brick retaining wall;
- Payments to Thomas Anderson over a period of time for work he did at Park Bradford;

- Carpet replacement;
- Painting of halls and doors;
- Painting of murals; and
- Roof repairs.

Mr. Glenn testified on cross-examination that these are all of the items that he feels were improperly authorized, since the members never voted on them. The evidence and testimony established that the members never took a vote on any of these items pursuant to Article X, Section 7 of the Park Bradford By-laws or otherwise.

Issue No. 7, involves a sign taped to the door of Mr. Glenn's unit and a letter posted by Mr. Glenn on the common elements. The sign gives the hours of operation of his business. Mr. Glenn testified that this sign is necessary to notify the U.S. Postal Service, Federal Express, UPS and others who deliver and pick up materials from his unit what his business hours are. He testified that this sign is no different than notes pasted on doors by unit owners advising the Post Office and others when the unit owners are out and cannot accept deliveries. The letter posted on the common elements involved the audit for the fiscal year ending May 31, 2011.

Upon being recalled to testify by Mr. Glenn at the December 21, 2011 hearing, Ms. Rayner testified that Terry Anderson had never been authorized to cast a vote either at a director or at a unit owner meeting. She also testified that the Board had not authorized an addition, alteration or improvement in excess of \$25,000.00 while Ms. Rayner was a member of the Board of Directors.

At the June 13, 2012 hearing Mr. Glenn called the remainder of his witnesses. Mr. Glenn asked Gregory Burke about expenditures in excess of \$25,000.00 to Thomas Anderson and

others. Mr. Burke testified that he had no first hand knowledge of payments to Thomas Anderson or to any other contractor.

Mr. Glenn then called Terry Anderson. At the outset of her testimony Mr. Glenn stated that Ms. Anderson was being offered to establish that the Board of Directors had created conditions which have caused Mr. Glenn personal injury, a great deal of frustration and anxiety over the fact that Park Bradford has allowed Terry Anderson's husband, Thomas Anderson, to perform work for the condominium. Transcript June 13, 2012, Page 20.

Ms. Anderson testified that during her time as a manager Park Bradford did not enter into any single contract for an alteration, addition or improvement in excess of \$25,000.00 and that the Board took no vote under Article X, Section 7 of the By-laws. She testified that the Mendoza/Ribas organization was a consultant the Board retained for purposes of creating a request for proposal for a new ventilation system. While the Board paid Mendoza/Ribas in excess of \$54,000.00, the payments were in three increments of approximately \$18,000.00 each. Mendoza/Ribas was to determine the feasibility of installing a new ventilation system, since there was no existing ventilation system at Park Bradford at the time and the consultant would have to design a system. The request for proposal was never completed and the ventilation system was never installed.

Ms. Anderson testified that the roof repairs in question were approximately \$143,000.00 and were paid for by a loan that was repaid. The repairs to the brick retaining wall cost approximately \$83,000.00. The wall was partially removed and repaired. When the work was done the wall existed in the same footprint as the original wall.

Mr. Glenn called Arthur Dubin, the President of Zalco, Inc., the management company for Park Bradford. Mr. Glenn discussed financial statements with Mr. Dubin that were of limited

relevance to the seven issues before the Panel. On cross-examination, Mr. Dubin testified that he had no reason to believe that Park Bradford approved contracts in excess of \$25,000.00 without the vote of the unit owners as required. He also testified that to his knowledge Mr. Glenn was not at any time denied the right to inspect books and records of the condominium at the offices of Zalco, Inc.

Mr. Glenn called Richard Stang regarding the audit for the fiscal year ending May 31, 2011. Mr. Stang stated that the audit had been prepared and accepted by the Board of Park Bradford in June of 2012 just prior to the June 13, 2012 hearing. Mr. Stang testified that he had made no investigation as to expenditures in excess of \$25,000.00 in the course of performing his audit or in preparing financial statements for Park Bradford.

Mr. Glenn called Nancy Russ, a nineteen year resident and current Board member of the Park Bradford Board of Directors. During Ms. Russ's testimony Mr. Glenn added an element to his claim under Issue No. 7 regarding the citation for the sign on his door. He discussed his distribution of the letter regarding the audit that he had posted on the common elements. He also discussed signs pasted or taped to other doors in the condominium. As with other witnesses, Mr. Glenn tried to use Ms. Russ to present his own testimony and evidence. During the course of his questioning of Ms. Russ, Mr. Glenn stated that his door sign consists of a peel off index card that has the hours of operation of his business. He said that he needs to post the hours of his business to notify the Post Office, UPS and Federal Express for deliveries and pick ups. Mr. Glenn introduced through Ms. Russ the proxy ballot, Complainant's Exhibit 11, that he claims allows Terry Anderson to vote at an annual meeting and therefore violates the Park Bradford By-laws.

Mr. Glenn next called Sharon Bovell, the current President of the Park Bradford Condominium. Ms. Bovell was relatively new to the issues involved in this case and again was a

witness who had little relevant testimony to offer.

Mr. Glenn's last witness was Thomas Anderson. Mr. Anderson is the husband of Terry Anderson who at one time was a manager of Park Bradford. Mr. Anderson performed a number of tasks involving maintenance and repair for Park Bradford over the years.

None of Mr. Anderson's contracts was in excess of \$25,000.00 individually although he apparently performed and was paid for general contracting work totaling much more than that during the course of his employment as a contractor. Mr. Anderson did not have written contracts with the condominium but he testified that all work he did was approved in advance by the Board of Directors. The scope of his work was general contracting work which included painting, electrical work and carpentry. He testified that he did not perform any electrical work that required electrical permits or that had to be done by a licensed electrician.

It was Mr. Anderson who painted the five doors of the condominium that concerned Mr. Glenn. Mr. Anderson testified that the doors had been painted improperly at one time and therefore he had to strip them to bare metal in order to paint them correctly. Upon questioning by the panel Mr. Anderson testified that no single contract between him and Park Bradford ever exceeded \$25,000.00.

At the conclusion of the hearing on June 13, 2012, the panel discussed with the parties the procedures for the next hearing, scheduled for July 19, 2012. The parties agreed that at the next hearing on July 19, 2012, Mr. Glenn would have an opportunity to testify, his case having been otherwise completed and then the Respondent would put on its case. Probably due to the lateness of the hour and the length of the hearings, the parties forgot the fact that Mr. Glenn had already testified and had been cross-examined by Respondent's counsel. Consequently at the outset of the July 19, 2012 hearing Mr. Glenn was allowed to present brief additional testimony. This was done because it had been represented to Mr. Glenn on June 13, 2012 that he would be

allowed the opportunity to testify.

Mr. Glenn continued as he had in the previous two hearings to raise issues not covered by the seven issues before the panel. These included a civil rights complaint, the issue of competitive bidding and whether competitive bidding is required (apparently the management contract between Park Bradford and its management company provides that the management company will let any contract over \$3,000.00 only after competitive bidding), the fees paid to counsel, the fact that Park Bradford declined to mediate this complaint with him, a claim that because the doors of the condominium were painted improperly by Thomas Anderson, Ms. Anderson's husband, Mr. Glenn suffered personal injury and the alleged conflict of interest because Park Bradford hired Thomas Anderson while his wife Terry Anderson was the manger at Park Bradford. Mr. Glenn attempted to tie these issues into issue No. 1 by arguing that in each case the condominium's actions caused him personal distress. He presented a recent letter from a psychologist as part of Complainant's Exhibit 12 that indicated that he does suffer from stress. The psychologist did not link the stress to anything done by Park Bradford Condominium however. Letter dated July 13, 2012, part of Complainant's Exhibit 12.

Regarding Issue No. 1, Mr. Glenn increased his damages to slightly over four point five million dollars. A copy of the portion of Complainant's Exhibit 12 itemizing these damages is attached to this Decision and Order.

At the hearing on July 19, 2012 Mr. Glenn reiterated his claim regarding issue No. 2 about allowing Terry Anderson, then manager at Park Bradford, to be named as a proxy in the proxy ballots distributed to the unit owners. He also reiterated his claims that Terry Anderson was "asked" to vote at board meetings and membership meetings although she never did so. He

did not provide any corroboration for this claim. While he testified that in his inspection of books and records he could not find a contract for amounts in excess of \$25,000.00, he did not retract his previous statements that he had seen all of the books and records, including bank statements, that he had requested.

Regarding Issue No. 6, Mr. Glenn continued to attempt to prove that there had been expenditures in excess of \$25,000.00 by referring to audits and financial statements that show transfers of funds. There were several transfers of funds, for example, to pay for the roof replacement and janitorial services, that were in excess of \$25,000.00, but Mr. Glenn produced no contracts regarding them.

Mr. Glenn reiterated his argument regarding the citation for improperly posting signs. There are two aspects to this argument. Mr. Glenn has a sign on his door that identifies his business and its hours of operation. Mr. Glenn also passed out a letter at one point regarding the audit for fiscal year ending May 31, 2011 and perhaps other matters (the letter was never introduced into evidence). Mr. Glenn had posted this letter at various locations in the common elements and as a result received a violation notice pursuant to Article X, Section 3(f) of the By-laws. Mr. Glenn claimed that Section 11-111.3, Real Property Article, Annotated Code of Maryland allowed him to distribute the letter in question. He also interpreted that statute to allow him to post the letter on the common elements.

Park Bradford presented the testimony of the following witnesses:

-Terry Anderson, Manager of Park Bradford during the incidents which are the subject of this Complaint;

-Nancy Russ, a Board member and resident of Park Bradford Condominium;

-Sharon Bovell current President of Park Bradford Condominium and a resident;

-Scott J. Silverman, Attorney for Park Bradford.

Each of these witnesses had already been called by Mr. Glenn with the exception of Scott J. Silverman.

Regarding Issue No. 2, Terry Anderson testified that at the March 7, 2011 meeting of the members, the meeting of the unit owners in question, she was involved in sending out notices, collecting proxy ballots in advance of the meeting, collecting ballots at the meeting, counting the ballots and performing other tasks as delegated to her by the president of Park Bradford to conduct the election.

Regarding Issue No. 3, Terry Anderson stated that she did not vote at any Board or membership meeting and did not count herself and was not counted by any one else for purposes of establishing a quorum at any meeting.

Regarding Issue No. 4, the annual report for the fiscal year ending May 31, 2011 had already been admitted as Respondent's Exhibit 1. Respondent's Exhibits 3, 4 and 5 were the audits for the years 2008, 2009, 2010 respectively, which were admitted by stipulation during the testimony of Terry Anderson.

Regarding Issue No. 5, Terry Anderson stated that in the course of these hearings all documents requested by Mr. Glenn including bank statements were provided to him.

Regarding Issue No. 6, Ms. Anderson testified that there had never been a vote on a contract pursuant to Article X, Section 7 of the Park Bradford By-laws. On cross-examination, she testified that the improvements to the brick retaining wall were done with funds moved from the reserves for the retaining wall and were done because the retaining wall began to have

problems that might affect safety. The roof repair she testified was a replacement of the entire roof. The elevator project mentioned by Mr. Glenn was a replacement of the oil drum for the elevator which had been leaking for some time. The electrical work done by Thomas Anderson was not electrical work that would require a licensed electrician but was work that was under the category of "general contracting" and not major repairs. Most of the work was done outside the building. Ms. Anderson did explain further the Mendoza/Ribas consulting fee. Mendoza/Ribas was consulted about correcting the air pressure in the building. This was consistent with her previous testimony when she was called by Mr. Glenn that Mendoza/Ribas was consulted to study and perhaps prepare a request for proposal for the installation of a new ventilation system for the building. This work was never done, however.

Regarding Issue No. 7, Ms. Anderson testified that the sign attached to Mr. Glenn's unit door appeared to be a magnetic or similar type of sign possibly made of plastic.

Park Bradford next called Nancy Russ.

Regarding Issue No. 4, Ms. Russ testified that Park Bradford had retained accountants to begin preparation of the audit for 2012. Her testimony, coupled with previous testimony, indicates that audits for 2008, 2009, 2010, and 2011 were prepared and 2012 was in preparation.

Regarding Issue No. 5, Ms. Russ testified that to her knowledge Mr. Glenn was never denied access to any books and records of the condominium.

Regarding Issue No. 6, Ms. Russ testified that Park Bradford had not done any addition, alteration or improvement in excess of \$25,000.00 to her knowledge.

Regarding Issue No. 7, Ms. Russ testified that she also felt that the sign on Mr. Glenn's unit door appeared to be a magnetic sign or like a magnetic car sign. It was not handwritten.

On cross-examination Ms. Russ testified that all transfers from reserves were approved

by the Board and that the unit owners did not approve the funds paid for the Mendoza/Ribas study. Mr. Glenn also questioned Ms. Russ about his civil rights complaint and his delinquent assessments, but these questions were not relevant to the issues before the panel.

Park Bradford called Sharon Bovell for the purpose of introducing Respondent's Exhibit 10, the attorney's fees claimed by the condominium for this action. Ms. Bovell stated that the attorney's fees represented in Respondent's Exhibit 10 either had been paid or the condominium was obligated to pay them.

To explain further the claim for attorney's fees, Scott J. Silverman was sworn and gave testimony. He explained that the amounts claimed by Park Bradford were solely for amounts in connection with this case before the Commission on Common Ownership Communities and not for other matters. These amounts had been extracted from statements attached to his affidavit in Respondent's Exhibit 10. He noted that the statements also include other matters that are not part of the claim in this case. He testified that he had been practicing since 1994, concentrating in the area of community association law. His hourly rate is \$295.00. He testified that he is familiar with the hourly rates of attorneys practicing in Montgomery County and surrounding areas in this area of the law and that this rate is reasonable and not at either the high or the low end of the spectrum.

FINDINGS OF FACT

1. Park Bradford is a condominium organized under and subject to the laws of Maryland.
2. Maurice Glenn is a unit owner in the condominium.
3. With the exception of the citations of Mr. Glenn for the sign on his door and the letter he posted, none of the actions of Park Bradford under the seven issues before the panel in

this case were directed specifically at Mr. Glenn. No action, including this one, was intended to injure him. The citations with respect to the sign on Mr. Glenn's door and the letter he posted were done in a manner that was not excessive, extreme or outrageous but rather with the objective of enforcing the By-laws of Park Bradford.

4. The proxy ballot naming Terry Anderson as a proxy at the annual election of March 7, 2011 was a lawful form of proxy ballot. It did not authorize Terry Anderson to vote as a unit owner but only as the proxy of a unit owner and only for the purpose of establishing a quorum. The use of a proxy is sanctioned by Section 10B-17(d) of the Montgomery County Code.

5. Terry Anderson never voted as a director at a Board of Directors meeting or as a unit owner at an annual meeting of the unit owners at any time.

6. Park Bradford has completed its audit for the fiscal year ending May 31, 2011. While the audit was nearly a year late, it has been done. The audit for 2012 is in process. There was no testimony as to when the association ordered the audit or why it was late.

7. Mr. Glenn testified and the panel finds that the condominium's management agent afforded Mr. Glenn an opportunity to inspect all of the books and records of the condominium that he desired to see.

8. None of the contracts for expenditures of the condominium described in the testimony and evidence involved additions, alterations or improvements in excess of \$25,000.00 with the exception of the Mendoza/Ribas study of a proposed new ventilation system to address an air pressure issue for Park Bradford. The contract for the wall murals might have constituted an addition or improvement but there was no evidence about that contract from either party.

9. Park Bradford did not have a ventilation system at the time that it retained

Mendoza/Ribas to prepare a request for proposal to install such a system. Consequently, Mendoza/Ribas was analyzing an addition, alteration or improvement and not the maintenance or repair of an existing element. The total of the Mendoza/Ribas contract was \$54,000.00 which is in excess of the \$25,000.00 cutoff where a vote of the unit owners is required.

10. The sign taped to Mr. Glenn's door was not a temporary sign.

11. While Mr. Glenn may have had the right to distribute written information or materials pursuant to Section 11-111.3, Real Property Article, Annotated Code of Maryland, that provision does not allow the posting of materials on the common elements. Mr. Glenn posted his letter at several locations in the condominium and it is for this that he was cited.

12. The three hearings conducted in this case lasted for approximately thirteen hours and forty-five minutes. Of that time, the panel estimates that the time spent by Mr. Glenn addressing Issue No. 2, the failure to conduct an election, and Issue No. 3, the failure to conduct meetings properly because the manager was allowed to vote, as well as the necessary responses thereto by the Respondent consumed approximately three hours. The time spent by Mr. Glenn addressing and cross-examining witnesses on issues that were not part of the seven issues before the panel consumed approximately another one and one half hours. The time spent by Mr. Glenn attempting to relate irrelevant issues to Issue No. 1, his claim that the actions of the condominium caused him personal distress, took at least an additional one half hour. This is a total of five hours for the matters described.

CONCLUSIONS OF LAW

1. Mr. Glenn failed to meet his burden of proof with respect to Issue No.1. He is essentially claiming that Park Bradford is guilty of intentionally inflicting emotional distress upon him.

We find that the law relied upon by Mr. Glenn does not support a claim for mental harassment or the intentional infliction of emotional distress. County Code Section 10B-8(4)(B)(vii) grants jurisdiction to the Commission over "the failure of the governing body, when required by law or an association document, to . . . maintain or repair a common element if the failure results in significant personal injury or property damage." The Staff's Case Summary (Commission Exhibit 1 at pp. 334-337) referred to Mr. Glenn's claims on the issue of personal injury and property damage as "16. the board authorized changes to the common elements that resulted in damage to the units and the common elements." The Commission the accepted jurisdiction of that issue to the extent that it alleged damage to Mr. Glenn's unit or personal injury to Mr. Glenn himself, and included it in the Summons. The wording of the Summons, which is a paraphrase of the issue, must be understood in light of the statute and of the case summary:

1. that the Respondent created conditions which caused personal injury to the Complainant and property damage to his unit. (Commission Exhibit 1 at 353.)

Mr. Glenn attempted to turn this wording into a license to bring up a variety of claims which involved neither the condition of the common elements nor personal injury. Such claims are clearly outside the Commission's jurisdiction. The Commission made this as clear as possible by voting to reject jurisdiction of all claims involving the conduct of employees and agents, of the transfer of funds from one budget category to another, and of unlawful discrimination and by not including them in the Summons.

Even if the Commission did have jurisdiction of what amounts to claims of harassment and mental abuse, Mr. Glenn fails properly to allege and to prove a claim. The elements of the tort of intentional infliction of emotional distress are as follows:

“A defendant may be liable to the plaintiff for the tort of Intentional Infliction of Emotional Distress if the plaintiff proves by a preponderance of the evidence:

- (1) that the defendant’s conduct was intentional or reckless;
- (2) that the conduct was extreme and outrageous;
- (3) that the conduct caused emotional distress to the plaintiff; and
- (4) that the emotional distress was severe.

The defendant is not liable if the plaintiff fails to prove any one or more of the four elements.”

Maryland does not recognize a cause of action for negligent infliction of emotional distress. Hamilton v. Ford Motor Credit Company, 66 Md. App 46 (1986) cert. denied, 306 Md. 118 (1986).

To satisfy the requirements of a claim for intentional infliction of emotional distress, among other things the conduct of the defendant must be extreme and outrageous. In effect the conduct must completely violate humane dignity. In addition, the emotional distress must be severe. To sustain an action for intentional infliction of emotional distress one must suffer an emotional response so acute that no reasonable person could be expected to endure it. One must be unable to function; one must be unable to attend to necessary matters. See also, Caldor, Inc. v. Bowden, 330 Md. 632 (1993).

The only actions of Park Bradford specifically directed toward Mr. Glenn were citations for a violation of the prohibition against signs. The remaining six issues involve actions that Mr. Glenn objected to, but those actions were not intentionally directed specifically at him. Rather, he claims that he experienced personal injury because he was in essence upset by those actions.

The actions of the condominium were conducted in its ordinary course of business,

and/or done in an effort to enforce the provisions of the By-Laws, not because Park Bradford desired to injure Mr. Glenn. While Mr. Glenn claimed to be upset, he produced no evidence that he suffered a severe degree of mental or physical injury caused by Park Bradford, its agents or representatives. Thus, none of the elements of the tort of intentional infliction of emotional distress were established other than the most tenuous connection between acts that occurred and Mr. Glenn's resulting displeasure regarding those acts. That is not enough to sustain the tort. Mr. Glenn produced no evidence of damage to his property. The July 13, 2012 letter from Dr. Sher, part of Complainant's Exhibit 12, does not attempt to establish any direct causal relationship between the actions of Park Bradford and Mr. Glenn's reasons for seeing Dr. Sher.

Additionally, there is no evidence that Park Bradford directed any of its actions against Mr. Glenn with regard to Issues 2, 3, 4, and 6. With regard to Issue No. 4, Mr. Glenn received access to all of the books and records he wanted to see, according to his own testimony. Park Bradford was exercising its authority and right to enforce its By-laws with respect to the sign posted on Mr. Glenn's unit and the letter posted by Mr. Glenn in the condominium. Therefore none of those actions can form the basis for Mr. Glenn's claim under Issue No. 1 that Park Bradford created conditions which caused personal injury to the Complainant.

2. Park Bradford did not misuse proxy ballots. Only one proxy ballot was submitted into evidence, Complainant's Exhibit 11 for the March 7, 2011 meeting. It properly appointed the manager as the proxy for the unit owner. The manager did not vote on her own behalf at the annual meeting but merely acted as an agent of the owner. Even Mr. Glenn noted that the board could delegate "ministerial" duties under Bylaws Article 14, Section 3. (Transcript of March 29, 2012 at pp.120-180.)

3. The manager did not vote at the Board of Directors meeting. The testimony was

at best that according to Mr. Glenn she was “asked to vote”.

4. Park Bradford has issued the annual financial audit required. Because there was no evidence as to why the association’s audit was late, the panel can only admonish Park Bradford that it should try in the future to observe the time frames set forth in its By-laws. The condominium has also completed its audits for the years 2008, 2009, 2010 and 2011. The audit for 2012 is in process.

5. Mr. Glenn testified at the June 13, 2012 hearing that he had seen all of the books and records that he had requested. He was looking for contracts in excess of \$25,000.00, but the testimony established that there were none.

6. The agreements with Mendoza/Ribas for the study of the proposed ventilation system were for additions, alterations or improvements in excess of \$25,000.00. Breaking the contract into three separate parts does not change that fact. The testimony did not indicate that Park Bradford was attempting to be deceptive or to avoid the requirements of its By-laws. However, there should have been a vote of the members before Park Bradford hired Mendoza/Ribas as a consultant. When it became apparent after the first phase of the contract that it was going to exceed \$25,000.00 that is when the vote should have been taken.

7. The remaining expenditures identified by Mr. Glenn were for repairs and maintenance that did not require a vote of the members. The decision of the panel in Lee v. University Towers Condominium, Case No. 52-08, decided April 8, 2009, is dispositive here. The language of the University Towers documents is nearly identical to the language of the Park Bradford documents. The work in question falls into the maintenance, repair or replacement of an *existing* common element, which is within the authority of the Park Bradford Board of

Directors to order without a vote of the unit owners, rather than the addition of a *new* common element. There is some question about the contract for the painting of a mural, which might or might not constitute an addition or improvement, but no facts were produced regarding the details or reason for that work. It was Mr. Glenn's burden of proof to show that the mural painting contract was an addition or an improvement, and he failed to do so.

8. Mr. Glenn did not obtain prior approval of Park Bradford to post a sign on the door of his unit or to post letters throughout the condominium. However, the condominium has not yet followed the Dispute Resolution Process of Section 11-113, Real Property Article, Annotated Code of Maryland, to require the removal of those signs or otherwise to sanction Mr. Glenn. There is then, no final decision of the governing body against Mr. Glenn, and therefore there is no "dispute" over its authority to compel him to take any action regarding his unit or the common elements. *See* Section 10B-8(4)(i) of the Montgomery County Code. A violation notice or warning does not constitute a decision of the association. Because the law allows for a dispute resolution procedure, Mr. Glenn should exhaust his remedies by using that procedure before bringing this dispute to the CCOC. *See* Section 10B-9(b) of the Montgomery County Code. This claim is therefore premature and we lack jurisdiction over it. For purposes of this Complaint, the panel will leave the issue regarding the unit door sign and the posting of the letter where it stands.

ATTORNEY'S FEES

The decision in this case favors Park Bradford on all but Issue No. 6, the \$25,000.00 issue. Additionally, Park Bradford was remiss in the timing of its audit due after the May 31, 2011 fiscal year, Issue No. 4 and it created some difficulty for Mr. Glenn when he attempted to inspect the books and records of the condominium, Issue No. 5.

Mr. Glenn's Issues 2 and 3 are without merit and reflect a stubborn adherence to a misreading of the law and the By-laws of Park Bradford. As stated in Findings of Fact No. 12 dealing with these issues added 3 hours to the proceedings, Mr. Glenn's unremitting efforts to address issues not before the panel added an additional 1 1/2 hours to the proceedings. Finally, Mr. Glenn's tactic of attempting to connect every action of the condominium to Issue No. 1, the alleged personal injury to him resulting from actions of the condominium with which he disagreed, was in the view of the panel disingenuous. This added another 1/2 hour to the proceedings. The panel has had an opportunity after thirteen hours and forty-five minutes of hearing to assess the demeanor, credibility, intelligence and motives of the parties and their witnesses. The panel finds that Mr. Glenn's actions constitute the maintenance of a frivolous dispute and the maintenance of a dispute in other than in good faith within the meaning of Section 10B-13(d)(i) of the Montgomery County Code with respect to Issues 2 and 3, with respect to his efforts to raise issues not before the panel, and with respect to his tactic of attempting to connect his every dissatisfaction, no matter how tenuously related, to Issue No. 1.

The panel acknowledges that one purpose of the Commission on Common Ownership Communities is to afford individual unit owners the opportunity to voice their claims without the expense of retaining counsel. If that is to happen, then *pro se* litigants will be presenting their cases, presumably without the skill of an attorney who is admitted to practice before the Court of Appeals of Maryland. In some sense it would therefore be contrary to the intent of the law to penalize *pro se* litigants for doing what the law allows them to do. However, the law also admonishes parties, including *pro se* litigants, not to bring or maintain frivolous actions. Mr. Glenn added at least five hours to the hearing process by maintaining frivolous issues after he should have known that they were frivolous and by failing to adhere to the seven issues before

the panel after the panel had explained that limitation to him over and over. Adding to that five hours the minimum time that counsel would have to spend to prepare to respond to Mr. Glenn is at least an additional two hours. Consequently, the panel awards counsel fees to Park Bradford Condominium in the amount of \$2,065.00, representing seven hours of attorney time at the hourly rate of \$295.00 per hour pursuant to Respondent's Exhibit 10.

It is therefore

ORDERED:

1. Complainant's claims 1, 2, 3, 4, 5 are dismissed.
2. The Respondent, having violated Article X, Section 7 of the By-laws with respect to the Mendoza/Ribas contracts, shall advise the unit owners by an appropriate notice delivered to them that it has done so (Issue No. 6) within 45 days from the date of this decision.

3. No relief shall be granted to either party with respect to the posting of a sign on Mr. Glenn's unit door and a letter in the condominium (Issue No. 7). If the Respondent wishes to pursue the matter further it must comply with Section 11-113, Real Property Article, Annotated Code of Maryland.
4. The Respondent, Park Bradford Condominium, is hereby awarded \$2,065.00 in attorney's fees, which shall be paid by the Complainant within 60 days from the date of this decision.

Panel members Henderson and Weinstein concur in this Decision.

Any party aggrieved by the action of the Panel may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days of the date of this

decision, pursuant to the Maryland Rules of Procedures governing administrative appeals.



John F. McCabe, Jr., Panel Chair

IN THE CIRCUIT COURT OF MARYLAND FOR MONTGOMERY COUNTY
Civil Division

CONSUMER PROTECTION

MAURICE GLENN,)
)
 Appellant)
)
 vs.)
)
 MONTGOMERY COUNTY COMMISSION)
 ON COMMON OWNERSHIP COMMUNITIES,)
)
 Appellee.)

APR 26 2013

Case No.: 371273 V **RECEIVED**

ORDER

Upon consideration of the record of proceedings conducted by the Appellee in *Glenn vs. Park Bradford Condominium*, Montgomery County Commission on Common Ownership Communities, Case No. 29-11, including its Decision & Order dated November 30, 2012, as well as the written memoranda of the Appellant and Park Bradford Condominium that have been filed with this Court in this case, and the oral argument presented by them before this Court at a hearing held April 4, 2013, it is this 22nd day of April, 2013, by this honorable Court,

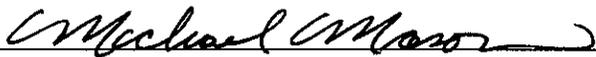
ORDERED, that, insofar as it is the finding of this Court that the Appellee committed no error of law in reaching the findings of fact and conclusions of law set forth in its Decision & Order, and because it is the further finding of this Court that Appellee's findings of fact and conclusions of law were supported by substantial evidence admitted during the proceedings below, the Appellee's Decision & Order dated November 30, 2012 shall be and is hereby AFFIRMED; and, it is further

ENTERED

APR 24 2013 *w*

Clerk of the Circuit Court
Montgomery County, Md.

ORDERED, that the Appellee's finding of Appellant's liability to Park Bradford Condominium for the reimbursement of attorneys' fees and costs in the amount of \$2,065.00 shall be and is hereby converted to and deemed a final judgment of this Court in that amount, plus post-judgment interest at the legal rate, which judgment shall be fully enforceable and collectible in accordance with applicable law and the Maryland Rules.


Hon. Michael D. Mason, Judge
Circuit Court of Maryland for Montgomery County

Copies to:

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Peter Drymalski
Montgomery County Commission
On Common Ownership Communities
100 Maryland Avenue, Room
Rockville, MD 20850

ENTERED

APR 24 2013

Clerk of the Circuit Court
Montgomery County, Md.

Circuit Court for Montgomery County Case No. 371273-V

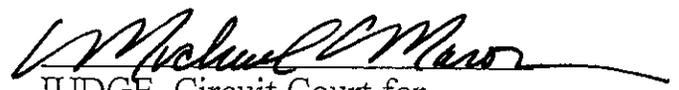
Maurice Glenn vs. Commission on Common
Ownership

ORDER

UPON consideration of the papers and pleadings filed in this case, it is this
22nd Day of April, 20 13, by this
Court, ORDERED:

ORDERED that the Motion For Explanation of Order on March
Is hereby ~~Granted/Denied~~; and it is further, 26, 2013

as moot in light of the explanation
provided to Appellant on the record
in open court on 4/4/13.


JUDGE, Circuit Court for
Montgomery County

ENTERED

APR 24 2013
Clerk of the Circuit Court
Montgomery County, Md.