



Mr. Hamilton's complaint asked the Commission to enforce compliance with cooperative documents by the Respondent, direct that Mr. Hamilton be found not to be in default and thus be considered a member in good standing entitled to serve on the Board or on a community committee, resolve these issues to avoid the need to go to court, mandate training and education for the Board, mandate supervision of elections by someone other than the Board, and require availability of cooperative financial records.

The Board responded to the Complaint denying any improper actions. Complainant requested mediation but the Board declined to participate.

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), and the Commission voted that it was a matter within the Commission's jurisdiction, and a public hearing was scheduled on August 21, 1996.

Since the basis for Mr. Hamilton's standing in the community was an assessment for legal fees by the Respondent, the Board was asked to establish the validity of that assessment at the beginning of the hearing.

At the opening of the hearing, counsel for Respondent asked for clarification on the question of identification of the complaining party since the case was filed in Mr. Hamilton's name alone. This issue is addressed later.

### **Findings of Fact**

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

1. Gregory and Loretta Hamilton purchased a share in the cooperative corporation for the residential building at 7611 Maple Avenue in Takoma Park, Maryland and signed an Occupancy Agreement entitling them to occupancy rights in Unit 606, early in December, 1992. In so doing, they undertook a variety of financial obligations to the cooperative.

2. The Hamiltons fell behind in payment to the cooperative resulting in the cooperative filing a law suit for possession of this unit. Mr. and Mrs. Hamilton entered into a consent judgment with Respondent in settlement of that suit on June 8, 1994. The copy of the consent judgment entered into the record by the Respondent does not include any provision for payment of attorneys' fees.

3. In the course of these efforts to collect payments from the Hamiltons which were overdue, the Respondent incurred legal bills. The amount of the legal bills, while not agreed upon, was not at issue in this case. The question was whether Respondent had authority to assess these charges against Complainant. Respondent submitted evidence of legal charges to its account in behalf of its efforts to bring the Hamiltons up to date in their payments in the amount of \$1101.81. A copy of several invoices submitted to the Hamiltons for attorney fees showing the amounts ranging from \$766.19 to \$849.23 were also entered into the record. Respondent's counsel argued that the Occupancy Agreement authorized the Board to recover attorneys' fees for collection of overdue payments from Members.

4. A copy of the Occupancy Agreement with Seventy Six Eleven Maple Avenue Cooperative, Inc. which appears to have the signatures of the Hamiltons, includes, in pertinent part, the following language:

In Article II, Monthly Cooperative Fees and Special Charges,

Section 2.3 Until further written notice from the Corporation, the monthly Cooperative Fees from the above-mentioned Dwelling Unit shall be in the amount set forth on the first page hereof, and shall be due and payable on or before the first (1st) day of each and every month of the term hereof provided no penalty may be assessed if such payment is received by the tenth (10th) day of the month.

Section 2.5 If a Member defaults in making a payment of Cooperative Fees or Special Charges or in the performance of any provisions of this Occupancy Agreement, the Bylaws or the House Rules and the Corporation retains the services of an attorney or collection agency with respect thereto, the Member shall pay to the Corporation any and all costs incurred by it, in respect thereto. All such costs and fees shall be deemed to be Special Charges payable to the Corporation upon demand.

In Article XXIII, Miscellaneous

Section 23.10 In the event of a conflict between the provisions of this Occupancy Agreement and the provisions of the Bylaws, the provisions of the Bylaws shall control.

5. The Bylaws of Seventy Six Eleven Maple Avenue Cooperative, Inc. include, in pertinent part, the following language:

-- In Article IV, Directors

Section 7. Annual Cash Requirements; Cooperative Fees: The Board of Directors shall, from time to time, determine the cash requirements as defined in these Bylaws and fix the terms and manner of payment of Cooperative Fees under the Corporation's Occupancy Agreements.

-- In Article XIII, Compliance and Default

Section 1. Default: If at any time one of the events specified in the following subparagraphs (1) through (6) of this Section 1 of Article XIII occurs, the Corporation may terminate the Member's right to occupancy, and exercise any other rights and remedies available under the Occupancy Agreement, the Bylaws, at law, or in equity. Such events of default shall include, but not be limited to, the following:

....

- (4) In case the Member shall fail to pay any sum due as a Cooperative Fee, Special Charge, or otherwise due pursuant to any provision of these Bylaws or of the Occupancy Agreement; and

....

Section 4. Costs and Attorney's Fees: In any proceeding arising out of any alleged default by a Member, the Cooperative, if it prevails, shall be entitled to recover the costs of all such proceeding and such reasonable attorney's fees as may be determined by the Court.

-- In Article XVII, Miscellaneous

Section 2. Amendments. ....  
Notwithstanding the foregoing, the Board of Directors shall have the right, by the affirmative vote of a majority of the total number of Directors, without the consent of the Members, to amend, modify, or alter the Occupancy Agreement, and the House Rules.

#### **Conclusions of Law**

The Commission concludes, based on a preponderance of the evidence, including the testimony and documents admitted into

evidence, and after full and fair consideration of the evidence of record, that:

The first issue to be addressed is the allegation by Respondent that the Hamiltons were considered to be in default to the Corporation for the legal costs of the collection action against them and thus were not considered to be members in good standing in the community. With regard to that issue, counsel for Respondent argued that the authority for the Corporation to assess the costs and fees incurred in collecting overdue charges from the Hamiltons is that included in the Occupancy Agreement. The language in the Occupancy Agreement at Section 2.5 authorizing the Corporation to assess these charges is very broad. However, there is also language in the Bylaws, at Article XIII, Section 4, regarding this authority and in the Bylaws the authority is more restrictive, indicating that these charges are to be determined by the Court. The Occupancy Agreement provides at Section 23.10 that in case of conflict between the Occupancy Agreement and the Bylaws, the Bylaws prevail. Meaning must be given to the Bylaw language which restricts assessment of costs and fees to those determined by the Court. No language was included in the Consent Judgment signed by the Hamiltons regarding the costs and fees of the collection action and no other action was taken by the Court. Therefore, the Respondent does not have the authority to impose on the Complainant the costs and fees incurred in that action. To the extent that Respondent considered the Hamiltons to be in default based only on the assessment of the costs and fees for the efforts to collect overdue payments, the assessment of the liability was not authorized, the charges were and are not owed and the Hamiltons were not in default and should have been considered to be members in good standing.

The second issue to be addressed is Mr. Hamilton's allegation that the membership meeting held in July 1995 to vote to change the provision in Article II, Section 2.3 of the Occupancy Agreement providing that no penalty may be assessed if payment of monthly Cooperative Fees is received by the tenth day of the month was not conducted in accordance with the requirements of the Cooperative documents. Article IV, Section 7 of the Bylaws indicates that the Board of Directors is authorized to fix the terms and manner of payment of Cooperative Fees under the Occupancy Agreements. That Section read in conjunction with the language in Article XVII, Section 2 stating that the Board of Directors has the right by affirmative vote of a majority, without the consent of the Members, to amend, modify, or alter the Occupancy Agreement, make it clear that this change did not require a Membership vote. Thus, this Panel does not reach the question of whether this meeting was conducted in accordance with Cooperative document provisions for the purpose of a Membership vote to amend those documents. If a majority of the Board of Directors voted affirmatively for this

change, it was appropriately adopted. The question of what is required by the documents for an amendment to the Bylaws or a change to the form of the Occupancy Agreement does not arise.

Lastly, Mr. Hamilton has complained about a variety of management and governance practices in the cooperative. There was limited evidence and testimony in the record on these issues and generally they were not well developed. The members of the Board who testified were pleasant, well-intentioned and intelligent volunteers. The documents of this community are unusually long and complex. It appears from the issues raised in this case that the Board with its management company and attorneys have not developed the level of understanding of these documents which would be advisable and may therefore from time to time be causing unnecessary hardship to members and going through unnecessary exercises. Further, as will be discussed below, while it appears that Cooperative Board Members, at least those who testified in this hearing, are willing to make available all the records they are required to by law and more, it was not clear at the hearing what arrangements had to be made, with whom, and that the identity and telephone numbers of persons with whom such arrangements had to be made were generally available to members of the Cooperative. Mr. Hamilton asked that the Commission mandate training for the Board and mandate supervision of elections. It is not clear that circumstances in this Cooperative require such action and the Commission declines to do so in this case. However, the Commission does recommend that the Board, in conjunction with their management service and attorney, consider means to give everyone a clearer understanding of the provisions of the Cooperative documents and provide to members additional information regarding such management features as location and access to Cooperative records which the Board is required to and the Board intends, even though not required to, make available to members.

The following paragraphs discuss Mr. Hamilton's specific complaints about the management and governance of the Cooperative:

Mr. Hamilton complained that there is no public notice of Board meetings and that participation of members at Board meetings is not allowed. While there is language at Section 1 of Article XVII of the Bylaws encouraging residents, both members and non-members to attend Board meetings and otherwise participate in the operation and functioning of the Cooperative, there is no requirement for member or public notice of Board meetings and, unlike other common ownership communities there is no law requiring open public meetings of Cooperative Boards. There is no provision requiring members be allowed to participate in meetings of a Board of Directors.

Mr. Hamilton has complained that he was not provided with

copies of the minutes of Board and Membership meetings. There is no requirement that members be provided with copies of Board minutes but only that the Secretary-Treasurer keep the minutes and that they be available as required by law (Bylaws, Article V, Section 4). There is no requirement in Maryland or Montgomery County law that the minutes of meetings of corporate Boards of Directors be available to members/shareholders or any one else. The Maryland Corporations and Associations Article at section 2-512 requires that a shareholder may inspect and copy the minutes and proceedings of shareholder meetings during usual business hours. While there was no objection to making meeting minutes available to Mr. Hamilton in the testimony by members of the Board and the management company, it was not clear during the hearing where these records were maintained and how a member might arrange to review them. As discussed above, the Commission recommends that the Board provide notice to the members of the records which are available for review, where they are kept, the hours they are available and how to arrange to review and copy them.

Mr. Hamilton has complained that the Board of Directors has established Committees but not allowed Members to sign up for those Committees. The language of Bylaws at Article V, Section 8, regarding Committees makes it clear that the establishment of and appointment to Committees by the Board of Directors is entirely within the discretion of the Board of Directors.

Mr. Hamilton has complained that the financial records of the Cooperative are not provided to him. Under Bylaws Article IV, Section 10 (11), the financial records of the Cooperative must be maintained and made available to the Members during general business hours on working days at the times and in the manner set and announced by the Board for the general knowledge of the members. As with the minutes, testimony indicated that the records were available to Members for inspection but where and when was not as clear as it might be. As discussed above, the Commission recommends that the Board provide notice to the Members where these records are kept and when and how to get access to them. Under Bylaws Article V, Section 4, the Secretary-Treasurer is required to provide each Member an annual report of operations and balance sheet of the Corporation certified by an accountant. Mr. Don Maenner, Treasurer of the Cooperative since 1990, testified that the annual audit had been provided to each Member. Mr. Hamilton agreed that he had received one but not another and Mr. Maenner said he would provide a duplicate of the one Mr. Hamilton did not have. Mr. Hamilton would like to receive copies of financial records which show the transactions of the Cooperative in much greater detail than is required by the Bylaws. Mr. Maenner indicated willingness to let Mr. Hamilton see records if Mr. Hamilton made arrangements to do so.

Mrs. (Loretta) Hamilton was present for the hearing. At the close of the hearing the Panel Chairwoman asked Mrs. Hamilton whether she was a party to this action. Mrs. Hamilton declined to become a party.

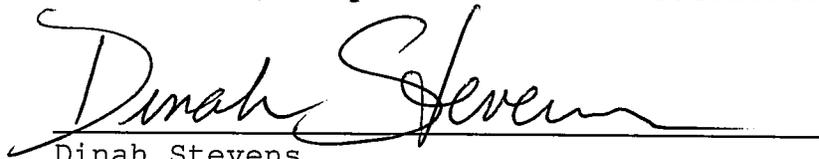
Commission rules do not include a provision on mandatory parties or finality. However, as a matter of equity for the cooperative, Mrs. Hamilton is precluded from relitigating the issues considered in this case which are based on joint ownership of a share in the Cooperative with Mr. Hamilton and occupancy of Unit 606 which could not have been litigated by any other member of the cooperative, based on the facts presented in this case, before this forum, having witnessed the hearing and declined to join as a party.

#### **Order**

The 7611 Maple Avenue Board of Directors may not consider the Hamiltons in default for failure to reimburse the Cooperative for the legal fees, in any amount, for the collection action against them in 1994 which was in controversy in this action and must repay to the Hamiltons any amounts the Hamiltons have paid toward this assessment or credit funds paid for that purpose to other obligations which the Hamiltons may owe to the Cooperative.

The foregoing was concurred in by panel members Huson, Kristian and Stevens.

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.

A handwritten signature in cursive script, reading "Dinah Stevens", written over a horizontal line.

Dinah Stevens  
Panel Chairwoman  
Commission on Common Ownership Communities