

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

In the Matter of :
Seneca Forest Community Association, Inc. :
c/o The Management Group Associates, Inc. :
One Bank Street :
Suite 301 :
Gaithersburg, MD 20878 :
 :
Complainant :
 :
vs. :
 :
Edwin Davilla :
13007 Robins Nest Terrace :
Germantown, MD 20874 :
 :
Respondent :
 :

Case No. 317-G

DECISION AND ORDER

The above-captioned 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, 1994, as amended, of record, it is therefore, this 27th day of August, 1996, found, determined and ordered as follows:

BACKGROUND

In 1986, the Respondent and his former wife purchased their townhouse unit located in Seneca Forest from an individual who had been the prior owner rather than from the developers/builder. At the time of the purchase there was a metal shed underneath of the deck of the unit. The Respondent testified that the existence of the shed was critical to his decision to purchase the unit at that time. The Respondent further testified that at the time of his purchase, he was not delivered a set of the homeowner's association documents and he had no knowledge of any rule or regulation that may have prohibited the existence of the shed on his property.

The Declaration of Covenants pertaining to Seneca Forest Community Association provides for architectural control and review (see Article VII, Section 1), and, in addition, Article VII, Section 7(j) provides that "no structure of a temporary

character, and no trailer, tent, shack, barn, pen, kennel, run, stable, playhouse, shed or other buildings shall be erected, used or maintained on any lot at any time" except with the written prior approval of the Architectural and Environmental Control Committee.

The Respondent testified that at no time in the following eight (8) years of his ownership was there ever a complaint made to him by the Committee or by any other entity or person regarding the existence of the shed on his property.

Testimony also was presented that the current management company replaced a prior management company several years ago and the status of the records related to the association was not clear.

On or about April 22, 1994, the Complainant notified the Respondent that the shed on his property was in violation of the covenants and requested that the shed be removed. (See Commission Exhibit 1, page 8.) Further correspondence and contacts occurred between Complainant and Respondent over the ensuing year and a half with the Complainant insisting that the shed be removed and the Respondent insisting that he had no obligation to do so.

Testimony and documents were further put in evidence relating to changes in the by-laws pertaining to architectural and environmental control. In short, in the Spring of 1995, the Association officially allowed for the construction of sheds pursuant to strict guidelines detailed in Commission Exhibit 1, page 91.

Thereafter, the Complaining party filed a Complaint before the Commission. In as much 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). On June 19, 1996, the Commission conducted a hearing in this cause before a panel consisting of commissioners, Richard Price, Jacqueline Simon and panel chair, Jonathan Bromberg.

FINDINGS OF FACT

Based on the testimony and documents and photographs placed in evidence, the Commission makes the following findings:

1. The Respondent purchased his home sometime in 1986 and the property and its use were controlled by the Declaration of Covenants duly recorded in the Land Records for Montgomery County, Maryland.

2. At the time the Respondent purchased the property, there was a shed already in existence on the property under the deck as detailed in photographs submitted by Complainant and admitted into evidence as Complainant's exhibits 1a through 1c.

3. In the following eight (8) years, notwithstanding at least annual inspections of the community by the Committee, there is no record of a formal complaint or action being initiated by the Complainant against the Respondent with regard to the shed, nor any approval by the Complainant of a shed.

4. The existence of the shed was a violation of the Declaration of Covenants pertaining to this property.

5. The Complainant properly notified the Respondent about the violation in 1994 and followed proper procedures with regard to the process for dealing with the violation of the Declaration of Covenants.

6. The Complainant in 1995, promulgated new rules and regulations that permit the construction of sheds under certain strict guidelines.

CONCLUSIONS OF LAW

The Commission concludes, based upon a preponderance of the testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

1. The Declaration of Covenants recorded in the Land Records pertaining to Seneca Forest Community Association, Inc., were validly established and applied to the unit occupied by the Respondent. The Respondent testified that he had no knowledge about the existence of the Declaration of Covenants and felt he should not be bound by those covenants as they were not delivered at the time of his settlement. While it is unfortunate that the Respondent was not given those documents at the time of his purchase, (if that was in fact what occurred), the Commission finds that the failure to deliver the documents to the Respondent has no impact on their running with the land and no impact on the ability of the Complainant to enforce those Declarations as against the Respondent.

2. The Commission finds that the lack of a record regarding whether or not the Association took previous action was not tantamount to a waiver of the rights of the Association to enforce rules and restrictions pursuant to the Declaration of Covenants.

3. The Commission, does, however, find that the failure to take some form of action over an eight (8) year period and then to enforce the regulation rises to a violation of basic equity principles.

ORDER

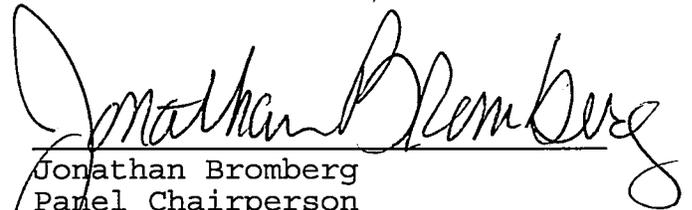
In view of the foregoing and based on the evidence of record, it is hereby ORDERED that:

1. The Respondent shall remove the offending shed from the premises within forty-five (45) days of the date of this Order, and it is further,

2. ORDERED that the costs of removal of the shed as well as the costs of construction of a new shed (if so elected by the Respondent) shall be born equally by the Complainant and the Respondent, subject, however, to a cap of a maximum contribution by the Complainant of Five Hundred and 00/100 Dollars (\$500.00).

The foregoing was concurred in by panel members Price, Simon and Bromberg.

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.


Jonathan Bromberg
Panel Chairperson
Commission on Common
Ownership Communities