

**Before the
Commission on Common Ownership Communities**

In the Matter of

Laytonia Homeowners Association	x	
c/o Metropolis	x	
4307 Gallatin Street	x	
Hyattsville, MD 20781,	x	
	x	
Complainants,	x	
	x	
v.	x	Case No. 341-G
	x	September 12, 1997
Ms. Maria Malone	x	
18036 Driftwood Court	x	
Gaithersburg, MD 20879,	x	
	x	
Respondent.	x	

DECISION AND ORDER

The above-entitled 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, and the Commission, having considered the testimony and evidence of record, finds, determines and orders, as follows:

Background

The Laytonia Homeowners' Association Board of Directors (Complainant or Board) filed a complaint with the Office of Common Ownership Communities dated May 31, 1996, against Ms. Maria Malone (Respondent) for constructing a fence of a design different from the design for which she had submitted a request for approval. The Board requested that the Commission order removal of the fence.

Ms. Malone responded to the Office of Common Ownership Communities on June 19, 1996, denying the allegations in the Board's complaint.

After determining that all procedures and remedies available in the Association's documents had been exhausted and that the dispute was not susceptible to resolution through mediation, this case was presented to the Commission on Common Ownership Communities on May 7, 1997. The Commission voted to accept jurisdiction of the complaint pursuant to Section 10B-11(f) of the

Montgomery County Code, 1994, as amended. The matter was initially scheduled for public hearing on June 18, 1997, and rescheduled to July 30, 1997, at the request of the Board.

Ms. Malone was first notified by mail on June 5, 1997, that the hearing was rescheduled to July 30, 1997. She was sent another notice on June 25, 1997, informing her of the July 30 hearing date. She was notified of the hearing date a third time by Summons, which was mailed on July 15, 1997.

Ms. Malone responded to the Commission on Common Ownership Communities by letter dated July 13, 1997, which was received on July 23, 1997. In that letter, she acknowledged receipt of the notice of the rescheduled hearing date, but stated that she could not attend. She included a statement of facts in the letter, asking that they be presented to the panel on July 30. This letter was distributed to the panel and the Complainant, and was included as a supplement to the Commission's Exhibit #1. The staff to the Commission attempted to contact Ms. Malone both by phone and by letter, dated July 24, 1997, after receipt of this correspondence.

Despite repeated attempts to reach Ms. Malone in order to try to reschedule the hearing at a time which would be convenient for her, she did not contact the Office of Common Ownership Communities prior to the hearing. In light of the fact that Ms. Malone did not request that the hearing be rescheduled and did not respond to the staff's attempts to find out whether she would be available for a rescheduled date, the Panel decided to go forward with the hearing to determine whether a decision could be reached based on the facts available. Mr. Al Kablitzki attended the hearing to represent Ms. Malone's interests. He stated that he had no personal knowledge of the facts of the dispute.

Findings of Fact

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

1. Maria E. Malone is the owner of 18036 Driftwood Court, Gaithersburg, Maryland 20879, a detached house located in the Laytonia Homeowners' Association.

2. Metropolis, the management company serving the Laytonia Homeowners' Association and representing the Board and the community at the hearing, submitted a copy of the plat drawing from their files showing Ms. Malone's property (Commission Exhibit 1, page 69) showing a line of "x"s part way around the perimeter with annotations: "Fence will be 3 rail split rail 50 in high with wire

on outside; materials Black Locust post Hemlock rails 2x4 welded wire; Fence will be installed 16'6" from curb". It shows a stamp indicating that it was received at Metropolis on July 6, 1995.

3. Metropolis also submitted a copy of a letter dated August 14, 1995, to Michael W. DuPont forwarding the plat submitted by Ms. Malone for the consideration of the Architectural Control Committee.

4. After the Commission's hearing on July 30, 1997, in response to the panel's request for a copy of the Architectural Control Committee application form which was being used at the time Ms. Malone submitted her request for approval of a fence, Metropolis submitted a copy of an application form to make exterior additions, change or alteration in the Laytonia community.

5. The Declaration of Covenants, Conditions and Restrictions for the Laytonia Homeowners' Association, which was recorded with the land records for Montgomery County on December 12, 1969, at Article V, "Architectural Control" says:

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

6. A letter dated October 23, 1995, was sent to Ms. Malone on behalf of the Board by Metropolis indicating that the fence she had installed was not the same as that described in the application she had submitted. Ms. Malone was invited to a meeting to discuss whether the fence she had installed should be permitted.

7. A letter dated November 15, 1995, was sent to Ms. Malone

on behalf of the Board by Metropolis indicating that there had been no response from her to the letter dated October 23, and thus the Board had scheduled a hearing on December 4, 1995, regarding the fence she had constructed.

8. By letter dated January 14, 1997, addressed to the Office of Consumer Affairs on behalf of the Laytonia Homeowners' Association, Metropolis reported that Ms. Malone did not respond to either of the letters described above. That letter also confirmed that Ms. Malone's original application for approval to construct a fence was approved by default but reiterates that the installed fence is not the design included in that application.

9. The Board was represented by Mr. Martin Lobb, President of Metropolis, and Ms. Smita Pai, an employee of Metropolis, at the hearing. Pictures of Ms. Malone's fence are in Commission Exhibit 1 at page 71 and the fence was described as "plank to plank" with top and bottom boards, and exceeding six feet in height. This is not the design of the fence submitted in Ms. Malone's application which the management company conceded was approved by default.

10. The management company representatives testified on behalf of the community that the design of the fence constructed by Ms. Malone is not in accordance the design of the fences approved for construction nor with those constructed in the community.

Conclusions of Law

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

1. The fence Ms. Malone constructed is not of the design which has been conceded to have been approved by default.

2. The evidence in the record does not support a conclusion that the design of the fence Ms. Malone actually constructed has been approved by action or default in accordance with Article V of the Covenants of the Laytonia Homeowners' Association.

ORDER

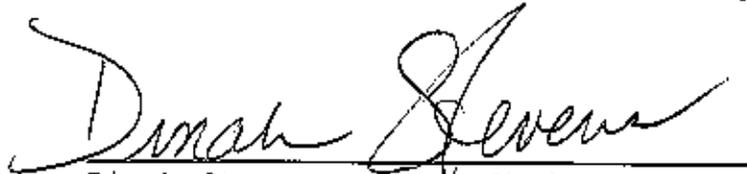
In view of the foregoing, based on the evidence of record, for the reasons set forth above, the Commission finds and orders:

Ms. Malone's fence is unauthorized and must be removed within forty-five (45) days of this Order or such longer period as may be

agreed to by the Laytonia Homeowners' Association Board of Directors.

The foregoing was concurred in by panel members Krampf, Price 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 the Maryland Rules of Procedure governing administrative appeals.

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

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities