

was thus no opportunity for mediation. The Commission accepted jurisdiction of the matter at its September 6, 2006 meeting and set the case for hearing on October 26, 2006.

It then transpired that counsel for Respondent entered an appearance with the Commission a few hours before the hearing was to begin, and requested a continuance. The hearing was rescheduled to February 28, 2007. At the hearing the Complainant presented witnesses and entered documents into evidence. Respondent cross-examined Complainant's witnesses but presented no testimony of his own.

FINDINGS OF FACT

1. The Complainant is the governing entity for the Castlegate townhouse community, which is created by a Declaration recorded on November 22, 1983 at Liber 6243, Folio 506, among the land records of Montgomery County, Maryland. Respondent owns a townhouse at 3769 Stepping Stone Lane in the Castlegate community.

2. Sometime in late 2005 or early 2006 Respondent had a deck constructed and attached to his townhouse. **Complainant Exhibit 2.** Respondent did not obtain prior approval from the Complainant before constructing the deck. Among other things, the deck was constructed of white vinyl.

3. Although the copy of Complainant's governing Declaration in the record is not signed, there is no dispute that it is the operable governing document. **Commission Exhibit 1 at 32-59.** It provides in pertinent part:

“... no ... structures shall be commenced [until the plans for such structure] shall have been submitted to and approved in writing ... by an Architectural and Environmental Control Committee.”

* * *

“The Board of Directors shall appoint an Architectural and Environmental Control Committee.” **Article VII, Sections 1 and 2 of the Declaration in Commission Exhibit 1 at page 45.**

4. Respondent's Board has not appointed an Architectural and Environmental Control Committee.

5. Complainant's Policies and Procedures Handbook provides that:

“Decks: Must be constructed of natural colored or pretreated lumber.”
Complainant Exhibit 1 at page 9.

6. Complainant's document entitled “Deck Specifications” provides that :

“... deck joists, flooring and railing must be constructed of either natural pressure treated lumber or composite material of a natural wood color (any non-wood material must be approved by the Board by submitting a sample of the material to be used.) Vinyl ... will not be allowed”

Commission Exhibit 1 at page 8 (attachment to February 26, 2006 letter from Abaris Realty to Robert Greenfield).

7. Complainant presented evidence that the deck constructed by Respondent did not comply with the Declaration, the Handbook, or the Deck Specifications. **Testimony of Lou Kramer, President of the Complainant; testimony of Sharon Seignious, Secretary of the Complainant; and Complainant Exhibit 3. See also Complainant’s Letter to Robert Greenfield of March 7, 2006: “all portions of the deck that are white or beige in color must be modified. ... Compliance can only be made by replacing those materials with natural wood or a synthetic material that looks like wood (brown in color).”**

8. While the deck was under construction, the Complainant wrote to Respondent notifying him on January 9, 2006 that he should stop work because the deck did not meet community standards. It wrote to him again on February 23, 2006, to notify him that the Board of Directors had met during that week, reviewed a recent letter and request from Respondent (neither this letter or request is in the record), and had voted to deny his request to permit the deck as constructed. This letter offered him a hearing in front of the Board on April 18, 2006.

9. Complainant’s Board of Directors held a hearing concerning Respondent’s deck on April 18, 2006. Respondent attended. No satisfactory resolution was reached. Complainant then filed a Complaint with the Commission on May 4, 2006.

CONCLUSIONS OF LAW

We apply the principle stated by the Court of Appeals in *Kirkley v. Seipelt*, 212 Md. 127, 133 (1956), in which the Court held that any refusal by a common ownership community of a request to make an architectural change "must be based on a reason that bears some relation to the other buildings or the general plan of development; and this refusal would have to be a reasonable determination made in good faith, and not high-handed, whimsical or captious in manner."

Respondent constructed his deck without obtaining approval or seeking a resolution of any dispute. The Commission looks with great disfavor on situations in which homeowners go ahead and act contrary to the community rules or to the instructions they have received from their association rather than

to bring the dispute to the Commission for resolution. The Commission exists to prevent such “self-help” measures.

Respondent argues that since Complainant did not appoint an Architectural and Environmental Control Committee as required by its Declaration, Complainant forfeited any ability to take action against a homeowner with respect to architectural matters. It takes but a moment’s reflection to see why this argument cannot succeed. First, such a result would mean that a homeowner could undertake architectural changes without any limitation, no matter how outrageous. Second, Complainant’s documents make clear that the Board of Directors acts as the final authority on architectural matters and that any decision of the architectural committee can be appealed to the Board. The facts also show that the Board did consider Respondent’s appeal of its denial. Third, nothing in the governing documents prevents the Board itself from acting as the architectural committee. Fourth, Respondent never presented such a contention to Complainant nor complained to Complainant about the Board’s authority. Fifth, as Complainant testified, and as the Panel can take judicial notice of, it is often difficult to get members of an association to participate in association governance. The problem of “free riding” is not unique to homeowner associations. **See for example, Mancur Olson, THE LOGIC OF COLLECTIVE ACTION (Harvard University Press 1971).**

ORDER

The Hearing Panel hereby judges and orders as follows:

1. The relief requested in the Complaint is granted. Within 30 days after the date of this Decision and Order, the Respondent shall submit an architectural change request to the Castlegate Association Board that will bring his deck into compliance with Complainant’s governing documents. Respondent shall have 90 days after the Board approves his request to comply with its instructions.

2. Complainant shall include a copy of this Decision in its files pertaining to Respondent’s property. It is up to Complainant as to how it may want to notify its homeowners of this decision.

3. Respondent shall refund to the Complainant the filing fee of \$50 within 30 days after the date of this Decision and Order.

Panel members Antoinette Negro and Jeffrey Williams concur in this Decision.

This Decision and Order may also be enforced by Montgomery County pursuant to Section 10B-13(i) of the Montgomery County Code.

.Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within 30 days after

the date of this Order, pursuant to the Maryland Rules of Procedures governing administrative appeals.

Robert S. Thorpe, Panel Chair

April 25, 2007