

**MONTGOMERY COUNTY, MARYLAND  
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

<b>VIRGINIA LICHTMAN</b>	)	
Complainant	)	
	)	
versus	)	<b>Case No. 50-11</b>
	)	<del>October 8, 2012</del>
<b>GRAND BEL MANOR CONDOMINIUMS</b>	)	<b>Nov. 21, 2012</b>
Respondents	)	

**DECISION AND ORDER**

Before Farrar, Gelfound, and Shontz

The above-entitled case came before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing and arguments on July 18, 2012, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code. The hearing panel has considered the testimony and evidence presented, and finds, determines, and orders as follows:

**BACKGROUND**

Virginia Lichtman (Complainant) filed a complaint with the Office of Consumer Protection for adjudication by the Commission on Common Ownership Communities against Grand Bel Manor Condominiums (Respondent). Complainant alleged the following:

1. Respondent did not properly conduct the two most recent elections for members of Respondent's Board of Directors.
2. Respondent did not properly adopt a rule requiring rearview mirror hangtags for parking, or otherwise has not consistently enforced the parking restrictions.

**FINDINGS OF FACT**

1. Complainant is a resident of a condominium as defined by Section 11-101 of the Real Property Article of the Code of Maryland, and Respondent is a condominium association, which has its covenants filed in the land records of Montgomery County, Maryland, and these covenants run with the land and bind all the lots referred to in the covenants, including the lot owned by Complainant.
2. Respondent's Board of Directors (Board) consists of five members, a president, vice-president, secretary, treasurer, and member-at-large, each elected to three-year terms that are staggered so not every Board member is elected the same year.

3. Residents of Respondent's association are allotted one vote per household in Board elections.
4. Multiple apparent irregularities occurred during the Respondent's 2010 and 2011 Board elections, summarized as follows:
  - a. In 2010, the condominium's engineer, on his own volition, obtained election proxies from the Property Manager's secretary and approached residents to solicit proxies. Both the Property Manager and Respondent's Board President directed that this activity be stopped. It was unclear based on testimony whether the engineer is an employee of the Property Manager or Respondent, but he is paid either directly or indirectly by the condominium association.
  - b. In 2010, the Board President oversaw the election, in which the position of president was not up for election. In keeping with previous practice, two residents who were not candidates counted the ballots. One of the ballot counters was the Board President's father-in-law. The witnesses were in dispute as to whether the ballot counters volunteered for the roles or were selected by the Board President.
  - c. In 2010, the Board President approached a resident about a possible forged proxy because the signature did not appear to be the resident's. The resident agreed and signed a new proxy. The resident later determined that another member of the resident's household had signed the resident's name to the first proxy.
  - d. The first attempt to hold the 2011 election did not reach a quorum of residents, and the election was rescheduled.
  - e. In 2011, Respondent's Property Manager oversaw the rescheduled election. During that election process, the Property Manager identified "quite a few" duplicate proxies and invalidated those with older dates. It was unclear based on testimony why the Property Manager presided over the election, but in 2011, the Board President was up for election, running against Complainant, and may have delegated election duties to the Property Manager in accordance with Article III, Section 3 of the bylaws. There were six candidates for 3 positions, and the Complainant was one of the unsuccessful candidates.
  - f. In 2011, there was a discrepancy between the number of proxies collected and the vote total stated in the minutes of the election meeting. Complainant introduced 105 ballots as an exhibit during the hearing, and Respondent introduced 108 ballots as an exhibit. The discrepancy in the vote count would not have changed the outcome of the election, and Complainant did not challenge the adoption of Respondent's Board's minutes that listed the vote totals at the time.

- g. There was a discrepancy between the number of ballots provided to Complainant by Respondent as part of discovery and the number of ballots Respondent introduced as an exhibit at the hearing.
  - h. Complainant did not dispute the election procedure or results through the Board, and she did not notify the Board of her complaints before filing with the CCOC. However, Respondent failed to raise these points before this hearing, and Respondent's Board does not have a written policy under which community members can raise complaints with the Board. Section 10B-9 of the Montgomery County Code requires complainants to exhaust all available association procedures or remedies, and CCOC policy requires respondents to object, if relevant, before the hearing on the grounds that a complainant did not exhaust the available association remedies.
5. Relevant facts associated with the parking rule and its enforcement are summarized as follows:
- a. Complainant's vehicle was towed from her reserved parking space because she forgot to place the hangtag on the rearview mirror.
  - b. All residents are required to display a hangtag to park at night, and at least one Board member has had his/her vehicle towed for violating the parking rule.
  - c. Respondent's engineer was assigned a reserved parking space but does not display a hangtag because he only works on the property "during the day" and is not a resident of the community.
  - d. Respondent's engineer also parks his motorcycle in the "boiler room" of the facilities because residents or their children had touched and sat on the motorcycle while it was in the parking lot.
  - e. The association's parking lot does not have designated handicapped spaces, and as of the hearing, Complainant had not requested one.
  - f. Vehicles not displaying a hangtag are only towed at the direction of a Board member or the resident to whom the parking space is assigned.
  - g. Reserved parking spaces are considered limited common elements.
  - h. Residents are only granted a hangtag if they are current on association fees.

### **CONCLUSIONS OF LAW**

1. Complainant and Respondent are proper parties to this dispute pursuant to Section 10B-8 of the Montgomery County Code, as it was in effect at the time this dispute was filed.

2. The hearing panel is generally disappointed with how Respondent conducts elections, but the hearing panel did not find evidence of improper acts that justify overturning the 2010 or 2011 election results. Respondent's engineer soliciting proxies and the discrepancies in proxy and ballot totals all speak to poor election management that, rightfully, raise questions. At first blush, a Board member's family member counting ballots raises the question of a possible conflict of interest, even though it is not an obvious conflict. The fact that Respondent was unable to resolve the discrepancy in ballot totals even when given an additional two weeks after this hearing further highlights the issue with election procedures. Nevertheless, the evidence provided was insufficient for the hearing panel to determine that the elections were invalid.
3. The hearing panel finds the parking rule was properly adopted and does not find evidence of arbitrary or malicious enforcement. However, Respondent would be well served to clarify and adopt procedures for towing to reduce the chances that a resident who is properly parked is towed.
4. The hearing panel is generally disappointed with the nature of communication between Complainant and Respondent. Based on the evidence provided, it does not appear that Complainant attempted to voice concerns about the elections at a Board meeting, nor did the Board attempt to resolve the disputes in this case before a hearing by requesting Complainant work through the Board's dispute resolution procedure. County law requires complainants to exhaust available association remedies before filing a complaint to be adjudicated by the CCOC, and Commission policy states that in the absence of an established association dispute resolution procedure, a complainant must give notice to the association of the dispute and to allow the association a reasonable amount of time to respond. CCOC policy also allows respondents to object in advance of the hearing if a complainant has not exhausted available remedies or provided notice. In this case, Complainant does not appear to have exhausted all available remedies through Respondent, and at the same time, Respondent failed to note this and object on these grounds before the hearing. Further, it does not appear that Respondent has an established process for addressing disputes such as those raised in this case. Nevertheless, Respondent had sufficient notice of the dispute after Complainant filed with the CCOC to have raised an objection on the grounds that Complainant did not exhaust available remedies. By not objecting before the hearing, Respondent effectively waived its right to assert that Complainant did not exhaust available remedies. The hearing panel finds that the interests of justice were served by proceeding with the hearing rather than by dismissing the complaint or by postponing the hearing and the ultimate resolution of the disputes. The hearing panel strongly urges the Respondent to modify its practices in the future and require residents to work through an established dispute resolution process before proceeding to a hearing.
5. Article II, Section 7(g) of the Respondent's bylaws require electing inspectors of elections. There was no indication that this was done in the 2011 election when the

Property Manager oversaw the election and invalidated some proxies. On the facts before us, we conclude that the Respondent violated this Section.

6. A majority of the hearing panel does not find sufficient justification to award Respondent any attorney fees under Section 10B-13(d) of the Montgomery County Code, which allows awarding attorney fees in cases where a party maintained a frivolous dispute, unreasonably refused to accept mediation, or substantially delayed dispute resolution process without good cause, or where association documents so require awarding attorney fees. Respondent did not cite any portion of the association documents as requiring award of attorney fees. Therefore, Respondent needed to prove Complainant's behavior met another standard under 10B-13(d), and Respondent failed to do so. Respondent's election procedures are sloppy at best, leaving it open to challenges such as the one presented in this case, and we also find that Respondent violated one of its own rules in the 2011 elections, so her complaints were not entirely unfounded. While Complainant did not work through the Board's dispute resolution process, the Board did not raise this fact until this hearing. Furthermore, the hearing panel may have been able to award some amount of attorney fees related to the parking allegation because there were some indications that the claim could have been determined to be frivolous or that Complainant delayed the resolution of the dispute. However, it is impossible for the hearing panel to quantify how much of the attorney fees is the result of the election dispute and how much is the result of the parking dispute. Therefore, the panel cannot award any attorney fees to Respondent.
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### **DECISION AND ORDER**

1. Based on the foregoing, the hearing panel orders the following:
  - a. The results of Respondent's 2010 and 2011 election stand, and Respondent may continue to enforce its parking rules.
  - b. Respondent must, within sixty (60) days from the date of this decision, initiate the process of creating a clear dispute resolution process for addressing disputes over election procedures, election results, changes to association rules, and enforcement of association rules.
  - c. Respondent must comply with all of its bylaws regarding conduct of elections, including electing inspectors of elections, in all future elections, barring subsequent change to the bylaws.
2. Commissioner Farrar concurs in this decision, and Commissioner Gelfound concurs with paragraphs 1 through 4 of the Conclusions of Law and dissents from the majority's conclusion regarding attorney fees.

Any person aggrieved by this decision may file an appeal with the Circuit Court for Montgomery County, Maryland, within 30 days after the date of this decision, pursuant to the Maryland Rules for judicial review of administrative agency decisions.

A handwritten signature in black ink that reads "Douglas Shontz". The signature is written in a cursive style with a large initial "D".

Douglas Shontz, Panel Chair  
Commission on Common Ownership Communities