

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

Rose Hill Falls Community Association,	:	
	:	
Complainant	:	
	:	Case No. 70-12
vs.	:	
	:	August 30, 2013
Miriam Perkins,	:	Before McCabe, Stone and Wilson
	:	
Respondent	:	
	:	

**DECISION AND ORDER**

This case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended. The Hearing Panel conducted a hearing on June 19, 2013. The Hearing Panel considered the testimony and evidence of record and finds, concludes and orders as follows:

**SUMMARY OF THE PROCEEDINGS**

A. Parties

This is a complaint brought by a homeowners association, Rose Hill Falls Community Association ("Rose Hill") Complainant against the owner of a townhouse in the association, Miriam Perkins ("Ms. Perkins") Respondent. Rose Hill Falls is a homeowners association organized under the laws of Maryland.

The issue presented involves the application of a provision of the Declaration of Covenants, Conditions and Restrictions for the Rose Hill Falls Community Association recorded

in the Land Records that provides:

“(d) No burning of trash shall be permitted on any Lot. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made at such place on the Lot so as to provide access to persons making such pickup. At all other times trash containers shall be stored so that they cannot be seen from any public way or from any other Lot.” Commission Exhibit 1, Page 31:  
Declaration of Covenants, Conditions and Restrictions, Article VII, Section 7(d).”

Ms. Perkins keeps her trash containers (trash containers and recycle bins) in an area at the front of her property to the left side of her driveway as one faces her dwelling unit. She keeps her smaller trash container in her garage. Ms. Perkins lives in a townhouse. There are a number of townhouses in Rose Hill. However there are only three townhouses with garages that are 10 feet in width and Ms. Perkins and her two neighbors live in those three townhouses.

After Ms. Perkins was cited for a violation of Article VII, Section 7(d), she applied to Rose Hill Falls for permission to construct an enclosure for her trash containers in the area where she was keeping them. The Rose Hill Falls Architectural and Environmental Preservation Committee denied her application. Commission Exhibit 1, Page 8. Thereafter Ms. Perkins ordered custom made covers and covered her trash containers with those covers in the same location at the front of her townhouse.

The position of Rose Hill is that the trash containers are not stored so that they cannot be seen from any public way or from any other Lot. The reasoning is that one can see something covered by the custom made covers and it is generally known that that something is the trash containers. Ms. Perkins' position is that once the coverings are placed over the trash containers and recycle bins they cannot be seen.

Rose Hill testified through its Property Manager, Glenn Loveland, that the covenants are actively enforced and that property owners are reminded on a regular basis about the requirements of the covenants, in particular of the requirement that trash containers be stored so that they cannot be seen from any public way or from any other Lot. Rose Hill conducts regular drive throughs and walk-throughs; it sends letters and notices regarding this particular provision. It also reminds property owners of this provision in its newsletters. Complainant's Exhibit 1. The parties brought only one outstanding violation of the covenant to the attention of the panel, other than Ms. Perkins' alleged violation. Rose Hill testified with respect to that violation, 4 Mohave Court, that the violation had been noted and a letter had been sent to the property after the commencement of this case. Ms. Perkins presented evidence that there are several properties where the trash containers are visible from the public way or from other Lots and she presented photographs to substantiate her evidence. Some of the properties were single family detached dwellings and others were townhouses. Ms. Perkins also stated that she had kept her trash containers in the location where she presently keeps them for the twenty years that she has lived in the community. This issue did not arise, according to her and according to Rose Hill, until there were complaints by other unit owners about Ms. Perkins. Rose Hill investigated the complaints and then pursued this alleged violation.

Ms. Perkins also testified that due to the size of her garage it would be extremely difficult if not impossible to keep her trash containers and her car in the garage at the same time. This would be true, she said, even though Rockville offers smaller trash containers than the ones she is currently using.

#### **FINDINGS OF FACT**

1. Rose Hill is a homeowners association organized under and subject to the laws of Maryland. It has restrictive covenants recorded in the Land Records. There is no evidence to indicate that those covenants are not valid and enforceable.

2. Miriam Perkins is a homeowner within the community of Rose Hill subject to the recorded covenants, in particular subject to the provision at issue in this case.

3. Ms. Perkins maintains and has maintained her trash containers at the front of her property to the side of her driveway for the last twenty years. They could be seen from a public way or from any other lot when they were not covered as they are presently and when they were not screened by plantings which was the case at a former time but is not now the case.

4. When the trash containers are covered by the fitted covers purchased by Ms. Perkins, it is not possible to determine what is under the covers. A logical conclusion is that there are trash containers under the covers. However Ms. Perkins also maintained a grill (this may be a violation which is not the subject of these proceedings) under those covers. In any event it was not possible to determine precisely what was covered but only to surmise.

5. The covers are carefully fitted, they are of a green color that appears from the photographs submitted in the record by both parties to be harmonious with the landscaping at the front of Ms. Perkins' property.

#### CONCLUSIONS OF LAW

Whether the panel applies the business judgment rule under *Reiner v. Ehrlich*, 212 Md. App. 142 (2013) and *Black v. Fox Hill North*, 90 Md. App 75 (1992), or the reasonableness test pursuant to the decision of the Court of Appeals in *Kirkley v. Siepelt*, 212 Md. 127 (1957), it must first answer the threshold question of authority. That is, what is the authority of the

association under the restrictive covenant?

The Declaration of Covenants of Rose Hill is enforceable as it is written. The question however is, what does it mean to store trash containers so that they “cannot be seen from any public way or from any other Lot”. Rose Hill can only regulate trash containers that can be seen from any public way or from any other Lot.

Both parties agree that even if the trash containers are covered, an observer sees something. Both parties also agreed that when the trash containers are covered the observer can surmise what is under them but he/she does not see what is under them and therefore does not know. If the trash containers in fact cannot be seen, then that should end the inquiry.

The panel understands and agrees with the desire of Rose Hill to enforce its restrictive covenants. The panel also understands that a precedent may be set by allowing trash containers that are covered to be placed at the fronts of properties. Some trash containers in the community are not out of site, based upon the photographic evidence of trash containers in open garages, trash containers in rear yards, and in the side yards of properties. Out of sight means completely out of sight; once an item is out of sight the covenant is not violated. On the other hand if a trash container is not out of sight, no matter where it is, there is a violation.

The panel therefore concludes that so long as Ms. Perkins covers the trash containers, or whatever else she has in the location to the side of her driveway at the front of her property, with the custom fitted covers that she is using now then she is not in violation of Article VII, Section 7(d) of the Declaration of Covenants. The association may pass a guideline to address the nature and style of coverings, but there is none in effect to date. The only guideline available on this issue repeats the provision of the covenants that “trash cans must be stored out of sight”.

Commission Exhibit 1 at Page 90.

Neither party requested attorney's fees and the panel does not see a basis for awarding attorney's fees to either party. This action was brought in good faith and the parties both conducted the hearing in a professional manner.

### ORDER

The panel therefore Orders the following:

1. The Complaint of Rose Hill Falls Community Association is dismissed.
2. Ms. Perkins may keep her trash containers at the location where they are currently kept at the front of her property so long as they are covered by the custom fitted covers she has on them now or similar covers in the future.
3. This decision applies only to the specific facts of this case. The panel is not saying and does not intend to say that placing a fitted custom made cover on an item, no matter what that item is or what its shape or size may be, automatically complies with provisions of the Declaration of Covenants other than under the facts presented here.

The decision of the Panel was unanimous.

Any party aggrieved by the decision of the Panel may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this decision, pursuant to the Maryland Rules of Procedures governing administrative appeals.

  
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John F. McCabe, Jr., Panel Chair