

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

In the matter of

Francis V. Prescott	x	
5340 Norbeck Road	x	
Rockville, MD 20853,	x	
		Complainant,
v.	x	
	x	Case No. 774-O
	x	May 16, 2006
Manor Towne Mutual Homes	x	
c/o Julie Dymowski, Esq.	x	
Whiteford, Taylor and Preston	x	
1025 Connecticut Ave., N.W.	x	
Washington, D.C. 20036,	x	
		Respondent.
	x	

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

Background

In a complaint dated May 16, 2005, filed with the Office of Common Ownership Communities, Dr. Francis V. Prescott (Complainant) initiated this case against Manor Towne Mutual Homes (Respondent or Corporation) requesting the Commission to require the respondent to reimburse him for electrical repairs, and costs incurred allegedly due to the fault of respondent's contractor employee. He also wanted an update of his equity position which took into account the improvements he had made to the unit and approval for a sub-tenancy.

Manor Towne responded by letter dated July 21, 2005, indicating that they are willing to reimburse Dr. Prescott for the electrical repair if they could arrange to inspect the work. Manor Towne disputed the Commission's jurisdiction regarding the costs allegedly due to their contractor's error. On the equity position and the sub-tenancy, Manor Towne responded that both would be addressed in accordance with the community's Occupancy Agreement

Inasmuch 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) of the Montgomery County Code on December 7, 2005 and the Commission accepted jurisdiction. A public hearing was held on March 29, 2006.

Dr. Prescott had added to his complaint a request that the cost of recovering his car from the tow company be included by a letter to the Office dated July 5, 2005. When he came to the hearing he had a long list of other issues that he wanted addressed by the panel.

Findings of Fact

Mr. David Weil, President of Weil Enterprises, has been the managing agent for Manor Towne Mutual Homes for 11 years. Mr. Weil testified for background that Manor Towne was jointly developed by the Montgomery County Housing Opportunities Commission (HOC) and the United States Department of Housing and Urban Development (HUD). The HOC owns the land on which the development is built and a HUD Section 236 loan was provided for construction. The development is exempt from property taxes, and low or negative interest mortgage rates are available for HUD mortgages in order to maintain affordability for low and moderate income home buyers. He explained that improvements to the units proposed by owners, that must get approval of the Corporation under the Occupancy Agreement, are reviewed in part to assure that the value of the improvements is not going to affect the affordability of the unit. He also testified that the review policy for subletting units is that application for a sublet should only be approved when it is for a definite period of reasonable duration. The reason for this policy is so that people who qualify for ownership of affordable housing will be the occupants of this housing.

Dr. Prescott, in presenting his case, testified on all of the issues he had raised in the letters submitted to the Office of Common Ownership Communities. He explained that he had arranged to have electrical repairs done that are the responsibility of Manor Towne and that he had been asking for reimbursement in the amount of \$475 for which he introduced the invoice as Exhibit C-4. Mr. David Weil, managing agent for Manor Towne agreed that they were willing to reimburse Dr. Prescott but that they require an inspection of repairs before making such reimbursement. Mr. Weil testified that he had arranged to meet Dr. Prescott at his unit a number of times over the past several years and had appointments cancelled frequently. As managing agent he said he wanted to have the site manager, Ms Connie Orona, present at any inspection. Dr. Prescott has indicated that he does not want Ms Orona in his unit. Thus, there appears to be an impasse on inspecting the repair so that the cost can be reimbursed.

The Manor Towne Occupancy Agreement at Article 11, "Repairs" provides that the Manor Towne Corporation has the right to enter the dwelling unit in order to effect necessary repairs, maintenance, and replacements and for such purposes by employees at any reasonable hour of the day. Additionally, at Article 16, Members agree that the

officers and employees of the Corporation shall have the right to enter the dwelling unit and make inspections at any reasonable hour of the day.

Dr. Prescott testified regarding reimbursement for the increased electrical bills that in April 2005 he discovered the heat pump for his unit had been turned off, which would have been a reason for the increase in his electrical bills for the previous winter. He alleged that the heat pump had been turned off by the person from the company that provides maintenance services for the community, on the previous service call. He is asking that the community be ordered to pay for the increased cost of heating his unit. He offered as evidence a bill from the electrical company that was a notice of termination of services. There was insufficient evidence to calculate what increase might have been caused by having the heat pump turned off.

The respondent called Matthew Colella from Central Plumbing, Heating and Air Conditioning who testified that his company had been providing service and maintenance for the heating and air conditioning systems at Manor Towne for ten years. There was unrebutted testimony that this company has been the exclusive provider of these services to this community. Mr. Colella testified that he had serviced the systems on April 20, 2005, and found the heat pump lever in the off position. He said that Dr. Prescott had said that he turned it off because he didn't like the noise when they were in the backyard. Dr. Prescott and his wife disputed that testimony. Mr. Colella testified that the most recent previous visit by Central to Manor Towne had been on December 17, 2003. He also said that with the power turned off the air conditioning would not work at all. Manor Towne submitted as exhibit R-1 a copy of a Central invoice prepared at Ms Orona's request by Mr. Colella, dated June 26, 2005, on which he had noted that when he performed the service check on April 20th at the outside heat pump A.C. unit at the unit at 5340, he had discovered the power disconnect switch was in the off position. He informed the tenant of that fact and was told that "he knew that it was off and that he had turned it off because it was too noisy when he sat outside in the backyard."

Regarding his equity position in his unit, Dr. Prescott is asking the Commission to require that the respondent reassess his position to include the upgrades and enhancements he has made in his unit. At Article 12 of the Manor Towne Occupancy Agreement, it is stipulated that Members may not, without the written consent of the Corporation, make any structural alterations in the premises or remove any additions, improvements, or fixtures from the premises. Mr. Weil testified that Dr. Prescott did not request permission for the alterations and improvements that he made. Dr. Prescott did not testify otherwise. The Corporation By-laws at Section 9 (f) addresses the "Transfer Value" of the Membership. Mr. Weil testified, and it was not disputed, that the Corporation has provided equity position updates to Dr. Prescott. The dispute is that Dr. Prescott wants an equity update that takes into account the upgrades and enhancements.

In his letter complaint to the Office of Common Ownership Communities dated May 15, 2005, Dr. Prescott included reference to his desire to sublet his unit to a friend because he might be relocating out of Rockville for a short period of time. As a result of this letter, Mr. Weil told Dr. Prescott to request approval to sublet his unit. Dr. Prescott

attended the July 19, 2005 meeting of the Manor Towne Board of Directors in support of his application. At the time of the hearing Dr. Prescott testified that he had received no response to his request for approval to sublet his unit. Mr. Weil testified that he had sent the letter denying approval twice by United States Postal Service certified mail and it had been returned unclaimed. He had then sent the letter by e-mail to Dr. Prescott. Testimony indicated that Dr. Prescott and his wife had moved out of the unit about the date that the letter was sent and that the tenants had not moved in until after both letters had been returned.

The Manor Towne Occupancy Agreement at Article 7, "No Subletting Without Consent of Corporation," says, in pertinent part, "The Member hereby agrees not to...sublet his dwelling unit without the written consent of the Corporation".

A copy of the letter from Manor Towne to Dr. Prescott, dated July 20, 2005, responding to his application to sublet his unit was introduced at the hearing as Exhibit R-2. The Board of Directors denied Dr. Prescott's application on the basis that indefinite occupancy of a unit by a guest is inconsistent with the purposes that Manor Towne was developed to achieve.

The final issue Dr. Prescott raised prior to the hearing was the charges for reclaiming his wife's car from the towing company. Dr. Prescott testified that they probably left the parking tag for his wife's car in a car that they sold when they bought the new car and that it wasn't in the car that was towed. He argued that the signage in the community did not meet the standards required by the county to provide notice that an unauthorized car would be towed. However, he did not dispute that he knew he needed a tag on the visor to park even in the spaces authorized for his unit. Mr. Weil testified that the agreement the Corporation has with the towing company requires that untagged cars in the parking lot after 11:00 PM are to be towed. Exhibit C-2 is an invoice for \$114.00, on which it is indicated that on July 1, 2005, the towing company impounded a 2003 Toyota Matrix for which the charge includes storage for one day. Exhibit C-3 is similar but shows storage for six days and is for \$214.00. Following these two events Dr. Prescott arranged to get another parking tag from Ms Orona.

A copy of the Manor Towne "Parking Permit" policy dated September 25, 2001 was included in Commission Exhibit 1. It is clearly stated that the parking regulations will be enforced by having vehicles without permits towed at the owner's expense.

Discussion

At the hearing, Dr. Prescott stated that there was a rodent nest in the back yard of his unit that required attention urgently. Manor Towne assured him and the Panel that it would be attended to. Copies of reports from an extermination company were submitted to the Office of Common Ownership Communities indicating that the back yard of Dr. Prescott's unit had been checked on March 30 and April 5, 2006. On both occasions there was no evidence of activity in the rat burrows. On the second occasion they also treated the outside of the unit for ants.

Dr. Prescott had a number of other issues he wished to present at the hearing. The Panel Chair advised him that he would need to prepare a new complaint for the other issues so that Manor Towne had notice and an opportunity to prepare a response before the Commission considered whether it had jurisdiction to consider those issues.

Conclusions of Law

Manor Towne has agreed to reimburse Dr. Prescott for the electrical repairs in the amount of \$475 but have a policy of requiring an inspection of the repairs before making payment. Manor Towne has the right to enter the unit for such inspection but have foregone that right in consideration of Dr. Prescott's concerns about the circumstances under which people enter his unit. There has been no evidence of violation of any provision of law or community regulation. Dr. Prescott simply needs to make an arrangement for an inspection that is satisfactory to all concerned.

The issue raised by Dr. Prescott regarding the potential that a contractor for the Corporation may have caused an increase in his electrical bills by performing without due care is outside the definition of "Disputes" in Section 10B-8 (3) of the Montgomery County Code under which the jurisdiction of the Commission is described and, thus, is not within the jurisdiction of the Commission to decide.

The evidence in the record indicates that Manor Towne is following the provisions of the Occupancy Agreement in evaluating Dr. Prescott's equity position.

Dr. Prescott was required to have written permission before he lent or sublet his unit to another family. He did not have permission. Dr. Prescott's tenants have been in his unit for approximately nine months at the sufferance of the Corporation. The Corporation has not asked the Commission to enforce their rules, so it is not necessary to determine whether there would be jurisdiction to do so.

The towing of Dr. Prescott's wife's car is within the parking policy of the community of which Dr. Prescott was aware. Manor Towne does not owe Dr. Prescott reimbursement for towing and storage of his wife's car.

ORDER

Based on the evidence of record, for the reasons stated above, it is ordered that Manor Towne reimburse Dr. Prescott for the cost of electrical repairs he had made which would have been the responsibility of Manor Towne at such time as a satisfactory inspection is completed. For the other issues in Dr. Prescott's complaint, to the extent the Commission has jurisdiction, they are denied.

The foregoing is concurred in by Commissioners Steven Maloney and Vicki Vergagni.

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, under the Maryland Rules of Procedure.

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities