

MONTGOMERY COUNTY, STATE OF MARYLAND

HAILIE YESHANEH, : COMMISSION ON COMMON
 : OWNERSHIP COMMUNITIES
 Complainant, :
 : Case No. 79-07
 v. :
 : Panel Hearing Date: September 25, 2008
REDLAND CROSSING HOMEOWNERS :
ASSOCIATION, :
 :
 Respondent. : Decision Issued: December 3, 2008
 : (Panel: Koenig, Negro, Whelan)
 :
 Panel Chair Memorandum By: Ursula A. Koenig :

MEMORANDUM DECISION AND ORDER

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland (“Commission”), for hearing pursuant to Chapter 10B of the Montgomery County Code 2004, as amended. The duly appointed Hearing Panel considered the testimony and evidence of record and finds, determines and orders as follows:

PROCEDURAL BACKGROUND

On December 12, 2007 the Complainant, Hailie Yeshaneh (“Yeshaneh”), filed a complaint with the Commission related to the towing of his vehicle from the common area parking lot located within the Redland Crossing Homeowners Association (“Redland Crossing” or “Association”). Yeshaneh challenged the validity of the Association's determination that his taxicab was a commercial vehicle and could not be parked in the Association's parking lot. He requested that the Commission permit him to park his taxicab in the community upon removal of all signs on the car indicating that it was a taxicab. Redland Crossing, by its agent, The Management Group Associates (“Management”), responded to the Commission by letter dated

December 18, 2007 stating that Yeshaneh had been given notice of the prohibition against parking a commercial vehicle on the property, that he had been afforded a hearing with the Association's Board of Directors, and that despite being advised that his appeal was denied, he had failed to remove his taxicab from the Association's parking lot. The Respondent declined mediation and the Commission accepted jurisdiction of the dispute on June 4, 2008 and the matter was scheduled for hearing before this panel on September 25, 2008.

FINDINGS OF FACT

1. Complainant Yeshaneh is an owner of a townhome located within the Redland Crossing subdivision and is bound by the Association's governing documents, including the Declaration of Covenants and Restrictions (the "Declaration"), By-laws and Rules and Regulations. He purchased the townhome approximately 8 years ago and resides there with his family.

2. Redland Crossing is a Maryland homeowners association within the meaning of the Maryland Homeowners Association Act, Real Property, Section 11B-101, *et. seq.*, Annotated Code of Maryland. Redland Crossing employs a professional management company.

3. As of June 1, 2007, Yeshaneh owned a vehicle that he parked in the Redland Crossing parking lot. The vehicle had signage on the exterior indicating that it is a taxi, including a taxi sign on top of the car, and Washington, D.C. license plates which indicate that the car is "For Hire." Yeshaneh uses the vehicle as a taxicab on the weekends.

4. On June 21, 2007, Management placed an orange sticker on Yeshaneh's car advising him that commercial vehicles were not permitted to park on Redland Crossing property and that it would be towed if he did not remove it from the property within thirty (30) days.

5. In an attempt to comply with Management's request, Yeshaneh covered up the signs on the vehicle and removed the taxi sign from the top of the car, but did not remove the license plates.

6. On July 19, 2007, Management saw Yeshaneh's vehicle parked in the Redland Crossing parking lot. Another sticker was placed on the car advising Yeshaneh that the car had to be removed in 48 hours or it would be towed from the property.

7. Yeshaneh contacted Management and was advised to send in his request for an appeal and he would be scheduled to attend a hearing with the Association's Board of Directors. Copies of the Association's rules related to parking were provided to Yeshaneh as well.

8. On August 22, 2007, Yeshaneh met with the Board of Directors. Yeshaneh asked the Board for permission to park in the Redland Crossing parking lot since he had covered up the signage and the car did not look like a commercial vehicle other than the For Hire license plates.

9. The Board denied Yeshaneh's request and Management sent him a letter on September 5, 2007 advising him of the same. The letter stated that the "For Hire" tags had to be removed from the car or the car had to be removed from the Redland Crossing parking lot within thirty (30) days, otherwise it would be towed.

10. Yeshaneh did not receive the letter and continued to park his car in the Redland Crossing parking lot until it was towed on November 13, 2007.

11. Yeshaneh has not parked in Redland Crossing since November 13, 2007.

12. Since 1986, the Association has had a policy prohibiting commercial vehicles on the property. Section 2.4 of the policy states:

The following vehicles are specifically prohibited from parking on the Association's property except when making business deliveries or providing commercial services to residents.

a. Commercial Vehicles:

(1) Any vehicles with any type of writing or printing (letters, pictures, insignia, etc.) other than that provided by the manufacturer of any kind, type of description.

...
(3) Any vehicle carrying “commercial” or “livery” or “taxi” license plates.

13. Yeshaneh admitted at the hearing that he received a large amount of documents when he purchased his home and that it may have included a copy of these parking rules.

CONCLUSION OF LAW

The Panel agrees with the Respondent that Yeshaneh’s car violates the Association’s prohibition against the parking of commercial vehicles on Redland Crossing property. While Yeshaneh took steps to mask the lettering and signage on the vehicle, the license plates violate the express provisions of the rules.

There was no evidence presented that the towing of Yeshaneh’s vehicle was arbitrary, capricious, or a product of selective enforcement. In fact, Management testified that there were other cars towed in the community for rules violations in the past.

However, the Panel was very concerned that there was no written information given to Yeshaneh by the Association or Management regarding his right to file a dispute with the Commission once the Association was aware that the dispute existed. Although the manager testified that he verbally advised Yeshaneh of his right to file with the Commission, this detail was not provided in Management’s written response to the complaint and Yeshaneh testified that Management did not give him this information. The Complainant indicated that he located information about the Commission on his own. Accordingly, the panel finds that the Respondent violated the notice requirements of Sections 10B-9(d) and (e) of the Montgomery County Code.

ORDER

1. The Complainant's request for relief is denied, and the Complainant, Hailie Yeshaneh, is prohibited from parking his vehicle on the common area of the Respondent, Redland Crossing Homeowners Association, unless and until the vehicle complies with the Respondent's governing documents, including the rules and regulations related to parking on the Association's property.

2. The Respondent must henceforth comply with the provisions of Sections 10B-9(d) and (e) of the Montgomery County Code and may not tow vehicles for at least fourteen days after a Board decision is made to tow a vehicle. The Respondent must provide a copy of its revised notice forms to the Panel within 30 days of the date of this decision.

Commissioners Negro and Whelan concurred in this opinion.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days of the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals

Ursula A. Koenig, Panel Chair
December 3, 2008