

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland
October 4, 2001

In the Matter of	:	
	:	
Potomac Farms	:	
Homeowners Association	:	
	:	Case No. 509-G
Complainant,	:	
	:	
vs.	:	
	:	
	:	
Azim Vaiya	:	
Susan Vaiya	:	
	:	
Respondents.	:	

Decision and Order

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing, on August 8, 2001, 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 duly appointed hearing Panel having considered the testimony and evidence of record, finds, determines and orders as follows:

On November 29, 2000, Potomac Farms Homeowners Association (hereinafter the "Complainant" or "Association") filed a formal dispute with the Office of Common Ownership Communities against Azim Vaiya and Susan Vaiya (hereinafter the "Respondents"). The Complainant alleged that the Respondents failed to maintain their lot in violation of the Association governing documents. Specifically, the Complainant alleged that Respondents allowed loose boards and peeling paint on their fence, peeling paint on dormers and window trim, rotted wood on the roof vent and rotted landscape timbers and grass trimming along the fence, walk and driveway.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities and the Commission voted that it was a matter within the Commission's jurisdiction and the hearing date was scheduled.

Findings of Fact

Based on the testimony and evidence of record, the Panel makes the following findings:

1. Azim Vaiya and Susan Vaiya are the owners of a single-family detached home within the Potomac Farms Homeowners Association ("Association") known as 11401 Frances Green Drive, Gaithersburg, Maryland 20878 ("Lot").
2. The Association was created by Articles of Incorporation and a Declaration of Covenants, Conditions and Restrictions ("Declaration") which was recorded among the land records of Montgomery County, Maryland and which encumber and bind the Respondent's Lot.
3. Article VIII, Section 10 of the Declaration provides the Board of Directors of the Association with the power to adopt rules and regulations.
4. In 1998, the Association adopted Architectural Guidelines and Review Procedures ("Rules") and Article IV of such Rules specifies that owners are responsible for the maintenance of fences including "...peeling paint..." and "...broken fences or missing sections..."
5. The parties agreed that of the original violations, the only remaining violations in dispute and set forth in the original Complaint concerned the Respondents' picket fence.
6. The Complainant offered testimony and photographs allegedly showing the fence on September 5, 2001, Complainant, through its property manager, alleged that the fence was in general need of re-painting and that pickets on the fence were not evenly spaced (either vertically or horizontally) as a result of the failure of the Respondents to replace damaged pickets or by improperly reattaching pickets after they had been removed.
7. Respondents offered testimony that they painted the fence on a regular basis and that some degradation of the painted surfaces will inevitably occur as a result of maintenance of the yard in and around the fence
8. Respondents further testified that individual pickets have never been removed and not replaced since Respondents purchased the home and that the pickets which do fall off are replaced in the same locations where previously installed.

Conclusions of Law

The evidence, including the photographs submitted by the Complainant, appear to support the Complainant's claim that the Respondents' picket fence is in need of re-painting.

The evidence does not support the allegation that the pickets are improperly spaced, either vertically or horizontally, and even had the spacing of the pickets been at issue, the Complainant did not present any evidence that the Rules or covenants of the Association regulate picket spacing. Even assuming, *arguendo*, that control of picket spacing was an implied right of the Association,

there was no mention of spacing in the original complaint nor in any of the communications which preceded the filing of the Complaint.

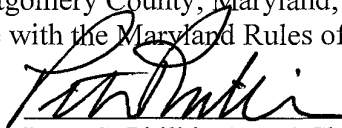
No evidence was presented by the Complainant as to the legal fees or costs incurred and therefore no award legal fees or costs shall be awarded.

Order

In view of the foregoing, and based on the evidence of record, it is, on this 18th day of October, 2001, hereby Ordered by the Commission Panel that the Respondents must paint the picket fence not later than December 15, 2001.

The foregoing was concurred in by panel members Philbin, Wertlieb and Perkins.

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 in accordance with the Maryland Rules of Procedure.



Peter S. Philbin, Panel Chair
Commission on Common
Ownership Communities