

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

In the Matter of:

Debra L. Saling  
Danny E. Saling  
33 Ericsson Road  
Cabin John, MD 20818

Complainants

vs.

Cabin John Gardens, Inc.  
c/o Shonita N. Mason, Esq.,  
Nagle & Zaller, P.C.  
10320 Little Patuxent Parkway, Suite 1200  
Columbia, MD 21044

Respondent.

Case No.: 572-O

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on January 29, 2003 pursuant to Section 10B-5, 10B-9(a), 10B-10, 10B-12, and 10B-13 of the Montgomery County Code, and the duly appointed hearing panel having considered the testimony and evidence of record, finds, determines and orders as follows:

BACKGROUND

Debra Saling and Danny Saling ("Complainants") own shares in the Cabin John Gardens, Inc., ("Respondent"). The Complainants reside in a single-family unit at 33

Ericsson Road, which is a residential unit within the Cabin John Garden, Inc. The Association is a residential co-operative that was created in the 1940 or 50's.

In 1993, the Salings began to have problems with their sewer system and during the course of the next almost nine (9) years, they were in contact with the Association. Although there were a number of on-going disputes between the parties, the only issues to be decided by the Commission were articulated in Maureen Harzinski's letter of November 8, 2002 were as follows:

1. Whether the Respondent took appropriate steps to correct the sewer line problems?
2. Whether the Respondent assessed Complainants unnecessary legal fees?

The correspondences sent by the Complainants were ongoing and during the course of this 9-year period, the Respondent made a number of "quick fix" repairs to the sewer line. The Respondents were not very responsive to the Complainants' request and continued to allow the Complainants to suffer from the day to day problems with backed-up sewers.

The Complainants filed a Complaint with the Commission on or about May 15, 2002. In light of the undisputed evidence that the work was completed by May of 2002, the only remaining issue was for attorney fees. There was no request and/or any evidence that the Respondent assessed legal fees against the Complainants, (contrary to the Commission's letter of November 8, 2002) but rather a request for attorney fees incurred by Complainants in a separate piece of litigation between the parties.

In that the dispute was not resolved through mediation, and all procedures and remedies provided in the Association's documents were exhausted, the matter was referred to the CCOC for action pursuant to Section 10B-11(f) of the Montgomery County Code. This matter was heard on January 29, 2002 in a hearing before a panel consisting of Commissioner Arlene Perkins and Panel Chair Jeffrey Van Grack.<sup>1</sup>

#### ISSUES

1. Whether the Board of Directors acted within its duties in properly and efficiently repairing the sewer line that served the Complainants' home?
2. Whether the Respondent should be awarded attorney fees that were incurred in a related matter?

#### APPLICABLE DOCUMENTS AND LAW

The Membership Agreement between Cabin John Gardens, Inc. and the Salings provides as follows:

Paragraph 17. Powers and Duties of Corporation. The Corporation shall:

- a. Provide the necessary management and administration of the Housing Project.
- b. Set up such reserves as the Board of Directors may deem necessary, such as reserves for vacancy and collection losses and repairs maintenance and replacement.
- c. Provide and pay for all necessary repairs, maintenance, and replacements of the community house and other community property and facilities of the Housing Project, not including the Member's dwelling unit.
- d. So long as the sewer and water lines servicing the project and each dwelling therein are the property of the Corporation, the Corporation shall provide and pay for all necessary repairs, maintenance, and replacements of such lines which are not the responsibility of the Member as provided in Paragraph 19 hereof. (Emphasis added)

<sup>1</sup> The third member of the panel Barry Wertlieb was absent. Both the Complaint and Respondent affirmatively agreed off the record to be bound by the determination of the remaining panel members.

Paragraph 18 Repairs, Maintenance and Replacements by Member. The Member shall make and perform all necessary interior and exterior repairs, maintenance, and replacements of the dwelling unit covered by this Agreement and the grounds immediately surrounding the same (the boundaries of which shall be determined by the Corporation as aforesaid). The Corporation reserves the right to adopt and amend from time to time reasonable rules and regulations to effectuate this provision. If the Member shall fail to keep his dwelling unit and the grounds around the same in a satisfactory state of maintenance and repair or shall fail to make necessary replacements, the Corporation shall have the right to do or cause such work to be done and charge the cost thereof to the Member.

Paragraph 19 Repairs, Maintenance and Replacements of Sewer and Water Lines. The Member shall be responsible for all necessary repairs, maintenance, and replacements of all water and sewer lines in his dwelling unit within the enclosure described by the foundation walls of such dwelling unit. If the Washington Suburban Sanitary Commission at any time accepts the responsibility of maintaining, the water and sewer mains now servicing the Project, then the Member shall be responsible for all repairs, maintenance and replacements of the pipes and lines in and leading to his dwelling unit which shall not have become the responsibility of the aforesaid Commission; provided that the Board of Directors shall have the authority if it so chooses, to accept and charge the Member his prorata share for the responsibility of such maintenance repairs and replacements as are not assumed by the Commission.

#### FINDINGS

The Board's failure to properly repair the sewer line that served the Complainants' home over the course of 9 years is unacceptable and contrary to the Board's legal obligation. However, in light of the fact that the system was properly repaired in 2002, the matter is moot.

a. DUTY TO REPAIR

The Corporation's obligation is clear under the documents and the evidence in this case is clear that the Corporation did not live up to its obligation. The events and circumstances that were experienced by the Complainants were unacceptable and if the

Respondent had treated the Complainants in a manner consistent with its obligation, the case would not have reached this posture. On numerous occasions and as recently as June 7, 1999, the Respondent assured the Complainants that the sewer problem would be fixed.

b. ATTORNEY FEES

The panel considered awarding attorney fees against the Respondent Corporation. However, Maryland law is clear that absent a contract or statutory authority each party is obligated to pay its own attorney fees. In this particular case there is no authority to impose the attorney fees against the Corporation. This paragraph seems like it should be part of the findings rather than part of the order.

ORDER

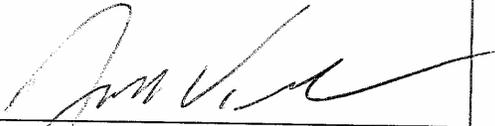
In view of the foregoing, and based upon the evidence of the record, and for the reasons set forth above, it is this 15 day of April, 2003 by the Commission on Common Ownership Communities.

ORDERED that attorneys fees for Complainants are hereby denied.

The foregoing was concurred in by panel member Arlene 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 days after date of this Order, pursuant to the Maryland Rules and Procedures governing administrative appeals.

Neither party came to the hearing with "clean hands" and there were a number of matters that were alleged but not proven including but not limited to whether the Complainants' house was condemned.



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Jeffrey Van Grack, Panel Chairman  
Montgomery County Commission on  
Common Ownership Communities

*Amended  
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