

**BEFORE THE MONTGOMERY COUNTY
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

In the Matter of

Middlebrook Commons
Townhouse Association,
Ginny Grimes, President,
Board of Directors

Complainant

v.

Eric Medlin
19360 Elderberry Terrace
Germantown, Maryland 20876

Respondent

**Case No. 302-G
April 30, 1996**

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland for hearing, on February 28, 1996, 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:

BACKGROUND

On March 31, 1995, Alan Siefert, Agent, on behalf of the Board of Directors, Middlebrook Commons Townhouse Association ("Complainants" or "Association"), filed a formal dispute with the Office of Common Ownership Communities ("Office" or "Commission"). The Association alleges that Eric Medlin, owner of 19360 Elderberry Terrace, Germantown, Maryland, 20876 ("Respondent"), failed to properly maintain the deck on his property in violation of Article VI, Section 2 of the Association's Declaration of Covenants, Conditions and Restrictions.

By correspondence dated June 2, 1995, and August 4, 1995, and by telephone conversations on August 17, 1995, and December 20, 1995, the Commission requested that the Respondent provide a written response to the allegations raised in the complaint. The

Respondent has failed to provide a written response.

Inasmuch as the matter was not resolved through mediation, the dispute was presented to the Commission for action pursuant to Section 10B-11(e) of the Montgomery County Code, 1994, as amended, on January 3, 1996, and the Commission voted that this was a matter within the Commission's jurisdiction. The hearing was held on February 28, 1996. The Complainant was represented by Alan Siefert, Agent. The Respondent failed to appear to bring forward a defense. The record was closed on February 28, 1996.

STATEMENT OF FACTS

The following facts were presented to the hearing panel in the form of oral testimony and documentary evidence introduced by the Complainant:

1. The Respondent owns the home at 19360 Elderberry Terrace, Germantown, Maryland, 20876 ("Unit"). The Unit is located within the Middlebrook Commons Townhouse Association.
2. In 1994, the deck, on the second floor of the Unit, was found to be in a state of disrepair. Specifically, the rail is missing on two of the three sides, and some of the rail is missing on the third side (Complainant's Exhibits).
3. On April 19, 1994, May 27, 1994, and on July 1, 1994, the Association wrote to the Respondent noting that he was required to maintain his property to an acceptable level. The Association informed him that he was required to repair or correct the maintenance violation (Commission Exhibit at pages 7-9).
4. The Respondent failed to respond or comply.
5. The Association's Declaration, Article VI, Section 2, provides, in pertinent part, that the owner of each lot shall be responsible for the care, maintenance and repair of his or her lot, the premises and all improvements thereon. The Declarations also provide that the Association shall have the right to enter and repair or maintain any lot, and that the costs shall be borne by the owner (Commission Exhibit at page 46).
6. Testimony reflects that the Association did not enter to make the repairs in this instance and bill the Respondent for the repairs because the Association had previously done this with regard to other repairs on the Respondent's Unit, and was unable to collect the money for the repairs.
7. The deck was found to be in violation of the Housing and Building Maintenance Standards of the Montgomery County Code (Commission Exhibit at page 85).
8. The Association asks that the Respondent be directed to repair the existing deck

or to remove the deck (Commission Exhibit at page 6).

FINDINGS AND CONCLUSIONS

Based upon a preponderance of the testimony and documents admitted into evidence, after a full and fair consideration of the evidence of record, including the arguments made by the Complainant, the Commission makes the following findings of fact and conclusions of law:

1. It is the Unit owner's responsibility to provide for the maintenance and repair of the Unit and the lot.
2. The Respondent has had two years within which to repair or remove the deck. The Respondent has failed to repair or remove the deck.

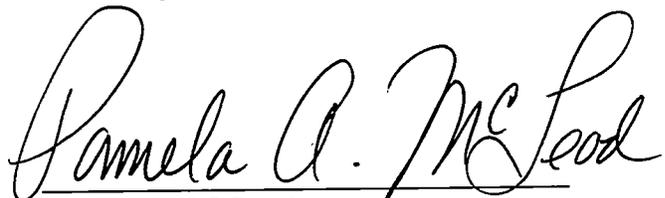
ORDER

In view of the foregoing and based on the evidence of record, it is hereby ORDERED that:

1. Within thirty (30) days from the date of this order, the Respondent shall repair, replace, or remove the rear deck and rail system.

The foregoing was concurred in by panel members McLeod, Auvil, and Simon.

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



Pamela A. McLeod
Panel Chair, Commission on Common
Ownership Communities