

**Before the**  
**COMMISSION ON COMMON OWNERSHIP COMMUNITIES**  
**MONTGOMERY COUNTY, MARYLAND**

**MELVIN HUDGINS**

**COMPLAINANT**

**v.**

**MUTUAL 22 OF LEISURE WORLD**

**RESPONDENT**

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**Case No. 10-08**  
**November 7, 2008**

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**Panel – Rosen, Dubin, Vergagni**  
**Panel Chair Memorandum By: Corinne G. Rosen, Esq.**

**MEMORANDUM DECISION AND ORDER**

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing pursuant to Chapter 10B of the Montgomery County Code, as amended, on July 17, 2008.

**Background**

Melvin Hudgins, a resident of Leisure World, hereinafter “the Complainant”, filed a dispute with the Office of Consumer Protection, Commission on Common Ownership Communities, against Mutual 22 of Leisure World. Hereinafter referred to as “Respondent”, alleging that Respondent violated the Rules of the Association by (1) refusing to pay for the repair and replacement of water-damaged and deteriorated glass sliding glass door and window moldings inside his unit; (2) refusing to pay for the repair of damage to his motor vehicle after a tree limb fell on it; (3) refusing to investigate a claim that another member vandalized his motor vehicle; (4) and treating him in a degrading manner during an open board meeting and discouraging him from attending board meetings because of his race.

The Commission, on June 4, 2008, accepted jurisdiction of issues numbered (1) and (2) above, and rejected jurisdiction of issues (3) and (4) above, as alleged in the original Complaint. The Complainant rejected mediation.

### **Preliminary Matters**

The hearing in this matter was scheduled for 6:30 P.M. on July 17, 2008. Panelist Vicki Vergagni was unable to attend the hearing due to a personal emergency. Complainant Melvin Hudgins failed to appear for the hearing. At 7:00 P.M., a Commission staff member placed a telephone call to the phone number on record for Complainant. The phone number on record for the Complainant was no longer in service. Respondent was present for hearing at the scheduled time. The Panel waited until 7:30 P.M. to provide Complainant opportunity to appear and proceed with his case. Complainant did not appear nor did Complainant contact the Commission to explain his failure to appear for the hearing. At 7:30 P.M., the Panel Chair, with the concurrence of Panel member Dubin, called for the proceedings to commence. Respondent chose to have Panel Chair Rosen and Panel Member Dubin hear and decide the case.

### **Findings of Fact**

1. Respondent, Mutual 22 of Leisure World is a Condominium Association within the meaning of Montgomery County Code, Chapter 10B, Section 10B-2 (2) and Maryland Real Property Article, Annotated Code of Maryland, Title 11.
2. Respondent's Declaration and Bylaws, which were admitted into evidence as Respondent's Exhibit 1., are recorded in the Land Records for Montgomery County, Maryland, at Liber 5710, Folio 676, et. seq.
3. Complainant is the owner of a condominium unit subject to the governing documents of Respondent Condominium located at 2921 NLW Blvd., Bldg. 1., Apt. 407, Silver Spring, Maryland 20906.
4. Respondent has a contract with a qualified professional landscaping company and said landscaping company inspects, prunes, and otherwise maintains the trees located on Respondent's common elements on a regular basis.
5. Community trees were inspected by the Respondent's landscape contractor in the Fall of 2007.
6. Respondent's volunteer committee also performed routine quarterly community walk-throughs, and as a matter of regular practice during these walkthroughs, tags any trees in the community which were thought to pose an imminent danger to person or property.
7. Complainant's vehicle was damaged by a fallen tree branch in August 2007 during a storm in August 2007. (Respondent's Exhibit 2).
8. Complainant's vehicle was parked in the condominium parking areas, which are common elements, at the time of the occurrence complained of.

9. Respondent conducts regular inspections of the exterior and interior of the Condominium buildings, but does not conduct inspections of the individual units.
10. Respondent has no knowledge of the alleged deterioration to Complainant's sliding glass door moldings and/or window moldings inside and/or appurtenant to Complainant's unit, which Complainant alleged was causing water build-up between the panes.
11. No other unit owner in Complainant's building has alleged or otherwise notified Respondent of similar deterioration the sliding glass doors and/or window moldings of his or her unit allegedly causing water build up between the panes.
12. Complainant did not permit Respondent to enter his unit to inspect the alleged deterioration of the glass sling door and window moldings or alleged water build-up between the panes, nor provide any other evidence to Respondent (i.e. photographs, report of qualified inspector or contractor), nor appear before the Board of Directors despite being given the opportunity to do so, to present and substantiate his claim.

### **Conclusions of Law**

1. In order to prevail in a case of negligence, the Complainant is required to show (1) that Respondent owed Complainant a duty of care; (2) that Respondent breached the duty of care owed to Complainant; (3) that the breach was the proximate cause of the damages; and (4) the actual damages sustained. Complainant bears the burden of proving each and every element of the negligence claim. No evidence was presented to the Panel showing that Respondent breached any duty of care to Complainant regarding inspection and maintenance of trees located on Condominium common elements. To the contrary, the Panel finds that Respondent acted in a reasonably prudent manner in accordance with the standard business practices of a Condominium with regards to inspection and maintenance of trees situate on common elements, and that no act or omission on the part of the Respondent Condominium was the proximate cause of the damage to Complainant's vehicle, which damage was caused during a storm which caused a tree limb to fall onto and damage Complainant's vehicle.
2. No evidence was presented by Complainant that Respondent failed to perform its duties pursuant to the Condominium's Bylaws, Article XIV, Physical Management, Section 1. (e) and/or (f) with regards to the inspection and/or maintenance of trees in the common elements generally, or with regards to inspection and maintenance of the specific tree at issue. To the contrary, Respondent caused to be performed regular inspections of trees located on common elements by a licensed landscaping company and pursuant to regular community walk-throughs during which trees found to pose a imminent danger to persons or property were tagged and such conditions abated.

3. Pursuant to the Condominium's Bylaws, Article XV, Parking, Section 1., "All parking areas within the condominium shall be considered part of the general common elements".
4. The Condominium's Bylaws, Article Article XIV, Physical Management, Section 8., Limitation of Liability., provides in pertinent part as follows: "the Council of Unit Owners shall not be liable to the owner of any condominium unit for loss or damage, by theft or otherwise, of articles which may be stored upon any o the common elements."
5. The Condominium's Bylaws, Article XIV, Physical Management, Section 1(e). Duty To Maintain., provides in pertinent part as follows "...Nothing herein contained shall require the Council of Unit Owners to repair, replace, or otherwise maintain the interior of any unit or any fixtures, appliances, equipment and the like located therein".
6. The Condominium's Bylaws, Article XIV, Physical Management, Section 4. Duty To Maintain., provides in pertinent part as follows: "Except for the maintenance requirements herein imposed upon the Council of Unit Owners, the owner of any condominium unit shall, at his own expense, maintain the interior of his condominium unit..." .
7. The Condominium's Bylaws, Article XIV, Physical Management, Section 5., Duty to Maintain, Windows and Doors., provides in pertinent part as follows: The owner of any unit shall, at his own expense, clean and maintain both the interior and exterior surfaces of all windows of such condominium unit and shall, at his own expense, clean and maintain both the interior and exterior glass surfaces of all glass entry doors of the condominium unit leading to any balcony, deck, terrace, fenced area, courtyard, or the like appurtenant to such condominium unit and designated herein or in the Declaration or the Condominium Plat as a limited common element for the exclusive use of the owner of that particular condominium unit."
8. The Condominium's Bylaws, Article XIV, Physical Management, Section 8., Limitation of Liability., provides in pertinent part as follows: "The Council of Unit Owners shall not be liable...for injury or damage to person or property caused by the elements or resulting from...water, snow, or ice which may leak or flow from any portion of the common elements or from any wire, pipe, drain, conduit, appliance or equipment."
9. Based upon the provisions of the Bylaws cited in paragraphs 5. through 8. above, and the evidence in the record, the Panel finds that Complainant, not Respondent, is responsible for maintaining and repairing the alleged deteriorating of moldings of his unit's glass sliding door and window moldings, and is responsible to repair any damage to the windows and glass sliding door of his unit allegedly sustained. The Panel further notes that Complainant, in addition to failing to appear at the hearing in this matter, provided no documentation whatsoever with his Complaint to substantiate his claim.

**Order**

Based on the foregoing Findings of Fact and Conclusions of Law, it is as of the effective date of this decision:

**ORDERED:**

1. That Melvin Hudgins' Complaint in Case No. 10-08 is dismissed with prejudice.

The Decision of the Hearing Panel is unanimous.

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

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Corinne G. Rosen, Esq., Panel Chair

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