

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

In the Matter of	x	
Stacie Balderston, Owner of	x	
5301 Westbard Circle, #202	x	
Complainant	x	
	x	
vs.	x	Case No 133-O
	x	February 28, 1992
	x	
Board of Directors	x	
William F. Colliton, Jr., President	x	
Kenwood Place Condominium Council	x	
of Unit Owners	x	
Respondent	x	

Decision and Order

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 28th day of February, 1992, found, determined and ordered as follows:

On August 30, 1991, Ms. Stacie Balderston, owner of Apartment #202, 5301 Westbard Circle, Bethesda, Maryland, hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. (See Attached).

The Complainant alleged that Kenwood Place Condominium Council of Unit Owners Board of Directors, Governing Body of 5301 Westbard Circle, Bethesda, Maryland, hereinafter the Respondent, failed to prepare a proper Fiscal Year 1992 budget that represents "reasonable amounts" for operating expenses, reserves and working capital, in violation of Article VI, Section 6.01(b)(1) of the Community's Bylaws. The Complainant also alleged that the Respondent did not have the authority to impose a June 3, 1991, special assessment for the replacement of the Community's heating ventilation and air conditioning system inasmuch as adequate funds were already available in the Community's existing replacement reserves, pursuant to Article VI, Section 6.01(d) of the Community's Bylaws and Section 10(i) of the Community's Declaration. The Complainant alleged that the Respondent failed to provide members of the Community with a proposed amendment to the Fiscal Year 1992 budget at least thirty (30) days before the Respondent's vote to increase the budget by 68% and increase the Assessment by 26%, in violation of Chapter 10B-18(b) of the Montgomery County Code, 1984, as amended. The Complainant alleged that the Respondent failed to provide members of the Community with at least ten days written notice of a special meeting to be held to consider the proposed amendment to the Community's Budget, in violation of Section 11-109.2(d) of the Real Property Article, Annotated Code of Maryland, 1988, as amended. The Complainant also alleged that the Respondent failed to notify all members of the Community of a right to file a dispute with the Commission on Common Ownership Communities after the Respondent became aware that a dispute existed, in violation of Section 10B-9(d) of the Montgomery County Code, 1984, as amended. The Complainant additionally alleged that the Respondent proceeded to take action to enforce and implement its decision to collect the special assessment after a dispute was filed with the Commission, in violation of Section 10B-9(e) of the Montgomery County Code, 1984, as amended.

The Complainant sought to stop the collection of the special assessment and to receive a refund of all payments that have been made pursuant to the special assessment.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On October 2, 1991, the Commission voted to hold a public hearing, which commenced on January 9, 1992, and concluded on February 11, 1992.

FINDINGS OF FACT

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

1. The Respondent adopted a Fiscal Year 1992 Budget.
2. On April 10, 1991, the Respondent voted to replace the Community's Heating Ventilation and Air Conditioning (HVAC) system, and voted to impose a special assessment in the amount of \$300,000 to help replenish the capital reserve account as a result of this expenditure.
3. On May 20, 1991, the Respondent voted to collect the \$300,000 special assessment to replace the Community's HVAC system over an 18-month period.
4. The \$300,000 expenditure for the replacement of the Community's HVAC system represented an amount in excess of 15% of the Community's Fiscal Year 1992 approved annual budget.
5. At least sixty days elapsed between the Respondent's decision to replace the Community's HVAC system (4/10/91) and the actual commencement of repairs (6/17/91) on the HVAC system.
6. The condition of the HVAC system, if not corrected, posed no imminent threat to the health or safety of the unit owners or any significant risk of damage to the condominium, or serious property damage.
7. The Respondent failed to send at least ten days written notice to the Council of Unit Owners of a special meeting to consider the proposed amendment to the approved annual budget for the replacement of the HVAC system.
8. The Respondent failed to provide members of the Council of Unit Owners a copy of the proposed amendment to the budget for repair of the HVAC system, at least thirty days before voting on the amendment.
9. In reaching its decision to replace the HVAC system, and its decision to impose the special assessment of \$300,000, the Respondent reviewed and considered information from independent sources including, Engineering Reports as referenced in the April 23, 1990, Board Meeting Minutes (Respondent's Exhibit #6); the September 6, 1990, report from Assistant Treasurer Richard Spencer regarding the Community's Budget and need for an assessment to fund the HVAC system (Respondent's Exhibit #7); the 1990 Capital Reserve Schedule prepared by Charles E. Smith Companies (Respondent's Exhibit #8); the April 8, 1991, recommendations from Bruce Boyce, Senior Community Manager regarding funding of the HVAC System (Respondent's Exhibit #19); and the April 8, 1991, recommendations from the Ad Hoc Committee on replacement of the HVAC system (Respondent's Exhibit #20).

10. Aside from procedural deficiencies, the Respondent did not act unreasonably or in bad faith in its decisions to execute contracts, proceed with replacements and impose a \$300,000 special assessment for the replacement of the HVAC system.

11. The Respondent implemented its decision to collect the \$300,000 special assessment from the Complainant and all other unit owners on July 1, 1991.

12. On August 30, 1991, a dispute was filed with the Office of Common Ownership Communities by the Complainant regarding the Respondent's decision to impose a \$300,000 special assessment.

13. By correspondence dated September 11, 1991, the Respondent was notified by the Office of Common Ownership Communities of a dispute filed by the Complainant regarding the \$300,000 special assessment.

14. The Respondent continued to implement its decision to collect the \$300,000 special assessment from the Complainant and all other unit owners, after receiving notification that a dispute had been filed with the Office of Common Ownership Communities.

CONCLUSIONS OF LAW

Accordingly, the Commission concludes based upon a preponderance of the evidence, including but not limited to testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

1) The Respondent failed to provide not less than ten days written notice to the Council of Unit Owners of a special meeting to consider the proposed amendment to the annual budget for the replacement of the HVAC system, in violation of Section 11-109.2(d) of the Real Property Article, 1988, as amended.

2) The Respondent failed to provide members of the Council of Unit Owners with the proposed amendment to the Fiscal Year 1992 budget for repair of the HVAC system, at least thirty days prior to voting on the amendment in violation of Section 10B-18(b) of the Montgomery County Code, 1984, as amended.

3) The Respondent took action to enforce or implement its decision to collect the \$300,000 special assessment after a dispute was filed with the Office of Common Ownership Communities, in violation of Section 10B-9(e) of the Montgomery County Code, 1984, as amended.

4) Inasmuch as the Respondent did not have a responsibility to notify all other unit owners within the Community, who were not involved in this dispute, of a right to file a dispute with the Office of Common Ownership Communities, the Respondent did not violate Section 10B-9(d) of the Montgomery County Code, 1984, as amended.

5) The Respondent adopted a Fiscal Year 1992 operating Budget that included reasonable amounts to provide working capital, and general operating reserves, and reserves for contingencies and replacements, and did not violate Article VI, Section 6.01(b)(1) of the Community's Bylaws.

6) In making its decision to impose the \$300,000 special assessment, the Respondent acted within its authority in exercising its business judgement and did not violate Article VI, Section 6.01(d) of the Community's Bylaws or Section 10(i) of the Community's Declaration.


ORDER

In view of the foregoing, and based on the evidence of record, the Commission orders the Respondent to:

1. Immediately cease the collection of the \$300,000 special assessment payments for the repair of the HVAC system.
2. Schedule a special meeting for the purpose of considering adoption of an amendment to the approved Fiscal Year 1992 budget, and a funding source for the repair of the HVAC system.
3. Provide members of the Council of Unit Owners with a copy of the proposed amendment to the Fiscal Year 1992 budget at least thirty (30) days before the Respondent's vote on the proposed amendment.
4. Provide members of the Council of Unit Owners with not less than ten (10) days written notice of the Special Meeting being held for the purpose of considering adoption of an amendment to the approved Fiscal Year 1992 budget for the repair of the HVAC system.

The foregoing was concurred in by panel members Bromberg, Chester, and Pruitt.

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, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.


Jonathan Bromberg
Panel Chairperson
Commission on Common Ownership
Communities