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

In the Matter of Board of Directors Kenneth Auerbach, President Pooks Hill Condominium, Inc. Complainant

Case No. 138-G September 9, 1992

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Martha Lockwood, Owner of 5216 Pooks Hill Road Bethesda, MD 20814 Respondent oop ocmber

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 ninth day of September, 1992, found, determined and ordered as follows:

On August 16, 1991, the Pooks Hill Condominium, Inc. Board of Directors, which is the governing body of Pooks Hill Condominium, Inc., (the "Condominium") hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. The complaint alleged that Martha Lockwood, owner of 5216 Pooks Hill Road, Bethesda, Maryland, hereinafter the Respondent, violated Article X, Section 1 of the Bylaws of the Condominium by constructing a second floor balcony that did not conform with the Complainant's specifications, inasmuch as it extended two feet in depth beyond the permitted depth of four feet and did not have the required railing pickets extending below the bottom balcony crosspiece. The Complainant additionally alleged that the Respondent failed to abide by the Complainant's requirement that she make necessary changes to the balcony and to the railing pickets in order to conform with Condominium standards.

The Respondent maintained that she complied with Article X, Section 1 of the Bylaws of the Condominium inasmuch as she submitted a request for approval for the construction of a second floor balcony to the Complainant; that within sixty (60) days of such submittal, the Board failed to approve or disapprove the application; that under the above-cited section of the Bylaws, her application no longer required approval of the Board; and that she proceeded with its construction only after such sixty (60) day period had passed without any formal response from the Complainant. The Respondent additionally maintains that her second floor balcony substantially conforms with the design standards in the rest of the Community.

The Complainant sought an order from this Commission that the Respondent be required to bring her second floor balcony into compliance by altering it to a depth of four feet and by adding pickets that extend below the bottom balcony crosspiece.

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 April 1, 1992, the Commission voted to hold a public hearing, which commenced and concluded on August 11, 1992.

FINDINGS OF FACT

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

- 1. On March 3, 1990, the Respondent delivered to the Complainant a proposal for the addition of a balcony to her condominium unit at 5216 Pooks Hill Road. The Respondent delivered the submission to the residence of the then Board President, Dinah Stevens, by placing the documents in the mail slot at the residence of Dinah Stevens.
- 2. On April 13, 1990, Board President Stevens responded to the Complainant's application in writing and stated that the Respondent's submission did not include adequate detail for approval. Specifically, additional drawings were requested. Board President Stevens delivered the correspondence to the residence of the Respondent by placing it in the mail slot at such residence.
- 3. Based upon testimony from the parties, it is a customary and accepted course of conduct in transmitting the business correspondence of the Condominium for members of the community to use mail slots to accomplish deliveries to residents within the Condominium.
- 4. The Respondent received further notification that her application was not complete, during a telephone conversation with the Board President on April 29, 1990. The Respondent initiated this telephone contact.
- 5. Article X, Section 1 of the Community's Bylaws require the submission of complete plans and specifications to the Board of Directors or a designated architectural control committee, for written approval prior to the alteration of the exterior of any condominium unit. Section 1 provides further that "[i]n the event the Board of Directors, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with."
- 6. At its meeting of May 16, 1990, the Board received additional drawings from the Respondent, relating to the Respondent's application. The drawings had been previously submitted by another owner in the Condominium, Rosemary Olmert, on her own behalf, and had been approved at that time by the Complainant Board. These drawings showed a four foot depth of the second floor balcony.
- 7. At its meeting of June 6, 1990, the Board approved the Respondent's plans for the second floor balcony with the condition that the pickets extend below the base of the balcony and that the balcony be four feet in depth.
- 8. By letter dated June 8, 1990, the Respondent was notified by the Board of the approval of her plans on condition that the 2 x 2 pickets be installed to conform with the pickets on other balconies in the community, and that the depth of the balcony be limited to four feet to conform to the depth of existing balconies.

- 9. After June 8, 1990, the Respondent proceeded to build a balcony that does not comply with the approved specifications, in that the balcony constructed on the second floor is six feet in depth and the specified pickets on the upper and lower balconies do not extend below the floor of the respective balcony.
- 10. Based upon testimony from the Complainant Board, conceded by the Respondent, there are currently no existing six foot balconies and no balconies with pickets that do not comply with approved specifications, other than on the Respondent's residence.

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 consideration of the evidence of record, that:

- Based upon the written correspondence of April 13, 1990, and the telephone conversation of April 29, 1990, the Respondent received notice that her application was not complete and that additional information was required by the Board of Directors before the application could be approved.
- 2. Upon the Board's receipt of the additional drawings on May 16, 1990, the Respondent's submission became complete and the sixty days referred to in Article X, Section 1 of the Condominium's Bylaws began to run.
- On June 6, 1990, the Complainant Board approved, with conditions, the Respondent's application within sixty (60) days of receipt of the complete submission, which was on May 16, 1990.
- 4. The Complainant Board has not approved plans deviating from its standards that require balcony depths to be limited to four feet and that pickets extend below balcony floors.
- 5. The Respondent violated, and continues to violate, the provisions of Article X, Section 1 of the Community's Bylaws, by constructing a balcony with a six foot depth after receiving approval from the Complainant for construction of a balcony with a four foot depth, and by constructing pickets which do not extend below the balcony floor.

ORDER

- That the Respondent, at her expense, bring her balcony at , 5216 Pooks Hill Road, Bethesda, Maryland, into compliance with Condominium standards, within sixty (60) days of the date of this Decision, by:
 - Reducing the size of her second floor balcony to four feet in depth;
 - b. Modifying the pickets by extending them below the floor of each balcony.

The foregoing Decision and Order was concurred in by panel members Alper, Blumberg, and Gordon.

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.

Richard Alper Panel Chairperson

Commission on Common Ownership

Communities

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