

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland
June 10, 1993

In the Matter of	x
Alice Everette-Cooper, President	x
Board of Directors	x
Greenfield Station Homeowners	x
Association, Inc.	x
Complainant	x
	x
Vs.	x
	x
Vijay K. Mehta, Owner	x
8316 Emory Grove Road	x
Gaithersburg, Maryland	x
Respondent	x

Case No. 203-G

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 10th day of June, 1993, found determined and ordered as follows:

On October 21, 1992, Alice Everette-Cooper, President, Board of Directors, Greenfield Station Homeowners Association, Inc., Governing Body for Greenfield Station Homeowners Association, Inc., hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleged that Vijay K. Mehta, Owner, 8316 Emory Grove Road, hereinafter the Respondent, installed a roof antenna on his home without the prior written approval of the Architectural Committee, in violation of Article IX, Section 9.(a)(viii) of the Declaration of Covenants, Conditions and Easements for Greenfield Station.

The Respondent contended that he received approval to install the subject outdoor antenna from an agent acting on behalf of the Developer, Diversified Homes.

The Complainant sought an order for the Respondent to permanently remove the antenna from his roof.

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 28, 1993, the Commission conducted a public hearing in this case.

STIPULATIONS OF FACT

At the hearing, the Complainant and the Respondent agreed to the following:

1. The Respondent owns a residence at 8316 Emory Grove Road, Gaithersburg, Maryland, having lived there since 1987.

2. The residence is located in a housing development governed by the rules and regulations, covenants, etc., adopted and issued by the Greenfield Station Homeowners Association, Inc. (hereinafter referred to as the "Association").

3. The Association's governing documents prohibit residences from having "outdoor antennas of any kind without the prior written approval of the Architectural Control Committee" of the Association (Page 5J of the investigative record).

4. The Respondent's residence does presently have an outdoor antenna installed on it, in violation of the Association's governing documents.

5. The Respondent has received various notices and orders from the Association that his outdoor antenna, being in violation of the above mentioned governing documents, must be removed.

6. To date, the Respondent has not complied with the Association's notices and orders to remove his outdoor antenna.

FINDINGS OF FACT

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

1. The Respondent's homeland is in India.

2. The Respondent requested that the Association make an exception to its governing documents so that he could retain his outdoor antenna; however, the Association rejected his request on July 16, 1992, and notified the Respondent of its decision.

3. Two other residents in the development whose residences had outdoor antennas on them received notice from the Association to remove their antennas. Both residents complied with the Association's notices by removing their antennas.

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:

A duly constituted Homeowners Association's rules and regulations legally bind the parties unless they are arbitrary and capricious, enforced selectively, or for some other reason rendered unlawful or unenforceable. The record clearly shows that the involved Homeowners Association's governing documents prohibit any residence from having an outdoor antenna. Further, the record shows, and the Respondent admitted, that he was notified that his outdoor antenna was to be removed because it violated the Association's governing documents. Despite being notified that the outdoor antenna had to be removed, the Respondent continues to retain the outdoor antenna on the roof of his residence. That is, the Respondent retains the antenna on his roof despite his exhaustion of remedies and procedures outlined in the Association's governing documents for requesting exceptions to notices issued to residents directing them to correct violations of the Association's governing documents.

The Respondent stated that he retains the antenna because, with the antenna, he and his Indian family and friends can watch and listen to programs broadcasted on Channel 56 in their native language of India, the country of their origin. The Respondent alleged, and it was not refuted by the Association, that even with installation of cable television, Channel 56 programming would otherwise be unavailable to the Respondent's residence. Thus, the Respondent argues that the Association's notice to him to remove his outdoor antenna would in effect constitute an unfair and undue burden on him and his family, because they would no longer be able to enjoy receiving programming from the Channel 56 television station.

Moreover, the Respondent argued that the Association's directive to him to remove his outdoor antenna ought to be rescinded based on the Association's delay in enforcing its restriction on outdoor antennas. The Respondent installed the roof antenna on his home after he moved to his present residence in 1987. The first evidence of the Respondent being ordered by the Association to remove his antenna is a letter dated April 6, 1989.

Further, the Respondent asserts that the Association's decision ought not be enforced because Robert Shatarsky, an initial Director and President of the Board of Directors of the Association, gave him verbal approval to install the disputed antenna. At the time Mr. Shatarsky served as Director, two other individuals along with Mr. Shatarsky constituted the Board of Directors of the Association (Exhibit 1m). The Respondent presented neither documentary evidence nor direct testimony from Mr. Shatarsky or anyone else corroborating the Respondent's assertions about Mr. Shatarsky's alleged approval of his outdoor antenna.

The Respondent also averred that violations, other than his outdoor antenna, exist in the community with the Association's knowledge. However, according to the Respondent, the Association has either ignored these violations or not enforced its governing documents concerning them. The Association testified to the contrary, namely, that it vigorously and uniformly enforces its restrictions against all known violators. The Respondent offered no facts or other probative evidence other than his conclusory statements to contradict the Association's assertions about enforcing its governing documents.

Lastly, at the hearing, the Respondent also raised in his defense that his antenna was "grandfathered" into the community. Since his antenna antedated the Association and its rules and regulations restricting the placement of an outdoor antenna, the Respondent asserts that he is entitled to retain his outdoor antenna. Neither testimonial nor documentary evidence corroborating the Respondent's statements regarding his "grandfather" defense were presented at the hearing. Further, the Respondent abandoned this defense when questioned by the Chair of this Hearing Panel about his alleged "grandfather" rights.

In conclusion, none of the evidence of record tends to support the Respondent's refusal to remove his outdoor antenna as ordered by the involved Association. First, the Association's governing documents clearly establish that the Association prohibits outdoor antennas in the community. The Respondent received written notice, according to the Association's procedures, directing him to remove his antenna. The Respondent requested an exception to the cited governing documents. The Association properly reviewed and rejected the Respondent's request for an exception.

Second, the Association ordered two other homeowners to remove their outdoor antennas. Both homeowners complied with the Association's order, but the Respondent refused to do so. He contends that he needs his outdoor antenna to receive broadcasts from the Channel 56 television station that carries programming of his native country, India. However, except for asserting that he desired to retain his outdoor antenna for the pleasure of himself and his family, the Respondent raises no other defenses for refusing to comply with the legitimate directives received by him from the Association to remove his outdoor antenna.

Although two other residents were ordered to remove their antennas, neither of them was identified by race, sex, national origin, etc. Therefore, the logical conclusion from this absence of data is that the other individuals ordered to remove their outdoor antennas were not from India, and/or nationality was not a factor in denying Respondent's request. Respondent failed to prove by probative evidence that others who are not from India have outdoor antennas and were allowed by the Association to retain them, for whatever reason. Thus, Respondent must comply with the Association's order issued to him to remove his outdoor antenna.

Third, the Respondent contends that the Association's delay in enforcing its no outdoor antenna rule should prevent the Association from imposing its rule upon him at this time. In other words, the doctrine of laches (i.e. unreasonable delay and prejudice to the Respondent's rights) ought to prevent the Association from acting against him and his outdoor antenna. From the record, the Association perhaps took nearly two years to notify the Respondent of his outdoor antenna violation. No facts or other credible evidence, such as prejudice to the Respondent's rights was presented. More than time alone, such as purposeful delay on the Association's part to enforce its involved rule, must be established to demonstrate laches in this matter. Further, the Respondent was not prejudiced by the two year delay by the Association. Respondent agreed that during this period Mr. Shatarsky was available, in the County. Thus, the Respondent could have obtained a written statement from Mr. Shatarsky or had Mr. Shatarsky at the hearing to corroborate the Respondent's contention that Mr. Shatarsky had given approval for the Respondent's outdoor antenna, but failed to provide such evidence.

Even if the Respondent established that Mr. Shatarsky had given his approval for the antenna, the Respondent still would not have prevailed on this issue. For, the Respondent did not show that Mr. Shatarsky alone, without the approval of both or either one of the other two Directors, had the authority to approve the Respondent's antenna.

Fourth, the Respondent presented no credible evidence that the Association permitted, to its knowledge, other violations by homeowners of its governing documents. The Association denied the Respondent's assertion. More than conclusory statements on this issue needed to be offered by the Respondent to establish, for example, selective enforcement by the Association of its governing documents. Having failed to do so, the Respondent failed to establish justification for refusing to comply with the Association's order issued to him to remove his outdoor antenna.

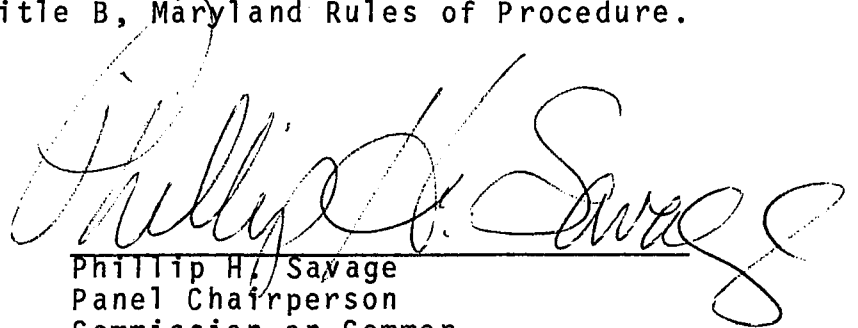
ORDER

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

1. The decision by Complainant Board of Directors that Respondent must remove his outdoor antenna be and hereby is AFFIRMED; and it is further ordered that

2. The Respondent shall remove the outdoor antenna from his roof within 30 days of the date of this Order.

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.

A handwritten signature in cursive script, reading "Phillip H. Savage". The signature is written in black ink and is positioned above a horizontal line.

Phillip H. Savage
Panel Chairperson
Commission on Common
Ownership Communities

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