

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

In the Matter of:	x
Haddonfield Homeowners	x
Association, Inc.,	x
	x
Complainant,	x
	x
	x
v.	x
	x
	x
Neil and K. Noel Tyra	x
13411 Haddonfield Lane	x
Darnestown, Maryland 20878	x
	x
Respondent	x

Case No. 263-G

MOTION TO DISMISS

For reasons stated, the Respondent's Motion to Dismiss is hereby granted.

DECISION AND ORDER

The above entitled case, having come before the Commission on Common Ownership Communities, for Montgomery County, Maryland, for hearing, on July 19, 1995, pursuant to Sections 10B-5(1), 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, this 29th day of September, 1995, finds and determines, and thereby issues the following order.

FINDINGS OF FACT

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

1. The Haddonfield Homeowners Association was formed on October 5, 1984, and adopted its Declaration of Covenants, Conditions and Restrictions and its By-Laws of the Haddonfield Homeowners Association, Inc., on October 18, 1984, respectively.
2. The respondents in this complaint, when they purchased a property in 1987 subject to the Declaration, received copies of the documents listed in item 1 above.
3. The Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as "Declaration") includes, *inter alia*, a provision, entitled Article V and which reads in pertinent part:

"Article V

"No building, fence, wall, or other structure shall be commenced, erected or maintained upon the properties nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by the Environmental Protection Board.

In the event said Board, or its designated committee, fails to approve such design and location within thirty days after receipt of said plans and specifications, approval will not be required and this Article will be deemed to have been fully complied with."

4. Respondents made numerous improvements and additions to their property, including the addition of a deck and a circular driveway, the repainting of exterior siding and trim, the landscaping of their front yard, and the planting of trees along the driveway of their residence.
5. Before making the mentioned improvements and additions, Respondents admit seeking and receiving the approval of the Association, as required by the Association's Declaration. Page 7 of the Investigative File.
6. "In late 1992, the [Respondents] had a combination storm door/security door installed, [yet did not]...seek Association approval before installing a storm door or security door." Motion to Dismiss, Page 2, item 4.
7. Respondents received written notification that the installation of the storm door, without prior approval of the Association or the Environmental Protection Board (EPB), constituted a violation of the Association's governing document, albeit that the section (Article VII, entitled " Use Restrictions") cited in the Association's letter, dated April 29, 1993, was in error.
8. The April 29, 1993 notification to the Respondents, from the then President of the Association, resulted from action taken by members of the then Environmental Protection Board at a closed and unannounced meeting held by them, to which the Respondents and other residents were not notified or informed in advance of the mentioned meeting. Neither Respondent nor Respondents' representative(s) attended the referenced meeting.
9. The mentioned April 29th letter from the Association also informed Respondents that, because they had not submitted the planned addition of the storm door in advance of its installation, and because "...the style of the door...does conflict with the architectural style...[it] must be disapproved ...[and] remove[d]."
10. On May 10, 1993, Respondents replied to the Association's April 29th letter, in which they raised issues about the Association's actions in disapproving the installation of the storm door and requested an opportunity "...to discuss our position with the Board of Directors and/or the Environmental Protection Board... We assume that this is a reasonable next step in the absence of any further guidelines stipulating the method of appealing [the] [B]oard['s] and/or EPB['s] decision."

On June 8, 1993, the then President of the Association, responded to the Respondents' May letter, notifying them that a meeting of the Board of Directors would be held, on June 17th, to provide needed clarification of the By Laws or Covenants and Restrictions and to hear any further comment you may wish to provide in the treatment of your letter as an appeal of the decision of the EPB." Later, in the same letter, the then President stated: "[This] is not a regularly scheduled meeting of the Board of Directors..."

12. The Maryland Homeowners Association Act, which applied "...to all homeowners associations that exist in the State after July 1, 1987 (Section 11B-102), requires: "Each homeowners association that was in existence on June 30, 1987 shall deposit in the depository by December 31, 1988...[certain documents]." Section 11B-112(c) (i), Maryland Homeowners Association Act.

13. The Maryland Homeowners Association Act, at 11B-112(c)(iii)(3), states: "If a homeowners association fails to deposit in the depository any of the disclosures required to be deposited by this section, or by 11B-105(b)(6)(ii) or 11B-106(b)(5)(ii) of this title, then those disclosures which were not deposited shall be unenforceable until the time they are deposited."

14. The disclosures required to be deposited in the depository excluded "[t]he articles of incorporation, the declaration...[of the Association]" [Section 11B-105 (b) (6) (i)]; but included "[t]he bylaws and rules of the primary development...to which the purchaser shall become obligated on becoming an owner of the lot, including a statement that these obligations are enforceable against an owner and the owner's tenant, if applicable." Section 11B (6) (ii).

15. The Maryland Homeowners Association Act, in Section 11B-111, also required:

"(1) Subject to the provisions of paragraph (3) of this section, all meetings of the homeowners association, including meetings of the board of directors or other governing body of the association or a committee of the homeowners association, shall be open to all members of the homeowners association or their agents;

"(2) All members of the homeowners association shall be given reasonable notice of all regularly scheduled open meetings of the homeowners association.

"(3) A meeting of the board of directors or other governing body of the homeowners association or a committee of the homeowners association may be held in closed session only for [specific] purposes [none of which applies to this complaint]."

16. The complainant Association deposited its Rules and Regulations and By Laws into the depository, on June 17, 1993, or later than the required date of December 31, 1988, as specified in the Maryland Homeowners Association Act, Section 11B-112 (c).

17. The complainant Association also failed to give Respondents and other members of the association reasonable advance notice of the meeting, at which its Environmental Protection Board (EPB) decided that the respondents' storm door was installed "without prior approval of the EPB" and reached "...consensus...that the style of the door you [respondents] have installed does conflict with the architectural style and must be disapproved." See April 29, 1993 letter from the Association to Respondents.

18. The complainant Association offered no legally acceptable explanation, for the record, for failing to timely comply with the mentioned sections of the Maryland Homeowners Association Act requiring affirmative duties on its part.

19. On June 17, 1993, the complainant Association held "A Special Meeting of the Board of Directors," attended by one of the Respondents, four (4) members of the then Board, and two (2) members of the then EPB. At this meeting, the mentioned officials of the Association heard the Respondents' appeal to it previous decision, instructing the Respondents to remove their storm door, and voted unanimously to reaffirm that decision.

20. The Board, in holding this "special meeting" without reasonable prior notice to the other members of the Association, violated Section 11B-11 (1) and (2) of the Maryland Homeowners Association Act, as well as Section 11B-111 (3) (i-viii) and (4) (i) and (2). The latter citations specify when and for what purposes an association covered by the Maryland Homeowners Association Act may hold a closed meeting. None of the listed circumstances applied in this complaint.

21. Later, on November 15, 1993, the members of the Board of Directors of the involved Association notified the Respondents, via letter, that the Board had, at its June 17, 1993 meeting, concluded that the Respondents' storm door violated Article V of the Declaration of Covenants, Conditions and Restrictions, and Rules #2 and #14 of the Rules and Regulations of the Association.

CONCLUSION

When the Respondents installed a storm door on their residence, they were thoroughly aware that the Declaration of Covenants, Conditions, and Restrictions of the Homeowners Association contained a process for obtaining prior approval for additions to the outside of their residence. For, on a number of previous occasions, the Respondents followed that process and obtained such approval before making any changes to the outside of their residence. However, before installing the storm door, that gives rise to this complaint, they failed to seek the Association's approval.

The Respondents allege, in their Motion to Dismiss and at the Hearing on their complaint, that they "were not aware that there were any Rules or Regulations of the Haddonfield Homeowners Association, Inc. that required them to seek Association approval before installing a storm door or security door." Motion to Dismiss, Page 2, dated July 19, 1995. Why they failed to inquire of a member or an officer of the Association whether prior permission was necessary before installing the storm door, was never answered to our satisfaction.

Nonetheless, we find that Article V of the Declaration of Covenants, Conditions, and Restrictions of the Association did require the Respondents to seek prior approval of the Association before installing the storm door, because the storm door is an exterior alteration. *Montgomery Village Foundation, Inc. vs. Donald and Helen Ryan*, Case No. 218-G, Commission on Common Ownership Communities, October 7, 1993.

Despite this finding, we must, nevertheless, dismiss this complaint filed by the complainant Association for various reasons. First, while the Association could have applied its Article V of the Declaration to cite the Respondents for failing to seek prior approval before installing their storm door, it could not do so, except by following the controlling law of the State of Maryland. The law controlling actions of homeowner associations located in the state in existence at the time, the Maryland Homeowners Association Act, required the Environmental Protection Board (EPB) of the Association to take action affecting the Respondents by disapproving the door at the meeting, to which the Respondents and members of the Association had been given prior reasonable notice of the meeting and its purposes. The EPB failed to abide by this restriction, thereby denying the Respondents the due process to which they were entitled under the mentioned Maryland law.

Second, the Association failed to deposit timely their Rules and Regulations into the depository, as mandated by the mentioned Maryland law. As a result, the Association, we find, could not have denied the Respondents the right to retain their storm door, after the date the Association deposited that document into the depository, by relying (as they did) on it. To effectuate an action based on the Rules and Regulations, the Association had to have deposited them into the depository in a timely manner. They failed to do so; therefore, the action taken against the Respondents, based in part or wholly on other than the Declaration of the Association, was improper and must be reversed.

The only vehicle to be used, at the time, by the Association to forbid the Respondents' retention of their storm door, was through its Declaration, a document not required to be deposited into the depository and in which the Association was empowered to require the removal of the storm door. However, as previously found here, to exercise this power, the Association had to have provided prior reasonable notice of the meeting to the Respondents and the members of the Association, at which this matter were to be discussed and decided. The Association, unfortunately, failed to follow the law of the State of Maryland, in this regard. We, therefore, must dismiss its complaint filed with the Commission against the Respondents.

Third, because the Association continued to take action against the Respondents to require them to remove their storm door at a Special Meeting, unauthorized under the Maryland Homeowners Association Act, the Association again violated the mentioned law. This violation impinged the rights of the Respondents and of the members of the Association to have prior notice of the meeting and to have an open meeting on the matter at hand. The right to an open meeting protects all of the parties (including the officers and members of the Board and the EPB) against arbitrary and capricious actions on the part of a few and may give rise to new and fresh information from parties familiar with or affected by the issues to be decided.

In this case, other members of the Association, who have an interest in the installation of a storm door at their respective residence or who have previously installed a storm door at their respective residence, might have attended a properly noticed and open meeting on Respondents' issue. At the meeting, they could have influenced either the Respondents' subsequent refusal to remove the questionable storm door or provided the Board and the EPB members with added information about other storm doors installed in the community and the need to have published standards for such doors. Perhaps, with such involvement from the community in a publicized meeting, this complaint might never have been filed.

Neither party to this complaint, having not been found to be without contributing fault, but to have acted without malice and with good faith, shall each incur its own attorney fees and cost.

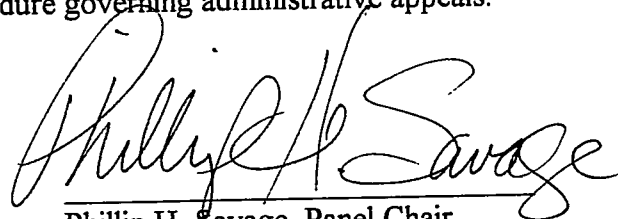
DECISION and ORDER

In view of the foregoing, and based on the evidence of record, it is Ordered by the Commission, this 30th day of September, 1995, that:

1. The complaint filed by the Haddonfield Homeowners Association, Inc. against Neil and K. Noel Tyra, dated March 4, 1994, is hereby dismissed, with prejudice.
2. All parties to this complaint shall incur their own legal expenses and costs.
3. Mr. and Mrs. Neil and K. Noel Tyra have the right to retain the installed storm door involved in this complaint, until such time that they move from their residence or, by following the rules and regulations of the Association, they replace it.

The foregoing Decision and Order were concurred in by panel members Burstyn, Price and Savage.

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.



Phillip H. Savage, Panel Chair
Commission on Common Ownership
Communities