

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

In the Matter of	x	
Dale E. Yeilding	x	
10648 Montrose Avenue, #204	x	
Bethesda, Maryland 20814	x	
	x	
Complainant	x	
	x	Case No. 265-O
v.	x	June 30, 1995
	x	
Louis D'Angelo, President	x	
Parkside Condominium	x	
10520 Montrose Avenue	x	
Bethesda, Maryland 20814	x	
	x	
Respondent	x	

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland for hearing on February 22, 1995, pursuant to Section 10B-5(I), 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, finds, determines and orders as follows:

Findings of Fact

1. On April 14, 1981, the Parkside Condominium Association, Inc. (hereinafter "Board" or "Association") was established, thereby giving it powers under its Association's Rules and Regulations and its Bylaws of Council of Unit Owners to govern the affairs of the condominiums noted herein.

2. Dale E. Yeilding (hereinafter "Complainant"), is a resident of a condominium at 10648 Montrose Avenue, Unit 204, bought by him in August of 1981, covered by the aforementioned Rules and Regulations and Bylaws.

3. On February 3, 1994, the Board of Directors, acting on behalf of the Association, concluded, after holding a hearing on the matter, that Complainant had violated Section I, Article A.2, of the Association's Rules and Regulations.

4. On February 3, 1994, the Board directed Complainant to play his stereo so that it could not be heard beyond his unit; to use headphones when playing his stereo after 8:00 p.m.; and to pay \$15.00 as a fine for having also played his stereo too loudly on three other occasions.

5. Later, the Board modified its directive to Complainant, by eliminating the requirement that he use headphones whenever playing his stereo after 9:00 p.m. However, the Board retained its order to Complainant that he pay a \$15.00 fine for having violated the Association's rule concerning the loud playing of his stereo.

6. At the public hearing, testimony from various witnesses supported the Association's position that Complainant played his stereo loudly.

Conclusion

The rule at issue states: "No unit owner or occupant shall play or allow to be played any musical instrument, radio, stereo, tape recorder, or the like if the same shall unreasonably disturb or annoy any other unit owners or occupants." Article I, Section A.2. Complainant contends that his playing of the stereo at a sound level that he enjoys is within the range permitted by Montgomery County law. That range is fifty-five (55) dBA. He knows that the sound level is within the permissible range because, using a sound meter, he checked the sound level and found it to be under fifty-five (55) dBA.

However, at the hearing, Complainant admitted that he had never received any training in measuring sound, nor did he provide any evidence that the meter used by him to measure the sound was scientifically acceptable and in proper working order at the time. Therefore, the evidence presented by Complainant, to show that the sound level of his stereo was maintained within the requirements of Montgomery County law, fails to satisfy his burden, i.e. to show that he played his stereo at a legally acceptable level.

Even if Complainant could demonstrate that he played his stereo within the range established by Montgomery County law, Complainant still would not have carried the day. For, evidence presented at the hearing, that was un-rebutted, described the building in which Complainant and other unit owners lived, had very thin walls between the units. Consequently, sound resonated easily throughout the building. In such a situation, residents of the building had to take special care, and to pay close attention, to avoid having noise (whether music from a stereo or from any other source) emanating from their respective units and disturbing other owners or their guests. Despite being aware that the building's walls, because of their thinness, permitted sound to easily escape from his unit, and despite being made aware that the sound level coming from his unit disturbed and annoyed other unit owners, Complainant, nevertheless, failed to comply with the Association's directives to him—issued on previous occasions—to manage the stereo's music level to prevent disturbing or annoying other unit owners.

We find that the Association used good judgment, reason, and common sense when it ordered Complainant to control his music's sound level, even if the sound level might have been within the level otherwise allowed by Montgomery County law, given the building's thinly constructed walls. To have done otherwise, the Association would have put into jeopardy the investment each unit owner had in his or her unit. For, few buyers would want to purchase units in a building where sounds are disturbing and annoying. We thus cannot fault the Association for applying its rules to protect the financial interests of its owners and to assure that the owners enjoyed their units without being disturbed by noises that could be controlled. Complainant had on previous occasions kept the music played by him at an acceptable level. So, it was not unreasonable, as mentioned, to expect him to do so consistently.

Consequently, we find and conclude that the Association violated no rule of law, nor any of its own rules and regulations, when it found that Complainant had violated its rule (Article I, Section A.20) by playing his stereo at a sound level that was disturbing and annoying to other unit owners.

Decision

We find, based on the evidence within this case, that Complainant did violate the Association's Article I, Section A.2, by disturbing and annoying other unit owners, and that the Association's imposition of a fine of fifteen dollars (\$15.00) against Complainant was reasonable and justified.

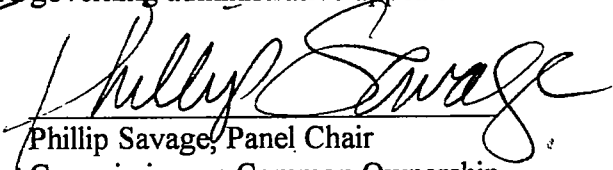
Order

In view of the foregoing and based on the evidence of record, it is hereby ORDERED that:

Within thirty (30) days of the date of this ORDER, Complainant shall pay the fine of fifteen dollars (\$15.00) levied against him by the Association.

The foregoing was concurred in by panel members Savage, Huson and Glancy.

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 the Maryland Rules of Procedure governing administrative appeals.


Phillip Savage, Panel Chair
Commission on Common Ownership
Communities