

Before the
Commission on Common Ownership Communities

In the Matter of	x
Dr. Ronald A. Pomykala, Owner	x
Units N-802, 803, 806 (partial)	x
4500 North Park Avenue	x
Chevy Chase, Maryland 20815	x
	x
Complainant	x
	x
v.	x
	x
The Willoughby at Chevy Chase	x
Board of Directors	x
5500 Friendship Boulevard	x
Chevy Chase, Maryland 20815	x
	x
Respondent	x

Case No. 279-O
May 12, 1995

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing, on March 29, 1995, 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 duly appointed hearing Panel having considered the testimony and evidence of record, finds, determines, and orders as follows:

Background

On June 10, 1994, Dr. Ronald A. Pomykala, (Complainant), owner of units N-802, 803 and 806 (partial), 4500 North Park Drive, Chevy Chase, Maryland, located in The Willoughby at Chevy Chase, filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleges that the Board of Directors, The Willoughby at Chevy Chase Condominium, Inc., improperly adopted a Resolution, "denying pool passes to the owners of commercial spaces and their staff," which is in violation of Article IV, Section 4 of the Declaration.

On behalf of the Council of Unit Owners of The Willoughby at Chevy Chase (Respondent), Ralph A. Taylor, Jr., of the law firm of Shaw, Pittman, Potts & Trowbridge, responded, in pertinent part, that The Willoughby is a residential condominium with a small number of units which may be used for professional or commercial purposes; that there is a long-standing policy, reflected in duly-enacted rules in effect at least since 1985, of issuing pool passes only to residents and their guests; that granting pool passes to nonresident commercial unit owners and their employees is inconsistent with the residential character of The Willoughby; that

The pool is a residential amenity not a commercial one and that giving pool passes to employees of commercial unit owners would set a precedent which might result in a requirement that pool passes be given to employees of every other unit owner, e.g. housekeepers, home office employees, babysitters, and the like.

The Complainant seeks an order from the Commission to the Respondent requiring that the policy denying pool passes to owners of commercial units be rescinded and to provide him with pool passes.

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 September 7, 1994, and the Commission voted that it was a matter within the Commission's jurisdiction; the hearing was scheduled for March 29, 1995, at which time the Commission conducted a public hearing in this matter. Dr. Ronald A. Pomykala testified on his own behalf. David Dobson, a member of the Board of Directors and former President, was authorized to and testified on behalf of The Willoughby. At the conclusion of the hearing, the record was closed.

Findings of Fact

1. The Willoughby of Chevy Chase Condominium has 810 units, of which fewer than 10 are non-residential. The non-residential units are approved for professional and commercial use. The Willoughby was converted from apartments to condominiums in 1982.

2. In 1989, Dr. Pomykala purchased two units and part of a third in the section of The Willoughby in which the units are for professional and commercial use. Dr. Pomykala uses this space for his dental practice. At the time of his purchase, Dr. Pomykala was provided with a copy of the Declaration and Bylaws of The Willoughby.

3. The Declaration includes, at Article I, Section 1, a series of definitions, which include, in pertinent part:

(f) "Condominium Unit" or "Unit"...shall include all Units designated for residential and for Professional Office use...";

(l) "Unit Owner" or "Owner" means any person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who holds legal title to a Unit within the Condominium....

4. At Article III, Section 3 "Easements", the Declaration states, in pertinent part,

Each Unit Owner is hereby granted an easement in common with each other Unit Owner for ingress and egress over, upon or through and for the use of all

rules, regulations and restrictions as may be imposed by the Council of Unit owners pursuant to the Bylaws.

5. At Article IV, Section 4 "Easements", the Declaration states,

The Common Elements of the Condominium shall be subject to mutual rights of support, access, use and enjoyment by all of the Unit Owners.

6. The Declaration does not distinguish between Unit Owners of residential units and Unit Owners of commercial or professional units in relation to the use of Common Elements.

7. The Bylaws of The Willoughby provide, at Article III "Board of Directors", Section 3 "Powers and Duties", that the Board of Directors shall on behalf of the Council of Unit Owners:

(f) Make and amend the Rules and Regulations governing use of the Property and the Common Elements, including the recreational facilities and Parking Area provided that no fees shall be charged to the Unit Owners for use of any of the recreational facilities during 'the period of Developer control.'

8. The Bylaws further provide, at Article V "Operation of the Property, Section 14 "Restriction on Use of Units; Rules and Regulations", at subsection (b):

Each Unit and the Common Elements shall be occupied and used in compliance with the Rules and Regulations which may be promulgated and amended by the Board of Directors. Copies of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner. Amendments to the Rules and Regulations shall be conspicuously posted prior to the time when the same shall become effective and copies thereof shall be furnished to each Unit Owner upon request.

9. It is clear from the record that both parties consider the swimming pool to be a Common Element of the Condominium.

10. Rules and Regulations were adopted in 1985 and have been amended from time to time since. Swimming Pool Rules are included in the Rules and Regulations. The swimming pool rules provide for issuance of admission cards to residents and guests. It is the use of the word "resident" in the pool rules which indicates the policy that only residents may use the pool. The intention of this policy is that pool admission cards will only be issued to those currently residing in The Willoughby. Pool admission cards are not issued to commercial unit owners or to other non-resident owners.

Conclusions of Law

1. The Declaration for The Willoughby, at both Article III, Section 3 and Article IV, Section 4, grants all Unit Owners an easement to use all of the Common Elements.

2. Both the Declaration and Bylaws authorize the Board of Directors to reasonably regulate the use of the Common Elements. This authority does not extend to denying Unit Owners of the use of the pool which is granted to them in the Declaration. It does permit reasonable regulation of the use of the pool by Unit Owners, treating all Unit Owners equally.

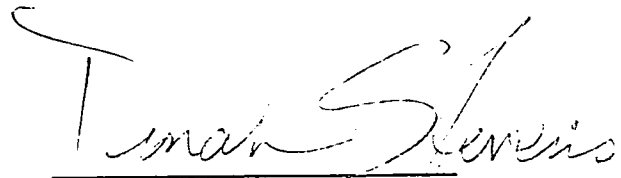
Order

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

That pool admission cards be distributed to all Unit Owners, upon application, including Dr. Pomykala, in accordance with such reasonable rules and regulations for the use of the pool at The Willoughby as may be adopted or reinterpreted in accordance with this decision and order.

The foregoing was concurred in by panel members Auvil, Szajna and Stevens.

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.



Dinah Stevens
Dinah Stevens
Panel Chairwoman
Commission on Common Ownership
Communities