

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

In the Matter of:	x	
Oak Springs Townhouse Association, Inc.,	x	
	x	
Complainant,	x	
	x	
v.	x	Case No. 288-G
	x	
Darryl Butler,	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 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 27th day of February, 1996, 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:

This dispute originated when the Respondent sought approval, via application to the Complainant, in July 1993, to install a window in his deck's roof constructed in March 1993. Respondent's application was denied by the Complainant because the Respondent had never sought, nor received, from Complainant approval to install a roof over his deck. (Neither had Respondent sought or received the Complainant's approval to install a deck at the rear of his residence. However, the Complainant never challenged the Respondent's installation of the deck without the Complainant's prior approval; nor was the matter considered as an issue in this complaint.) The Complainant appropriately relied on the authority granted to it, in Article V of its Declaration of Covenants, Conditions and Restrictions, when rejecting the Respondent's application for installation of a window in his deck's roof.

When the Complainant rejected the Respondent's application to install a window in the deck's roof, allegedly "to give additional light to [his] kitchen area," the Complainant informed the Respondent that he would have to seek approval from the Association to retain the deck's roof already installed over the Respondent's deck. The Respondent complied by submitting to the Complainant an application, dated December 10, 1993, for the approval of the completely shingled deck's roof, that was a solid structure covering his deck.

In a January 20, 1995 statement, the Respondent insisted that he installed the solid roof over his deck "to block the sunlight [because] we were not sun worshiper[s]." This statement seems to be a contradiction of the Respondent's previous statement, namely, that he wanted to install a window in the solid roof over his deck to allow additional sunlight to enter through it. Nevertheless, neither reason bears upon the outcome of this dispute.

The Complainant reviewed and rejected the Respondent's application, concluding that the deck's roof lacked the "design compatibility of the architectural characteristics of adjoining homes and the neighborhood setting." The Respondent requested that the Complainant reconsider its rejection of his application. At a March 9, 1994 meeting, conducted by the Complainant, the Complainant did reconsider; however, it reached the same decision: that the Respondent's roof over his deck was in violation of its Declaration and rules.

In rejecting the Respondent's request for reconsideration, the Complainant did propose a compromise to the Respondent, namely, that if the Respondent modified his deck's solid roof to make it an open trellis-type one, the Complainant would approve his application for the deck's roof. Testimony elicited at the Commission's hearing confirmed that no other residence in the community has a solid roof over a deck; rather, all other residences with roofs over decks are trellis-like, in appearance and structure.

At a hearing held by the Complainant on September 14, 1994, at which the Respondent attended, the Complainant again rejected Respondent's deck roof and ordered that it either be modified to a trellis-type structure or be removed. To date, the Respondent has failed either to remove or to modify the deck roof to conform with the Complainant's decision.

In defense of his defiance of the Respondent's order to him, the Respondent asserted that he was relying on the then President of the Association's alleged agreement that, if the Respondent submitted an application for approval of the roof deck, it would be approved. The alleged agreement came during a December 8, 1993 Board Meeting, at which the Board had rejected the Respondent's application to place a window in his roof deck. However, testimony at the hearing held by the Commission, on November 29, 1995, failed to corroborate the Respondent's assertion.

The Respondent also stated that, in 1986, he had assisted his next door neighbor to build a roof over his deck and that the roof deck had subsequently been approved by the Complainant. The neighbor's roof was a trellis-type structure, with louvers capable of being opened and shut. The Complainant denied that it ever received or approved the application for the neighbor's roof. Nonetheless, the roof remains, as constructed and erected, over the neighbor's deck. Furthermore, the Complainant added that it had rejected the Respondent's roof because it was solid in construction, therefore not able to let light and air through it as a trellis-type would allow. The erection of a solid roof over the deck, the Complainant included, could easily, at a later date and without the Complainant's approval, be converted into an addition to the rear of a residence, a violation of the Complainant's Declaration which the Complainant wished to prevent.

The Respondent served as a member of the Complainant's Board of Directors, according to the Respondent's testimony, during 1989-90.

## CONCLUSION

The Complainant possessed clear authority, under Article V of its Declaration of Covenants, Conditions, and Restrictions, to regulate the erection of any roofs over decks in the involved community. Article V reads:

" No building, fence, wall or other structure shall be commenced 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 the 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 (EPB) appointed by the Board and composed of three (3) or more representatives none of whom have to be members of the Association."

Thus, the Respondent's maintenance of a roof over his deck, in opposition to the Complainant's order to him, either to remove the roof or to modify it to a trellis-type structure, places him in violation of Article V. In bringing this complaint against the Respondent, the Complainant is seeking the Commission's authority to order the Respondent to abide by the Complainant's order concerning the roof over his deck. To sustain the Complainant's order to the Respondent, we must find that the Complainant acted reasonably when it acted against the Respondent.

Nothing in this record tends to undermine or to cause us to reverse or otherwise change the Complainant's order to the Respondent. For, the testimony and documents, relevant and material to this dispute, show that the Complainant followed and complied with all of the procedures required of it, before requiring the Respondent to remove or to modify the roof over his deck. For example, the Complainant met and heard the Respondent and others present their views regarding the roof. After weighing the views presented, the Complainant timely notified the Respondent of its decision to reject his roof. When the Respondent requested the Complainant to reconsider his request to retain his roof without modification, the Complainant did, in fact, reconsider its ruling about the roof. After reconsidering its ruling, the Complainant modified its ruling to allow the Respondent to retain his roof if he modified it to a trellis-like structure. Then, upon the Respondent's request, the Complainant held a hearing, at which the Respondent attended and testified, to again reconsider its ruling. At the end of the hearing, the Complainant reaffirmed its ruling, ordering the Respondent either to modify his roof or to remove it.

The Complainant and the Commission considered and rejected the Respondent's contention that the order to him was unreasonable, in that a then President of the Association had assured him that if he submitted an application to the Association to retain the installed roof over his deck, it would be approved by the Association. Neither the involved President of the Association nor any other member of the Association present at the meeting, when the Respondent alleges that the then President gave him such an assurance, corroborated the Respondent's allegation.

Furthermore, even if such assurance had been opined, the then President of the Association had no power by herself to approve the Respondent's roof over his deck. Article V, cited here, makes abundantly clear that only the Board of Directors or the Environmental Protection Board (EPB) had the authority to approve the Respondent's maintenance of an alteration to his home. Neither of which ever approved the Respondent's roof; therefore, the Respondent's retention of the roof, unless modified, violates Article V.

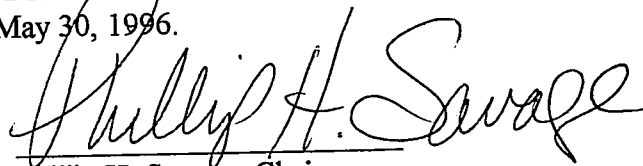
Additionally, the Respondent contends that the Association's ruling that his roof is in violation of Article V is unreasonable, because his next door neighbor's roof over his deck is similar. We disagree. The neighbor's roof can be made solid or be opened by either closing or opening the louvers in it. Complainant's roof, on the other hand, is always solid, because it is shingled and unlouvered. This is more than a distinction without a difference, in that the Complainant is opposed to solid roof structures over decks, because they may, inter alia, lead to residents constructing, without the Complainant's permission, additions of rooms to their homes. Moreover, such roofs would not in keeping with the harmony of the community.

Except for the single neighbor in the community that has louvers in the roof over his deck that can be opened and closed, the Complainant has never approved any addition of a roof over a deck that was not louvered. The Respondent did not challenge or rebut this testimony by the Complainant, which gave credence to the Complainant's ruling that the Respondent's roof was not in harmony with the community, i. e., "not consistent with the design compatibility of the architectural characteristics of adjoining houses and the neighborhood setting."

Therefore, we find that the Complainant acted reasonably, when it concluded that the Respondent's roof over his deck violated Article V of its Declaration and when it ordered the Respondent to remove the roof or modify it. Further, we find that the Respondent is in violation of the Complainant's order, in that he has neither modified nor removed the roof over his deck, as ordered.

#### ORDER

The Respondent is ordered to either remove the roof over his deck or modify it in accordance with the Complainant's March 15, 1994 instructions to him. The Complainant shall comply with this order by the Commission no later May 30, 1996.

  
Phillip H. Savage, Chair  
Commission on Common  
Ownership Communities