

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

In the Matter of
Christina Page, et al.,
Unit Owners at
Grosvenor Park I,
10201 Grosvenor Place
Rockville, Maryland 20852,
Complainants,

x
x
x
x
x
x
x
x
x
x
x
x

v.

Joan Nichols, President
Board of Directors
Grosvenor Park I,
Respondent

Case No. 291-O
November 3, 1995

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, 1994, as amended, and the Commission having considered the testimony and evidence of record, it is therefore this 3rd day of November, 1995, found, determined and ordered as follows:

Background

Christina Page, Wallace Coy, Marvin Marcus and Richard Motley as the Steering Committee of the "Grosvenor Park I Co-Owners Committee" (hereinafter "Complainants") filed a complaint against the Board of Directors of the Grosvenor Park Condominium I (hereinafter "Board" or "Association") on February 14, 1995. The complaint alleged that the Board and Management "did knowingly and willfully fail to properly conduct an election and did conduct a fraudulent election at the 1994 Annual Meeting...on December 5, 1994" and listed a variety of instances of commission and omission in support of these allegations. The requested remedies, as revised at the hearing, were that the Commission direct that an objective third party conduct the Grosvenor Park I annual meeting to be held in December 1995 and direct that all five members of the Board of Directors stand for election at the December 1995 annual meeting. The validity of the adoption of the budget was an issue in the original complaint but was explicitly withdrawn at the hearing by counsel for the complainants.

On May 25, 1995, a response to the complaint was filed on behalf of the Board and several discovery requests were submitted. In response to the complaint, the Board admitted a number of the instances which Complainants had described in support of their allegations but denied the legal characterization alleged by Complainants, otherwise the Board generally denied violating any law or condominium document provision. The discovery requests sought clarification of some parts of the complaint, as well as discovery in preparation for hearing. The Board also moved for dismissal of some parts of the complaint.

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 August 2, 1995, and the Commission voted to take jurisdiction and to schedule a public hearing. The Panel Chairwoman held a pre-hearing conference on August 15, 1995 and ordered the parties to conduct such depositions and other discovery as might be necessary to prepare for a hearing. The hearing was held on October 18, 1995. The record was kept open until October 25, 1995, to allow the parties to respond to the written legal argument each had presented at the close of the hearing.

Findings of Fact

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

1. There are approximately 400 units in the Grosvenor Park Condominium I.
2. In May 1994, a group of unit owners came together and formed the Grosvenor Park I (GP-I) Co-Owners' Committee. The Committee and its subcommittees met approximately 30 times during the period between May and the annual meeting of the Condominium co-owners in December. The complainants were all active members of the Committee.
3. The Committee made a number of attempts to communicate with other GP-I co-owners which were frustrated because their efforts did not comply with community rules. The Board and management personnel enforced the community rules restricting posting and distributing notices.
4. The Committee made numerous efforts to negotiate their concerns with the Board during the period between May and December 1994. The tenor of some of these communications and of some communications between the Board and the rest of the unit owners regarding the Committee's efforts indicate strong differences of opinion, lack of respect and in some cases a lack of civility.
5. Two people associated with the Committee, Richard Motley and Susan Brewer, decided to run for the Board of Directors at the 1994 annual meeting of the condominium co-owners.
6. At the Board meeting held in November 1994, six inspectors of election were chosen including Christina Page, Wallace Coy and Marvin Marcus. The group was evenly balanced in representation between the Committee and the incumbent Board of Directors.
7. Information related to the annual meeting, the budget and the election of directors was circulated to unit owners by transmittal memorandum dated November 7, 1994. It was placed in boxes provided for unit owners. Ms. Page and Mr. Motley did not receive a copy of this material on that date but requested a copy and were given one. The material distributed in this package included an agenda for the meeting, an official proxy, resumes of the four candidates for the Board. The names of the candidates for the Board were in alphabetical order on the proxy. The resumes in at least some of the sets of documents were not in alphabetical order but placed Mr. Motley's and Ms. Brewer's resumes at the end.

8. Mr. Motley testified that the proxy form which requested unit owners to return the proxy whether they intended to attend the meeting or not was new. Ms. Nichols, President of the Board of Directors, confirmed that this was a new procedure and she thought that it was intended to help expedite the beginning of the annual meeting when it is necessary to determine that a quorum is present.

9. Ms. Page testified that she inquired of Ms. Nichols about volunteering to serve at the sign-in tables at the annual meeting. Ms. Nichols referred her to Ms. Willard, then the manager, who told her that no more people were needed at the sign-in tables. Ms. Willard testified that she had no memory of who chose people to sit at the sign-in tables.

10. The Grosvenor Park I annual meeting was held in a room in the Holy Cross Church complex on December 5, 1994. Two positions on the Board of Directors were to be filled by the election held at the annual meeting and the budget for the following year was to be approved.

11. Ms. Nichols testified that it was her understanding that the management staff was in charge of the meeting and election. Ms. Willard testified that she helped set up the room including the sign-in tables at the back of the room and instructed the people at those tables but did not supervise them. Ms. Willard also testified that she took proxies and ballots to members of the Board to have the ballots filled in.

12. Ms. Page testified that Ms. Nichols told her and others present at a meeting on January 19th that Board members traditionally filled in the Board as proxy holder when no proxy holder was designated by the unit owner.

13. Ms. Page testified that she had discussed with Ms. Gomez, then assistant manager, the process of recording the ballots in the computer program used for counting ballots and that Ms. Gomez told her that the process took a whole day and declined Ms. Page's offer to have an inspector of elections present during the process. Ms. Gomez said that it actually took about two hours to record the voting on the computer and that she did not remember Ms. Page's offer to have an inspector present for the process.

14. Ms. Gomez testified that she didn't know whether a proxy holder was supposed to sign-in at the meeting for the unit owner whose proxy he/she was carrying. Ms. Page testified that the Committee representatives tried to make sure that the person holding proxies collected by them signed in for each unit for which she was the proxy holder.

15. Ms. Nichols and Ms. Willard testified that they took the box containing all of the ballots back to the management office at Grosvenor Park I and locked it in a closet there after the annual meeting.

16. Ms. Gomez testified that on the morning of December 6th she opened the ballot box and recorded the ballots on the computer. She said that all of the ballots were in the box with the proxy physically attached to the ballot. She said that Ms. Willard was also in the office but not involved in the recording process. When Ms. Gomez had completed the recording process she returned the ballots to the box, locked the box and returned the locked box to the closet.

17. Ms. Page testified that the inspectors of election were convened in a meeting room at Grosvenor Park I on the evening of December 7th and presented with the box with ballots and proxies in it and a computer print out of the results of the election.

18. Ms. Page testified that the inspectors of election were given no instructions on their duties. They were told that they should ignore the sign-in sheets because at some point during the meeting they were no longer being used. The inspectors started to review the ballots and proxies and noticed that the handwriting indicating the Board of Directors (in various forms, e.g. BOD, Bd of Dirs) as the holder of the proxy appeared to be different from the handwriting of the signature. They counted approximately 40 of these and then gave up attempting to make this determination. There was no photocopying equipment available for their use at this meeting. Mr. Coy testified that this and other concerns raised by the inspectors representing the Committee were received by those representing the incumbent Board with hostility. Ms. Page also testified that they observed approximately 15 to 20 unsigned ballots at that meeting. Mr. Coy adopted Ms. Page's testimony and offered additional testimony that the meeting lasted more than three hours and was very unpleasant.

19. Some number of proxies were submitted without designation of a proxy holder. Members of the Board exercised these proxies and entered onto ballot forms votes for candidates for the Board of Directors. Neither party in this case has included any case or statutory references or citations on the law involving proxies into the record.

20. On December 8th the inspectors of election received a memorandum describing the certification for the election and a sample of the certification from Ms. Nichols. Ms. Nichols testified that this was the only instruction she provided to the inspectors on their responsibilities.

21. Ms. Page testified that the inspectors reconvened on December 13th. One of the inspectors selected by the incumbent Board was unable to attend that meeting so Mr. Marcus also did not come in order to retain the original balance. At this meeting the ballot or ballots which Ms. Page could recall she had observed a week earlier to be missing a signature were signed.

22. Ms. Page and Mr. Coy declined to certify the results of the election. It was certified by two inspectors originally selected by the incumbent Board who had attended both meetings of the inspectors. One of the two candidates certified as elected has since resigned and that position must be filled for the remaining two years of the term at the election to be held on December 4, 1995.

23. It was clear from the testimony and documents in the record that no one was in charge of the election of directors and vote on the budget at the Grosvenor Park I annual meeting in December 1994. Further, no testimony was offered on behalf of the Board or management of Grosvenor Park I indicating that anyone had a very clear idea what appropriate procedures for the conduct of the election and vote were.

24. There was no testimony offered on what members of the Board did when they voted on behalf of a unit owner when exercising a proxy. There was no testimony indicating that there was a variance between proxies which directed the vote for candidates for director and the ballot attached to them. There was no testimony indicating what a director may have done when presented with a proxy that did not include direction for voting for candidates for director.

25. There was no testimony that any other recent election had been contested. Nor was any evidence introduced into the record regarding the conduct of any other election of directors.

26. Ms. Nichols testified that arrangements have been made for an outside firm which works with the League of Women Voters and runs private elections to run the election at the annual meeting of Grosvenor Park I to be held on December 4, 1995.

Conclusions of Law

The Commission concludes, based on a preponderance of the evidence admitted into the record, and after a full and fair consideration of the evidence of record, that:

1. Complainants, while not proving any specific violation of law or provision of community documents, have provided sufficient evidence of inadequate management and oversight of the election of members to the Board of Directors at the annual meeting on December 5, 1994, to seriously undermine the integrity of that election.
2. The relationship between the owner of an interest entitled to vote and the holder of the proxy for that interest is one of agency. Thus, the owner needs to designate the proxy holder. The proxy holder should be an individual.
3. The Real Property Article of the Annotated Code of Maryland, in the Condominium Act at sections 11-109(c)(10) and (11) requires that a proxy holder voting in an election of members of the board of directors may only vote for candidates designated by the unit owner.

ORDER

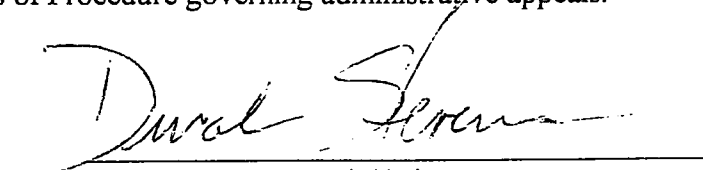
In view of the foregoing and based on the evidence of record, it is hereby ORDERED that:

1. Both of the positions on the Board of Directors of Grosvenor Park I which were filed as a result of the certification issued after the election held at the annual meeting on December 5, 1994 be subject to election again for the remaining two years of the term at the annual meeting to be held on December 4, 1995.
2. The election be held in such manner that the rules are clear and are followed and the integrity of the voting and tabulating process is ensured.

3. Proxy holders are to be designated by the unit owner and are to be a person.

The foregoing was concurred in by panel members Gick, Fox and Stevens.

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.

A handwritten signature in cursive script, appearing to read "Dinah Stevens", is written over a horizontal line.

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities