

MONTGOMERY COUNTY, STATE OF MARYLAND

Doral Homeowners Association *

Complainant * **COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

v. * **Case No. 36-07**

Ehigiator Akhigbe * **November 26, 2008**

Respondent *

MEMORANDUM DECISION AND ORDER

On September 24, 2008, the above-captioned case was heard by a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended.

The duly appointed Hearing Panel now having considered the testimony and evidence presented, finds, determines and orders as follows:

Background

This action was filed by the Doral Homeowners Association (“Complainant”), against Ehigiator Akhigbe (“Respondent”), who is the owner of 13105 Princeville Road, Silver Spring, MD 20904 located within the Doral Homeowners Association (“Property”). In its Complaint, the Complainant alleges that the Respondent constructed an exterior shed on his Property in violation of the Complainant’s Declaration of Covenants, Conditions and Restrictions.

Findings of Fact

Based on the testimony and evidence received, the Hearing Panel makes the following Findings of Fact:

1. The Respondent is the owner of property located at 13105 Princeville Road, Silver Spring, MD 20904 located within the Doral Homeowners Association.

2. As a result of his ownership of the Property, the Respondent is a member of the Complainant and is bound by its recorded Declaration of Covenants, Conditions and Restrictions ("Declaration").

3. Article V of the Declaration states that:

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, 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 harmony of external design and location in relation to surrounding structures and topography and conformity with the design concept for the Property by the Board of Directors of the Association or by a covenant committee. . .

4. In 2006, the Respondent constructed on his Property an exterior structure, which the Respondent describes as a playhouse.

6. The Respondent did not seek or obtain the approval of the Complainant for the exterior structure prior to its construction.

7. Upon learning of the structure, the Complainant sent correspondence to the Respondent requesting that he remove the structure because it had been constructed

in violation of the Declaration.¹ The Respondent contested such request and refused to remove the structure.

8. On June 29, 2007, the Complainant filed this action seeking removal of the exterior structure on the Respondent's Property, return of its \$50.00 filing fee, and an award of legal fees.

Conclusions of Law

1. While the parties disagree on whether the exterior structure is a playhouse, animal house, or shed, it is clear that what the Respondent built falls within the definition of the term "structure".

2. Pursuant to Article V of the Declaration, the Respondent was required to make a submission to the Complainant for this structure and obtain its approval prior to constructing the structure.

3. The Respondent failed to comply with the terms of Article V of the Declaration, which are binding upon him and the Property.

Order

In view of the foregoing, and based upon the record in this case, it is this twenty-sixth day of November, 2008 by the Commission on Common Ownership Communities,

ORDERED as follows:

¹ It is noted that the Complainant's correspondence to the Respondent did not comply with the Commission's "Policy on Fines and Sanctions" in that it failed to advise the Respondent that if he disagreed with the determination of the Complainant he could file an appeal with the Montgomery County Commission on Common Ownership Communities.

1. Complainant's request for removal of the exterior structure is GRANTED, and it shall be removed by the Respondent within 60 days after the date of this Order.
2. Also within 60 days after the date of this Order, the Respondent shall reimburse the Complainant for the \$50.00 filing fee in this case.
3. Complainant's request for attorney's fees is DENIED.

The foregoing was concurred in by panel members Allen Farrar and Andrew Oxendine.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty days after the date of this Order, pursuant to the Maryland Rules and Procedures governing administrative appeals.

Julianne E. Dymowski, Panel Chair
Montgomery County Commission on
Common Ownership Communities