

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matter of

Anita T. Weiss

Complainant

v.

Woodrock Homeowners Association

Respondents

*
*
*
*
*
*
*
*
*
*

Case # 702- O
March 29th, 2006

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on July 13, 2005, 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 duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, determines, and orders as follows:

The Dispute

Case No. 702-O is a dispute in which Complainant Anita T. Weiss ("Ms. Weiss" or "Complainant") asserts that the Woodrock Homeowners Association ("Woodrock" or "Respondent ") failed to act on her application to make architectural modifications, failed to keep certain records, failed to provide notice of certain meetings, and failed to allow her to inspect Association records, all in contradiction of Woodrock's governing documents and applicable provisions of the Maryland Homeowner's Act.

Ms. Weiss filed Complaint No. 702-O against Woodrock with the Commission on May 14, 2004. The complaint was not resolved through mediation, and the dispute was presented to the Commission on Common Ownership Communities, which voted that the dispute involved matters within the Commission's jurisdiction and scheduled the dispute for hearing, which was held before Commissioners Andrew Oxendine and Vicki Vergagni, and Panel Chair Christopher Hitchens on July 13, 2005.

SUMMARY OF TESTIMONY AND EVIDENCE

Complainant's Case

The Complainant, represented by Mitchell Shapiro, Esquire, testified on her own behalf.

Ms. Weiss testified that she is the owner of the property known as 10854 Whiterim Drive, Potomac, Maryland 20854 (the "Property") and that she submitted an application on July 18, 2002, to install a slate patio and a brick retaining wall to control erosion at the Property. She testified that she was not notified of a meeting held by the Architectural Control Committee (the "ACC") to review her application. Ms. Weiss testified that she saw two people observing her yard on or about August 6, 2002, but that she did not know that the two people represented the ACC or that the visit was related to the ACC meeting on her application. She testified that she could not remember when her application was denied. Ms. Weiss testified that she had appealed the ACC's denial, and that she attended a meeting to appeal the ACC's decision on October 21, 2002. Ms. Weiss testified that the appeal hearing was not completed because the Respondent needed additional time to provide information requested by her counsel. She testified that a continued hearing on the appeal never was held. Ms. Weiss testified that she had installed brick pavers instead of slate as indicated in her application, and that she had placed rocks on her lot instead of a two-foot brick retaining wall as indicated in her application.

In her complaint, Ms. Weiss asked the Commission to order Woodrock to: grant her permission to build the slate patio and retaining wall as she had requested; furnish all documents she had requested; hold an "open agenda" meeting; and establish procedures that would ensure that Woodrock meets the criteria from its governing documents and applicable Maryland statutes for providing notices of meetings, conducting meetings, and maintaining records. She further requested that the Commission sanction Woodrock generally for failing to meet these criteria as they specifically related to her application for architectural changes.

Ms. Weiss also requested an award of attorney's fees and the return of the filing fee for the dispute.

The record includes her application for the architectural changes, as well as correspondence with Woodrock that was offered to support her assertions.

Respondent's Case

The Respondent, represented by Kim O'Halloran, Esquire and Rees, Broom and Diaz, presented testimony through two witnesses, John Termini of Hadrian Management, manager under contract to the Respondent, and Alan Cantor, President of the Board of Directors of the Respondent.

Through testimony and exhibits, the Respondent denied that it had not provided notification of the Architectural Control Committee's (ACC's) meeting regarding Ms. Weiss's application, and introduced a general notice to association members establishing the meeting time and place for monthly ACC meetings. The Respondent claimed that members of the ACC had visited the Property on August 6, 2002, and met later to decide on the application. The Respondent provided further testimony and documents to support its argument that it had reviewed Ms. Weiss's application in accordance with its documents, and that notwithstanding the Respondent's defenses and although Complainant had not installed the slate patio and brick wall as she had requested in her application, Respondent was prepared to take no further enforcement action to compel Complainant to comply with the specifications on the application.

The Respondent provided testimony, correspondence, and exhibits in response to the assertions in the Complaint that it had not given proper notices of meetings, that it had maintained association records required to be kept, and that it had provided all records for inspection requested by the Complainant.

Although in its Response to the Complaint the Respondent had asked the Commission to order the Complainant to remove the brick pavers and stone edging she had installed, at the hearing, the Respondent instead asked the Commission to order the Complainant to submit an "as-built," after-the-fact application to provide benchmark documentation of the conditions at the Property, and to pay the attorney's fees it had incurred in responding to the Complaint.

Other exhibits in the record included the Commission's file on this dispute, which contained the Woodrock governing documents. Notably, neither of the parties introduced any photographs to show the conditions at the Property.

FINDINGS OF FACT

1. Ms. Weiss is the owner of the Property.
2. The Property is subject to the Declaration of Covenants, Conditions, and Restrictions for Woodrock, dated March 26, 1984, recorded at Liber 6372, Folio 256 among the Land Records for Montgomery County, Maryland, supplements thereto, and rules, policies and procedures adopted pursuant to the authority in the Declaration.
3. Ms. Weiss submitted an application dated July 18, 2002, to alter the exterior of the Property by installing a slate patio and brick retaining wall.
4. The ACC notified Ms. Weiss in a letter dated August 8, 2002, that her application had been denied.
5. Ms. Weiss appealed the ACC's decision to the Woodrock Board of Directors sometime between August 8 and August 20, 2002.

6. Woodrock's "Policies and Procedures for Architectural Control" dated October 1, 1988, state in pertinent part, at paragraph B (6) that ". . . All written requests [for architectural modifications] must be approved or disapproved within sixty (60) days of submission to the ACC . . .," and at paragraph C(4) that "The ACC will review the written request, the plans, and specifications, and approve or disapprove the proposed modification within sixty (60) days of submission."

7. Section F of the Architectural Policies and Procedures provides that a denial of an application may be appealed to the Board of Directors, that a hearing be held, and in paragraph F (5) that "In no event shall the hearing be convened more than sixty (60) days after the date the appeal was filed, unless by agreement with the owner."

8. Respondent notified Ms. Weiss by letter dated August 20, 2002, that it would schedule a date for a hearing on the appeal, in coordination with Ms. Weiss.

9. Respondent scheduled an appeal for October 21, 2002, and notified Ms. Weiss by letter dated September 16, 2002.

10. The appeal hearing was begun on October 21, 2002, continued at Ms. Weiss's request, but never completed.

11. At an undetermined date, Ms. Weiss installed brick pavers and stones at the Property, materials not described in her application dated July 18, 2002.

12. Complainant has not modified her application to include the brick pavers and stones that she installed at the Property.

13. The Respondent notified Woodrock members of the dates for meetings of the ACC for the year 2002 by a notice dated February 25, 2002.

14. The record contains minutes for ACC meetings held on March 26, 2003, May 14, 2003, and August 19, 2003.

15. The record contains the Board of Directors' reminder notice for the annual meeting of members on December 3, 2001, dated November 29, 2001.

16. The record contains minutes of meetings held by the Board of Directors on February 11, 2002, March 20, 2003, and May 19, 2003.

17. The Complainant requested certain records from the Respondent by letter dated October 28, 2002.

18. The Respondent provided the records accompanied by a cover letter to the Complainant's counsel dated July 15, 2004.

CONCLUSIONS OF LAW & DISCUSSION

1. The Complainant's request for an order to Respondent to grant her application to install a slate patio and a brick retaining wall has become moot.

The panel concludes that Woodrock met the fundamental requirements for processing Ms. Weiss's July 18, 2002, application, and for issuing a denial. The actions of the ACC were prompt and indicate that a process is in place, as well as an intent to comply with the timeframes set forth in the governing documents. The reasons for the subsequent breakdown in the appeal process are not clear from the record, but the contacts made during August and September 2002 indicate the Association's intent to act promptly and to schedule Ms. Weiss's appeal. The appeal was continued at her request.

The panel concludes that given the passage of time and changes in circumstances, there is no interest served in trying to further determine compliance by each of the parties. Given Mr. Cantor's candid assessment that the Association does not now object substantively to the materials Weiss has installed, notwithstanding her failure to install what she initially described in her application, it is appropriate in the interest of bringing this matter to closure for the Complainant to provide documentation of the location and specifications of the materials she has installed. This will enable the Respondent to establish a record for the Property with regard to any further requests for modification. It also is appropriate under the circumstances that the Association provide Ms. Weiss with written documentation that the Association has approved the installation of the brick pavers and stones.

2. Complainant's request to inspect documents has been granted by Respondent.

As noted above, Respondent has granted Complainant's request to inspect records as of July 15, 2004.

3. Complainant's requests to order the Respondent to hold an "open agenda" meeting, to establish procedures for providing notice of meetings, conducting meetings and maintaining records, and to sanction the Respondent, are not warranted by the facts.

Based on the copies of minutes of meetings and notices presented by the Respondent, the Panel has concluded that Woodrock has procedures in place that substantially comply with the requirements and achieve the goals set forth in its documents and Maryland statutes with regard to notices, meetings, and records. Moreover, Woodrock does not operate without advice, but consults with a professional manager and attorneys in carrying out its functions; these professionals provide added safeguards against procedural failures. The Panel concludes that the concerns raised by the Complainant do not indicate a pattern of willful disregard for the requirements in the documents, nor do Woodrock's practices fall below the standard of care of directors in acting in the best interests of the association within the requirements of Woodrock's governing documents and Maryland statutes. Therefore, the Panel declines to sanction Woodrock or to order Woodrock to take any further actions regarding its practices.

The Panel notes from Ms. Weiss's testimony that she was not notified specifically that the August 2002 meeting of the ACC would address her application. While the Association's general annual notice of expected regular meeting dates for the ACC meets the minimum requirements for notifying members, the Panel strongly recommends that the Association specifically notify any person whose application is expected to be reviewed at an ACC meeting of that meeting. The Panel also notes that the Woodrock Association Policies and Procedures for Architectural Control, at paragraph B(5) requires that at least three members of the ACC be present to vote on an application.

4. An award of attorney's fees to either of the parties is not warranted.

Both parties sought to recover attorney's fees in this dispute. The Panel's authority to award attorney's fees is based on the Montgomery County Code, Section 10B-13. The intent of Section 10B-13 is to encourage reasonable behavior by the parties in resolving a dispute, and to discourage unreasonable actions that cause the opposing party to unnecessarily incur expenses. The testimony and documents in the record indicate that there were numerous times in this dispute when both parties focused their energies not on resolving the dispute, but on arguing nuances of each party's compliance with the Association's documents. This approach obscured the primary issues in the dispute, broadened and confused the issues, and created the delay and cost of resolving the dispute.

The most obvious example of the non-productive relationship that developed between the parties was that by the conclusion of the hearing, the Association indicated that it did not object substantively to the pavers and rocks installed by the Complainant, but wanted an application submitted to provide a benchmark for evaluating any future requests for changes. Yet even with that admission, the parties could not move on to a voluntary resolution of this dispute.

The Panel concludes that none of the criteria specified under Section 10B-13 that would justify an award of attorney's fees have been met. The Panel, therefore, denies both parties' requests for attorney's fees. The Panel also concludes that there are no facts that warrant granting the Complainant's request for the return of her filing fee.

ORDER

Based upon the evidence of record and for the reasons set forth above, on this 29th day of March, 2006, by the Commission on Common Ownership Communities, it is ORDERED that:

1. Except as indicated below, the relief requested by the Complainant is DENIED.
2. The Complainant is ordered to submit an application for architectural change on the form currently used by the Respondent, no later than 30 days from the date of this order. The application for architectural change must document the locations and dimensions of

brick pavers and other materials that are currently in place in the portion of the Respondent's lot that is not enclosed by a structure.

3. No later than 30 days after receipt of the as-built application from the Complainant, the Respondent shall provide a written approval of the installation of brick pavers and stones at the Property to the Complainant.

Panel members Vergagni, Oxendine and Hitchens concurred in this decision.

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 after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Christopher Hitchens
Panel Chair
Commission on Common
Ownership Communities