

**Commission on Common Ownership Communities
Montgomery County, Maryland**

In the matter of

Sandra and Charles Kauffman	x	
5101 River Road	x	
Bethesda, MD 20816,	x	
Complainants,	x	
	x	
v.	x	Case No. 04-07
	x	October 4, 2007
The Kenwood Condominium	x	
c/o Kenneth B. Tecler	x	
Suite 300	x	
200A Monroe Street	x	
Rockville, MD 20850,	x	
Respondent.	x	

DECISION AND ORDER

The above-captioned case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to §§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, finds, determines and orders as follows:

Background

On January 16, 2007, Ms Sandra B. Kauffman (Complainant), owner of Apartment 1813, 5101 River Road, Bethesda, a unit in the Kenwood Condominium, and her husband Charles Kauffman, as a resident of that unit, filed a complaint with the Commission on Common Ownership Communities on behalf of themselves and all others similarly situated, against The Kenwood Condominium (Respondent), the Directors and Officers, and management company employed by the Kenwood Board of Directors. The complaint alleged that a special assessment passed by the Board in September 2006 was approved without authorization in the Kenwood documents and that the appearance of need for the assessment was caused by use of an inadequate accounting system. The remedies requested were a temporary and permanent injunction from collecting the assessment; an order: directing the Board to realistically estimate reserve contingencies on an annual basis, to use a cost rather than accrual accounting system, to replace the management company presently employed; and to declare rules 15h and i null and void as being in contravention of the Maryland Condominium Act. Complainants also asked that the Commission specifically instruct that no further such violations occur and impose

suitable penalties. Approximately 13 other unit owners joined in the complaint. The issue regarding rules 15 h and i was resolved and withdrawn prior to the hearing.

Counsel, on behalf of the Kenwood Condominium Board of Directors, responded that the dispute was not within the jurisdiction of the Commission, characterizing the issues as “the collection of an assessment validly levied against a party” or “discretion of a governing body in taking or deciding not to take any legally authorized action”.

Respondent moved to dismiss the complaint against the management company which was granted on July 2, 2007.

The complaint was accepted for jurisdiction, and has been considered and decided, as a complaint only by Mr. and Mrs. Kauffman against the Association. It is, however, the kind of case in which all others similarly situated will get the same result as the Complainant. By virtue of filing the complaint with the Commission, collection of the assessment has been enjoined pending issuance of this decision and order.

Inasmuch as the matter was not resolved through mediation, the dispute was presented to the Commission on Common Ownership Communities for action pursuant to § 10B-11(e) on June 6, 2007, and the Commission accepted jurisdiction. A pre-hearing conference was held by the panel chair on July 13, 2007. The public hearing was held on July 26, 2007, at the conclusion of which the record in the case was closed.

Findings of Fact

The Kenwood Condominium is a 40 year old building which was converted to a condominium regime about 25 years ago. It has 310 units, a garage, and other amenities.

Due to the failure of the auditing firm the Condominium had been using to perform the annual audit in a timely manner, the Condominium contracted with a new firm to audit the records of the Condominium for the period from May 1, 2004 through April 30, 2006. The auditor reported that operating expenses exceeded income for those expenses during the period by \$751,946, and that this deficit was paid for by not funding the reserve funds at the budgeted levels during the period. The budgeted amount for capital reserves was based on a reserve study done about six years ago.

At a Board meeting held on September 28, 2006, the Board determined that the deficit in the reserve funds noted in the audit report was a “net shortage” within the meaning of Article V, Section 1(c) and (d) of the Kenwood Condominium By-laws and it would be necessary to promptly assess \$610,000 against the unit owners in accordance with their percentage of ownership interest to be paid in full with the next monthly assessment due or in not more than six equal monthly installments.

The Kenwood By-laws delegate the authority to adopt a budget and to adopt assessments to the Board of Directors.

Discussion

Mr. Kauffman argued that the shortfall in reserves was not a “net shortage,” in that the Condominium never lacked reserve funds and sufficient funds to pay all identified obligations. He argued additionally that the current budgeting and accounting system is inadequate; that the reserve study is outdated; and that the budgeting process is out of sync with the required schedule due to the delayed audit.

Mr. Kauffman advances an alternative approach to the business process of the condominium which may be a reasonable approach. However, he needs to convince a majority of the unit owners or the Board that it is superior to that currently chosen by the Board of Directors in order to implement it. The minutes of one of the Board meetings in the record indicate that the Board was investigating alternative accounting procedures and in the process of getting a new reserve replacement study done.

Conclusions of Law

The Board sought advice from counsel and their management company and determined that it was necessary to adopt this assessment to restore the reserve account to an amount in accord with the most recent reserve study in light of the anticipated capital expenditures. The decision was in accordance with a reasonable interpretation of the condominium documents and the assessment was within the discretion of the Board of Directors.

DECISION

The determination of the Board of Directors of the Kenwood Condominium to assess the “net shortage” in the reserve funds was within their discretion. The relief requested by Complainants is, therefore, denied.

The foregoing is concurred in by Commissioner Robert Gramzinski.¹

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, under the Maryland Rules of Procedure.

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership Communities

¹ The third member of the panel was ill and unable to attend the hearing. Since the two members of the panel who were present at the hearing were in agreement on the decision, it is concurred in by the panel members present at the hearing without the participation of the third.

