

**Commission on Common Ownership Communities
Montgomery County, Maryland
100 Maryland Avenue, Room 330
Rockville, Maryland 20850**

**Plymouth Woods Condominium Association,
Complainant**

**Case No. 10-12
August 16, 2013**

vs.

**Slyavash Nejadi and Alicia Torres,
Respondents**

JUDGMENT BY DEFAULT

Before Commissioners Molloy (Panel Chair), Henderson, and Weinstein

This matter came before the Commission on Common Ownership Communities for Montgomery County, Maryland ("CCOC") pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended, COMCOR 10B.06.01.01(b)(2), and the CCOC's *Default Judgment Procedures*. The duly-authorized Hearing Panel, having considered the evidence of record, finds, determines and orders as follows.

Findings of Fact

1. The Complainant, Plymouth Woods Condominium Association, Inc., is a condominium association whose governing documents (Master Deed and Bylaws) are filed in the land records of the Circuit Court for Montgomery County, Maryland; and these documents grant the Complainant the right to regulate the use of and maintenance of the common elements, to enforce restrictions against the creation of nuisances and other offensive uses or conduct by the residents, and to create rules and regulations for the community.
2. The Respondents, Slyavash Nejadi and Alicia Torres, are the owners of a unit (#301 at 878 College Parkway, Rockville, Maryland), and this unit is subject to the governing documents of the Complainant.
3. The Respondents do not reside in their unit. They rent their unit to tenants.
4. The Respondent's Bylaws, Article X, Section 3, states:
 - (a) no noxious or offensive trade or activity shall be carried on within the

project or within any condominium unit situate thereon, nor shall anything be done therein or thereon which may be or become an annoyance to the neighborhood or the other owners. No nuisances shall be permitted within the condominium project, nor shall any use or practice be permitted which is or becomes a source of annoyance to the members or which interferes with the peaceful use and possession by the members.

(b) there shall be no obstruction of any common elements. . . .

5. Article V, Section 3 of the Bylaws states that the Board of Directors has the power and duty necessary to provide for the:

(d) promulgation and enforcement of such rules and regulations and such restrictions on or requirements as may be deemed proper respecting the use, occupancy and maintenance of the project and the use of the general and limited common elements as are designated to prevent unreasonable interference with the use and occupancy of the condominium project and of the general and limited common elements by the members....

6. On April 14, 2004, the Complainant adopted rules and regulations on various topics. The "Introduction" of the 2004 Rules & Regulations provides a schedule of fines for initial and continuing violations, including maximum fines. The Introduction also defines classes of violations. A "class A" violation carries an initial fine of \$200 and a maximum fine of \$400. A "class C" violation of this rule carries a fine of \$50 for a first offense and a maximum fine of \$100. Section 4 of the 2004 Rules & Regulations lists specific violations and identifies in parenthesis the class of violation, including:

CARPETING/PADDING (C): In order to reduce noise caused by walking on the floors in the unit, the owner of each apartment shall install necessary carpeting or rugs, plus separate padding, which cover a minimum of 80% of the total floor space, and which meet the requirement of noise reduction.

VANDALISM (A): Unit owners and their families, tenants and guests shall not deface, remove, destroy or permit the defacing, removal or destruction of any element of common property or of limited common property.

7. On February 13, 2012, the Complainant filed this dispute against the Respondents, alleging Respondents failed to install carpeting and padding over 80% of the floor area of the unit and that the tenants of the Respondents had overloaded the common washing machine causing damage in the amount of \$373.76. The Complainant requested that the CCOC order the Respondents to install the required padding and carpeting, reimburse the Complainant for its damages, and to pay \$500 in fines. The complaint was substantiated with several warning notices previously sent to the Respondent as well as a statement of their right to request a hearing with the Board of Directors on the charges. The complaint further stated that a hearing with Respondents had been held on September 14, 2011, and that the Board of Directors found Respondents

to be in violation of the rule on carpeting and that their tenants had damaged the laundry equipment.

8. On February 14, 2012, the CCOC's staff sent a copy of the complaint to the Respondents at both their address of record and at the address of the unit. This notice clearly states that the Respondents must answer it in writing within 30 days and that if they fail to do so the CCOC can enter a judgment by default against them. The letter sent to the unit was returned unclaimed by the post office but the letter sent to the address of record was not returned.

9. Respondents did not answer the complaint by June 18, 2012, and on that date the staff notified Complainant of its right to request an order of default. Staff sent a copy of this notice, along with a copy of the CCOC's *Default Judgment Procedures*, to the Respondents. Respondents did not reply to the notice and on August 8, 2012, the Complainant filed a request for default. Complainant sent a copy of its request to the Respondents. Respondents did not oppose the request.

10. On August 15, 2012, the CCOC's staff notified both parties that the CCOC would take up the request for a default at its monthly meeting September 5, 2012. The notice included a copy of the staff's Case Summary, in which the staff recommended that the CCOC grant the request. The notice stated further that either party could file written comments on the request. Neither Complainant nor Respondents filed any comments.

11. On September 5, 2012, the CCOC voted to accept jurisdiction of the request for default and on September 6, 2012, the staff notified the Respondents that the CCOC had issued an order finding them in default. The order granted Respondents 30 days to show cause why a final judgment should not be entered against them. Respondents did not reply.

Conclusions of Law

1. The Complainant is a "condominium association" within the meaning of the Maryland Condominium Association Act, Chapter 11, Real Property Article, Code of Maryland. Its governing documents, including its Master Deed, Bylaws, and Rules & Regulations, are binding on and enforceable against its members.

2. The Respondents Slyavash Nejadi and Alicia Torres are members of the Complainant and subject to its governing documents.

3. The CCOC has subject matter jurisdiction over this complaint under Section 10B-8(4)(A)(i) of the Montgomery County Code.

4. The CCOC has personal jurisdiction over the Respondents, whom it has served by mail with the complaint and with numerous other warnings that the CCOC could proceed to judgment on the Complaint.

5. The Respondents have failed to answer the complaint and are in default of their obligations to do so.
6. The Respondents were and are in violation of the Complainant's Rules & Regulations in that they have not installed padding and carpeting on 80% of the floor area of the unit they own.
7. The Respondents are liable for the conduct of their tenants, who are their invitees.
8. Respondents' tenants damaged the washing machines of the Complainant, which are a common property, and therefore they violated Article X of the Bylaws, prohibiting waste and the creation of nuisances.
9. The Complainant properly followed its own rules in taking enforcement action against the Respondent. The Complainant's conclusion that the Respondents violated the governing documents has a reasonable basis and is consistent with the overall plan for the community, and we uphold it pursuant to *Kirkley v. Seipelt*, 128 A.2d 430, 212 Md. 127 (1957).
10. The Maryland Condominium Act permits the imposition of fines, *see* Md. Code Ann., Real Prop. §§ 11-109(d)(16), 11-113. Complainant by rule adopted a schedule of fines, according to seriousness, under which it can impose a maximum of \$500 for the two violations. The Complainant did not impose fines until after it had sent several violation notices to the Respondents, which they ignored. Respondents took no action to comply with the decision of the Board of Directors after their hearing. We find that the Complainant has the legal right to impose fines and that it acted reasonably in doing so under *Kirkley v. Seipelt, supra*.

ORDER

We hereby ORDER as follows:

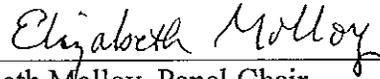
1. Within 60 days after the date of this Order, the Respondent, Slyavash Nejadi and Alicia Torres, shall install padding and carpeting over at least 80% of the floor space of their unit; and
2. If the Respondents fail to comply with Paragraph 1, above, within the time allowed, the Complainant may enter on the property without Respondents' consent and purchase and install the padding and carpeting at the Respondents' cost; said costs may include the cost of hiring a locksmith to gain access to the unit if necessary; and
3. Within 60 days of the date of this Order the Respondents shall pay the Complainant the sum of \$973.76, which represents \$500.00 in fines imposed by the Complainant and reimbursement of \$50 for Complainant's costs in this matter, and reimbursement for the \$373.76 in repair costs; and

4. If Respondents fail to pay the sum ordered in Paragraph 3 of this order and any costs incurred by the Complainant pursuant to Paragraph 2 of this order, the Complainant may proceed to collect those amounts in any manner authorized by its governing documents or by applicable law.

We remind Respondents that any failure on their part to obey this Order is considered a Class A violation of the Montgomery County Code and is subject to fines of up to \$500.00 per day, and that this Order may be enforced by the County in the District Court of Maryland.

Any party aggrieved by this Decision may appeal it to the Circuit Court for Montgomery County, Maryland, within 30 days pursuant to the Rules of Procedure for Appeals from Decisions of Administrative Agencies.

Commissioners Henderson and Weinstein concur in this Decision.



Elizabeth Molloy, Panel Chair

August 16, 2013