

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

PERVAIZ SYED, *et ux.*

Complainants

v.

LLEWELLYN FIELDS HOMEOWNERS
ASSOCIATION, INC.

Respondent

Case No. 24-12
June 18, 2013

FINAL ORDER

This case involves a dispute over whether the complainants, Mr. and Mrs. Syed, can rent out a portion of their basement as an accessory apartment. The Syeds obtained County approval but not the approval of their local community, respondent Llewellyn Fields Homeowners Association, Inc. (the "Association" or "Respondent").

The Association's Declaration of Covenants, Conditions and Restrictions says: "No portion of a dwelling unit, other than the entire dwelling unit, may be leased or rented *unless the prior written approval of the . . . Board of Directors is obtained*" (emphasis added). In a decision dated January 3, 2013, the Panel ruled that under this provision the Association could not flatly prohibit all partial rentals, as it had done. The Panel gave the Association an opportunity to develop guidelines for partial rentals and it gave the Syeds an opportunity to renew their request once those guidelines were in place. The Panel retained jurisdiction while that process occurred.

The Association then purported to adopt Rules and Regulations Regarding Leasing, one of which says in part:

6. No portion of a dwelling unit other than the entire dwelling unit may be rented or leased at any time. Leasing of a portion of a dwelling unit including room by room rental of a dwelling unit is strictly prohibited.

Following adoption of these new Rules, both parties moved for final relief. The Panel set the motions for a May 29, 2013 hearing.

At the motions hearing, Mr. Syed argued that the new Rules merely continue the flat prohibition on partial rentals, contrary to the Panel's earlier decision. He explained that he did not reapply for permission to rent the basement because to do so would have been futile.

The Association argued that the new Rules are consistent with the Panel's decision, in that they provide a procedure for obtaining approval of partial rentals, namely, by garnering a 51% approval vote of the Association's members to allow such rentals. The Association also pointed out that it was in the process of amending the Declaration to make clear that partial rentals are prohibited, but it conceded that the pendency of the amendment does not bear on the Panel's decision.

The Panel agrees with the Syeds and concludes that the new Rules continue the flat prohibition on partial rentals, contrary to the Declaration and contrary to the Panel's earlier decision.

During the hearing, the Association cited a recent decision by the Court of Special Appeals of Maryland, *Reiner v. Ehrlich*, __ Md. App. __, 2013 WL 2338476 (No. 33, decided May 29, 2013). Counsel for the Association argued that this decision reaffirms the business judgment rule announced in *Black v. Fox Hills North Cmty. Ass'n*, 90 Md. App. 75 (1992), and that under *Black* and *Reiner*, only fraud or bad faith can overturn a homeowners association's corporate decision-making.

In the Panel's view, the business judgment rule does not apply here. In this case, the Association lacked the power to adopt prohibitive guidelines because Section 7.3 (*Leasing and Transfers*) of the Declaration contemplates partial rentals. See *Ridgley Condo. Ass'n v. Smyrnioudis*, 343 Md. 357 (1996) (condominium board's action to bar commercial tenants from using common lobby was an unauthorized change in property rights, so that reasonableness standard did not apply). Had the Association adopted guidelines that actually permitted partial rentals under specified circumstances, the strictness or liberalness of such guidelines might have been protected by the business judgment rule. But a flat prohibition is not.

Accordingly, it is, this 18th day of June, 2013, ORDERED as follows:

1. Rule 6 (including all its subparts) of the LLeuwelyn Fields Homeowners Association, Inc. Rules and Regulations Regarding Leasing is declared invalid and unenforceable.

2. Complainants Pervaiz and Tazeen Syed may, without the approval of Respondent LLeuwelyn Fields Homeowners Association, Inc., lease or rent a portion of their home on Lindsey Manor Lane in the LLeuwelyn Fields subdivision of Montgomery County, Maryland; *provided, however*, that any leasing or rental arrangement must terminate no later than (a) three years after the date of this Order, or (b) two years after the beginning of the lease or rental term (whichever occurs first), at which time Complainants must re-apply to Respondent, in accordance with any rules or guidelines then in effect, for permission to lease or rent a portion of their home.

3. Within 30 days after the date of this Order, Respondent must reimburse Complainants for their \$50.00 filing fee.

Panel members Ralph Caudle and Allen Farrar concur in this Final Order.

Any party aggrieved by the action of the Commission may file an administrative appeal in the Circuit Court for Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing judicial review of administrative agency decisions.



Charles H. Fleischer, Panel Chair