

Before the
Commission on Common Ownership Communities
Montgomery County, Maryland

In the matter of:

Dale Stalbaum	X	
13275 Stravinsky Terrace	X	
Silver Spring, MD 20904,	X	
Complainant,	X	
	X	
v.	X	Case No. 26-14
	X	September 30, 2014
Ashley Place at Tanglewood	X	
Homeowner's Association	X	
c/o Amber Bryant, Esq.	X	
264 Merrimac Court	X	
Prince Frederick, MD 20674,	X	
Respondent.	X	

Decision and Order

The above-titled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, and the Commission, having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

Dale Stalbaum, Complainant, filed his complaint with the Office of Consumer Protection on March 18, 2014. In his complaint he alleged that the board of directors of Ashley Place at Tanglewood Homeowner's Association (the "Association"), Respondent, had adopted parking rules that were in violation of the Association documents. The board responded that the documents gave it authority to adopt rules and that the new parking rules are within that authority.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for consideration on July 2, 2014, and the Commission accepted jurisdiction of this dispute. The matter was scheduled for public hearing on August 27, 2014 and a public hearing was conducted on that date. The record was closed at the completion of the hearing.

Findings of Fact

In July, 2013, the board of Ashley Place at Tanglewood Homeowner's Association, which is a home owners association as defined by the Maryland Homeowners Association Act, Section 11B-101 of the Real Property Article of the Code of Maryland, adopted a new detailed parking and enforcement policy. This policy continued the existing practice of assigning two parking spaces to each unit. It added a provision that the board would issue hanging tag parking permits to unit owners that designated their two spaces. The new policy also provided that unit owners who are delinquent in paying their community assessments or who have lot usage violations or maintenance needs would have the privilege of their assigned spaces suspended and the parking permits for those units would be revoked. The primary purpose of this new policy was to establish an additional assessment collection and enforcement tool.

Those parking without a valid permit were to be and were towed after the adoption of the policy. The policy was not properly recorded until December 2013 and thus could not have been effective until then, Md. Code Ann., Real Prop. Section 11B-112(c)(3).

The Association Declaration of Covenants, Conditions, and Restrictions at Article IV, "Property Rights", begins with a general grant to members of the right of easement of enjoyment to the Common Area and then provides the Association some authority to limit that grant. At Section 1(d), the Association is authorized to suspend voting rights and the right to use of recreational facilities for any period during which any assessment against an owner's lot remains unpaid and for a period not to exceed ninety days for any infraction of its published rules and regulations. In addition to the specific grant of authority to suspend privileges for nonpayment of assessments granted in Article IV, Article V provides for a continuing lien including interest and costs for any assessment payment delinquency at Section 1 and for enforcement of the lien for continuing nonpayment at Section 8.

Article IV, at Section 4, requires among other provisions that the Association provide not less than one parking space for each lot.

The By-Laws of the Association at Article III, Section 2, includes language similar to the Declaration language at Article IV, Section 1(d). At Article VIII, Section 1(a), the board is authorized to adopt rules and regulations governing the use of the Common Area and facilities and to establish penalties for the "fraction" (*sic*, presumably "infraction") thereof. Article XIII, at Section 2 establishes that in case of conflict between the documents the Declaration prevails over the By-Laws.

Conclusions of Law

The authority of the board to adopt rules suspending the use of Common Areas to counter delinquent assessment payments and violation of other rules is limited to the grant in

the Declaration and By-Laws for voting rights and recreational facilities and does not include parking. In order to expand that authority to parking privileges, it will be necessary to amend the Declaration and By-Laws. The board of directors of a common ownership community does not have the authority to adopt rules beyond the authority granted in the Association's declaration of covenants or bylaws documents or which are otherwise in conflict with that association's documents. *See, e.g., Ridgely Condominium Association v. Smyrnioudis*, 681 A.2d 494 (Md. 1996); *Dulaney Towers Maintenance Corp. v. O'Brey*, 418 A.2d 1233, 1238 (Md. App. 1980) (the law allows unit owners to delegate their powers of administration to a board of directors, which may in turn make reasonable rules and regulations concerning conduct, not inconsistent with the Master Deed and Declaration and bylaws).

The provisions of the July 2013 Ashley Place at Tanglewood Homeowner's Association Parking Resolution and Enforcement Policy that purport to suspend parking privileges for unit owners who are delinquent in assessment payment or who have lot usage violations/maintenance needs are void ab initio because there was no authority to adopt those provisions.

ORDER

The Association must refund to unit owners any fees incurred due to the enforcement of the July 2013 Parking Resolution and Enforcement Policy.

The Association must pay Mr. Stalbaum the fee he paid for filing the complaint in this dispute, within 30 days of the date of this order.

A copy of this Decision and Order will be delivered to each unit owner.

The foregoing was concurred in by panel members Mays, Zajic, and Stevens.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals.



Dinah Stevens
Panel Chairwoman