

Montgomery County, Maryland
COMMISSION ON COMMON OWNERSHIP COMMUNITIES

Steven Chaney,
Complainant

vs.

#29-15
April 15, 2016

Kimberly Place Condominium Association,
Respondent

Panel Hearing Date: February 24, 2016
Decision Issued:

(Before Bruce L. Birchman, Jim Coyle, Aimee Winegar)

MEMORANDUM DECISION AND ORDER

The above captioned case came before a hearing panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing pursuant to Chapter 10B of the Montgomery County Code, 2014, as amended. The duly appointed Hearing Panel considered the testimony and evidence of record, and finds, determines, and orders as follows:

For the reasons discussed below, the Panel finds and concludes that the complaint should be dismissed. Essentially, the Complainant failed to establish that Respondent enforced its rules governing the maintenance of the lots neighboring the Complainant's unit. Complainant also failed to establish that the Respondent failed to maintain the common areas affecting Complainant's unit which Complainant claimed to have been the cause of damage to Complainant's unit.

FINDINGS AND CONCLUSIONS

This is a dispute filed by a unit owner, Steven Chaney, (hereinafter "Complainant") against his condominium, Kimberly Place Condominium Association (hereinafter "Respondent").

Complainant testified and documented that he owns and resides in a lower level lower unit. See Commission Exhibit 1 at 24 (hereinafter, "CE1). Complainant testified that he experienced water infiltration due to hydrostatic pressure upon his exterior underground

basement wall since 2014. However, at the hearing, complainant testified that water incursion could have been caused by drainage from the gutters of upper units, *i.e.* units above his unit. He provided an October, 2016, cost repair estimate but failed to demonstrate that the water infiltration was caused by hydrostatic pressure upon his exterior underground basement wall.

Upon the conclusion of Complainant's testimony, Respondent waived cross-examination of the Complainant and rested its case. Respondent stated that it would rely on the record as made and that Complainant had failed to meet his burden of proof.

CE 1 was admitted into evidence without objection by the Complainant. It had been served by Commission Staff upon the parties and available to the parties for their consideration, review, and amendment since mid-December 2015. Included in CE1 at 128 is the Respondent's answer to this complaint. Respondent's answer to the complaint, CE1 at 128, *inter alia*, included the following which was not refuted by the Complainant:

The water incursion into Mr. Chaney's laundry room is of a similar nature as was experienced by a number of homeowners throughout the property as evidenced in the inspection report by Structural Solutions, Inc., as a follow-up to a unit-by-unit inspection performed on November 11, 2014. The results of this inspection were published to the community and at a community meeting held with the engineers and counsel to discuss the results of the inspection and the actions necessary for the association and unit owners total to prevent further damage...Mr. Chaney's original complaint dated September 2014, the water infiltration to his unit was not a result of the shifting the CMU [Concrete Masonry Unit, or cinderblock] foundation, but was attributed per the engineer's report, to poor drainage of the appurtenant units and failure of the waterproofing of the foundation, which is a homeowner maintenance issue.

In this regard, it is noted that Mr. Chaney was a member of the Board of the Association. See CE1 at 40, 46-7, 48, 50, 51, 53.

The engineer's November 2014 report as well as correspondence relative to the adoption of a new management contract subsequent to the engineer's November 2014 report indicates that the Board was aware of and responsive to Complainant's water incursion concerns, as well as other unit owner concerns that are beyond the scope of the issues set for hearing.

It is well to recall, and official notice is taken, of this Commission's handbook entitled "How to Prepare for your Hearing with the Commission on Common Ownership Communities" (the "Handbook"). Among other critical concerns, the Handbook encourages the parties prior to the Commission hearing to make copies of any new documents intended to be offered in evidence which are not already part of CE1. Further, with regard to the hearing process itself, the Handbook emphasizes and reminds Complainant's that their case includes and comprises the testimony of each witness and the offering of new exhibits into evidence. (Emphasis supplied).

As noted for the reasons set forth above, Complainant has failed to establish by concrete and probative evidence that the Respondent failed to enforce its rules governing the maintenance of the lots neighboring Complainant's unit and that Respondent failed to maintain the common

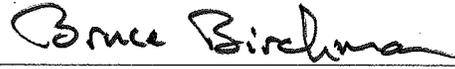
areas affecting his unit which was claimed to have been the cause of damage to his unit. Consequently, in the circumstances present and based upon the record as made, the Panel finds concludes and is compelled to dismiss this complaint.

ORDER

For the foregoing reasons, the Complaint shall be, and is hereby, dismissed.

The decision of the Panel is unanimous.

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.



Bruce L. Birchman, Panel Chair

April 15, 2016