

Before the

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

Laura Lopez,	x	
Apartment B2	x	
7509 Spring Lake Drive	x	
Bethesda, MD 20817,	x	
Complainant,	x	
v.	x	
	x	CCOC No. 30-13
Spring Lake Condominium	x	May 29,2015
Association,	x	
c/o Jason E. Fisher	x	
Lerch Early & Brewer	x	
Suite 460	x	
3 Bethesda Metro	x	
Bethesda, MD 20814,	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

Laura Lopez, Complainant, is the owner of a unit in the Spring Lake Condominium Association, who filed a complaint against the Association with the Office of Consumer Protection on May 21, 2013. In her complaint Ms Lopez raised a number of issues in support of her primary complaint that the Association board had required unit owners still using fuse boxes to convert to circuit breakers at the owners' expense and then arranged to have this work done, to pay for it with Association funds and to collect the costs from the unit owners.

Counsel for Spring Lake Condominium Association, Respondent, answered the complaint alleging that to fulfill the Association's statutory requirement to have a master insurance policy it was necessary to assure that the fuse boxes were replaced. The insurance carrier had had the buildings inspected by a risk assessor who had reported some concerns and the carrier had advised the broker that it would not insure the property unless the concerns raised in the risk assessment report were addressed. One of the concerns was continued reliance on fuse boxes rather than circuit breakers. Consequently, the board had voted to

require that the remaining fuse boxes be converted to circuit breakers. The Association simultaneously moved to have the automatic stay lifted so the work could be done pending the resolution of the case and the motion was granted on July 26, 2013.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for consideration on January 8, 2014, and the Commission accepted jurisdiction. A prehearing conference was held on October 29, 2014 to review the scope of the case and resolve final discovery issues. After the prehearing conference, Ms Lopez moved for the removal of the panel chair. The motion was reviewed by the Commission chair and the member of the county attorney's office who advises the Commission who each determined that the question of recusal was up to the panel chair. The panel chair being confident that she was not personally biased against complainant nor predisposed to a result in the case, and considering that the available panel chairs are few and that she was familiar with the issues, declined to recuse herself. In a Decision issued on February 6, 2015.

At the hearing, counsel for the Association introduced a motion for award of fees on the basis that the case is frivolous.

A public hearing was conducted on March 30, 2015 and the record was closed at the completion of that hearing.

Discussion

Ms Lopez, who was not personally affected by the Spring Lake board decision as she had already had her fuse box replaced with circuit breakers, believed that the board's mandate was not within the authority of the board either in requiring unit owners to convert a unit owner utility feature or in financing the work and recovering the cost. A neighbor contacted an employee of the Montgomery County Department of Permitting Services to ask if the county required this change and received a response that indicated that if there was no damage to the fuse box causing an unsafe condition there was no government requirement that this conversion be done. Ms Lopez suggested that several other condominium communities had not needed to make this conversion and she and a neighbor offered to provide the names of several insurance companies that might not require the conversion.

Ms Lopez asked several people why this was necessary or appropriate and how the Association could make the arrangements to have the work done. She received a number of answers which she believed were conflicting and concluded that people were lying to her. As she reported the answers they were incomplete, unclear or mistaken. There are a number of explanations for this other than being intentionally misleading. It was not necessary to clarify the causes of the errors in order to reach a decision on the legal issues in this case. This early confusion in explanation was part of Ms Lopez' determination to litigate the case.

Ms Lopez is not an attorney and does not have a sophisticated understanding of condominium law and business practices. She argued that use of an insurance broker did not meet the bylaw requirement to get insurance quotes from three companies. She did not understand how the repayment arrangement under the bylaws would work to recover from unit owners the cost of the conversion work that the Association contracted and paid for.

It appeared to Ms Lopez that the decision in an earlier Commission on Common Ownership Communities case, Lieberman v. The Whitehall Condominium, Case No. 25-06 (March 7, 2007), would be applicable and could be dispositive in this case.

Ms Lopez asked questions and argued her case to a number of people in the community. The only response to her queries and arguments that is in the record in this case is an email from Jay Tilden dated April 18, 2013 to Ms Lopez. It does not provide comprehensive answers to her questions.

Counsel for the Association moved to have the Association legal fees paid by Complainant on the grounds that the case was frivolous. The Association ran up significant legal fees. But no one from the Association board, management or even counsel's office, since Ms Lopez was not represented by an attorney, appears to have tried sitting down with her to explain the legal and business intricacies of the problem or its solution. While that may not be anyone's specific responsibility, it might have been worth the investment of an hour or so to try to explain them to her. Community members are entitled to understand these problems and their solutions when the members have enough interest to want to understand them.

In her closing argument Ms Lopez argued, for the first time, that the resolution mandating the conversion was invalid because the two members of the board who signed it were in debt to the community and others and proposed to introduce public records in support of her argument that they were ineligible to sign the resolution and thus it was invalid. The signatures on the resolution were in support of the recital of the vote and date of passage of the resolution thus the eligibility of the signatories to vote was not at issue.. The resolution passed in a vote of five to zero of a five member board, so the issue of the eligibility of those two members to serve or to vote would also not invalidate the resolution. The bylaws say that a member of the community who is delinquent in their obligation to the community cannot take office as a director. Even if those two members had not been eligible to take office as directors, the vote in favor of the resolution had a quorum and a majority of the board. The panel declined to keep the record open to determine whether there had been an issue at the time they entered into the relevant term on the board.

Findings of Fact

The Respondent is a condominium association governed by the Maryland Condominium Act, Chapter 11 of the Real Property Article of the Code of Maryland. Complainant is the owner of a unit within the Respondent and therefore a member of the Respondent.

On April 23, 2013, the board of directors of Spring Lake Condominium Association passed a resolution by a vote of five to none to require that all fuse boxes in the community be replaced with circuit breakers and to establish a process by which this would be achieved in a relatively short period of time. This was the culmination of discussion and consideration of the issue which had been raised by the insurance broker the community had worked with for several years for their master insurance coverage.

In the spring of 2012, the carrier then insuring Spring Lake engaged a company called My Loss Control that does loss control inspections of insured properties to assess the Spring Lake property. In a letter dated April 30, 2012, My Loss Control reported three issues of concern at the Spring Lake property, one of which was the continued use of fuse boxes.

On March 25, 2013, the member of the staff in the insurance brokerage business Spring Lake had been using forwarded to the community manager an email from the firm that carried their insurance, dated October 31, 2012, indicating that that firm would no longer cover the community unless the fuse boxes were replaced and told her that he had contacted other carriers, all of which had taken the same position. At the hearing, Marc Bruno, another member of the staff at V.W. Brown Insurance Service, the brokerage used by the community, testified that the agent Spring Lake had worked with had retired. Mr. Bruno testified that he had the earlier agent's records and had reviewed them. Mr. Bruno said that the agency worked with a number of major insurance companies. In identifying coverage for Spring Lake, they would consider all the carriers that covered condominium communities and had the top rating from the state of Maryland, such that the state indemnified the insured if the carrier was financially stressed. Mr. Bruno mentioned five or six such companies. The March 23, 2013 email from the insurance agent to the community manager indicated that "several" companies had been contacted and all of them took the same position. Mr. Bruno testified that when an insured was thinking of changing companies, the companies contacted wanted to know why a change was contemplated and the agency was obligated to explain the reason. He suggested that As a result of this disclosure other possible insurers also required the fuse box replacement.

There was no testimony regarding when this issue was first presented to the board. On February 26, 2013 the board invited all unit owners to the board meeting scheduled to be held on March 26, 2013 and attached a draft resolution on the fuse box replacement to the invitation. The board invited an insurance agent from another insurance company to speak to those who attended the March 26 meeting to help explain the insurance issue. Ms Lopez did not attend that meeting.

Chris Hays, currently president of the Spring Lake board and a member of the board in 2013, testified that when the board learned about the insurance issue, they consulted with the insurance broker and legal counsel and reviewed the condominium bylaws and Maryland Condominium Act in order to develop a solution.

Both parties agree that the fuse box/circuit breaker utility is a unit owner responsibility.

Since the board had determined that in order to continue to be able to obtain the required master insurance policy the remaining fuse boxes had to be converted to circuit breakers, it was necessary to determine how this could be done.

The Spring Lake bylaws, at Article VII, Sec. 10, states:

Unit Service Charges. The Board of Directors may establish an in-unit maintenance and service program. Bills for said programs shall be presented separate [sic] from the assessment obligation but each Unit Owner agrees that overdue bills shall be collected as if the costs were common area expense.

This language provides the same tools for collection that the community has to collect delinquent assessments.

The board determined that this language provided the mechanism for the board to have the conversions done and to recover the costs from the unit owners. Testimony from the Spring Lake management company at the hearing was that all but about \$500 of the costs had been recovered and the balance would soon be paid.

Conclusions of Law

The questions presented in this case are whether the Spring Lake Condominium Association board had the authority to require replacement of the fuse boxes, which are not a common element and thus are the responsibility of the unit owner, with circuit breakers and did the board have the authority to contract to have the work done, using community funds to pay for the work and recover the cost from the unit owners.

These issues both come under the legal standard called the business judgment rule. Under the business judgment rule judicial bodies defer to the judgment of the governing body unless it has acted fraudulently, dishonestly, arbitrarily, or in bad faith. *Tackney v. U.S. Naval Academy Alumni Ass'n Inc.*, 971 A.2d 309 (Md. 2009); *NAACP v. Golding*, 679 A. 2d 554, 558 (Md. 1996). As a rule that gives deference to the legitimacy of the decisions of a governing body, the complainant must provide proof of the illegitimacy of the contested actions. In this case, once the authority to mandate the conversion and to pay for the work and recover the funds was established, absent evidence that the board acted fraudulently, dishonestly or in bad faith, the Commission has no further jurisdiction.

Under the Maryland Condominium Act, §11-114 of the Real Property Article, Maryland Code, the Association is required to have insurance coverage. The Spring Lake bylaws, at Article

X, Sec. 6 (b) require that the board get three bids for insurance coverage. Testimony from the brokerage firm used by the Association is sufficient to find that this requirement was satisfied.

Further, the testimony and evidence of record supports the decision of the board that requiring conversion of the fuse boxes to circuit breakers was necessary as reasonable based on the information provided by their insurance broker. The facts in this case differ from those in Lieberman v. The Whitehall Condominium, *supra*, in which there was an explicit finding of fact that no evidence was presented that the insurance carrier would require installation of ground fault interrupters. In this case there was an insurance inspection and the potential insurance companies required this change be made before they would renew the Association policy.

The unit service charges provision of the Association bylaws provided a suitable approach to accomplishing this mandate.

The actions of the Spring Lake board relating to the mandate to convert fuse boxes to circuit breakers and to use the unit service charges provision of the bylaws to accomplish this mandate were within their authority and were legitimate.

While this action appears frivolous to the board it was not frivolous to Ms Lopez and she did not understand the legal and business complexities that provided legitimacy to the actions. Nor was a serious effort made to explain them to her.

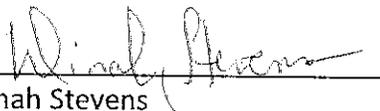
ORDER

Based on the evidence of record, for the reasons set forth above:

1. the case is hereby dismissed;
2. Respondent's motion for attorneys' fees is denied.

The foregoing is concurred in by Commissioners Brandes and Foronoff.

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