

**MONTGOMERY COUNTY, STATE OF MARYLAND**

|                                    |   |                              |
|------------------------------------|---|------------------------------|
| <b>VILLAGE OF JAMES CREEK</b>      | : |                              |
| <b>HOMEOWNERS ASSOCIATION, INC</b> | : | COMMISSION ON COMMON         |
|                                    |   | OWNERSHIP COMMUNITIES        |
| Complainant,                       | : |                              |
|                                    | : | Case No. 34-11               |
| <b>v.</b>                          | : |                              |
|                                    | : |                              |
| <b>EDGAR DIAZ,</b>                 | : |                              |
|                                    | : |                              |
| Respondent.                        | : | Decision Issued: May 2, 2012 |
|                                    | : | (Panel: Burgess, Caudle and  |
|                                    | : | Weinstein)                   |

Memorandum Decision and Order By: Ursula Koenig Burgess

**JUDGMENT BY DEFAULT**

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland (“Commission”) pursuant to Sections 10B-8, 9, and 13 of the Montgomery County Code (2010), COMCOR 10B.06.01.03(b), and the Commission's Default Judgment Procedures. The Complainant alleged that the Respondent was storing building materials, old bicycles, traffic cones, gas cans, trash and tools in the rear of his lot in violation of the rules of the community. The Hearing Panel has reviewed the record in this case, and now makes the following findings of fact, conclusions of law, and orders.

**Findings of Fact**

1. The Complainant, Village of James Creek Homeowners Association (“Association”), is a homeowners association operating under the Maryland Homeowner Association Act pursuant to covenants filed in the land records of Montgomery County, Maryland. (Record “R.” at 61- 204)<sup>1</sup>.

2. The Respondent, Edgar Diaz (“Diaz”), is the owner of a lot that is part of the Association, located at 2804 Thickett Way, Olney, Maryland. This lot is subject to the Association's governing documents. (R. at 1).

3. Article VIII, Section 2 of the Declaration of Covenants, Conditions and Restrictions of Village of James Creek Homeowners Association (“Declaration”) provides:

---

<sup>1</sup> While there are numbered pages in the documents that constitute the ‘Commission’s Exhibit 1, the numbers are incorrect; accordingly, the page cites are to the page number of the pdf document that exists as Commission’s Exhibit 1 at the time this order is written.

Except as provided in Section 1, no part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes.

4. Article VIII, Section 5 of the Declaration provides:

No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or unused building materials, or trash of any other kind shall be permitted on the Property. .. All refuse containers, wood piles, storage areas and machinery and equipment shall be prohibited upon any Lot, unless obscured from view of adjoining Lots and streets by a fence or appropriate screen approved by the Architectural Committee.

5. On October 24, 2006, the Association sent Diaz a letter advising him that he was storing a ladder in his rear yard, which was a violation and that the ladder had to be removed within fifteen days. (R. at 20).

6. On March 8, 2007, the Association sent Diaz a letter advising him that he was storing a vehicle with ladder racks in the driveway in violation of the prohibition of storage of commercial vehicles in the community. The letter gave Diaz fifteen days to remove the vehicle. (R. at 19).

7. On May 21, 2007, the Association sent Diaz a letter advising him that he was storing orange traffic cones on his driveway, which was a violation and that the cones had to be stored out of view within fifteen days. (R. at 18).

8. On May 6, 2008, the Association sent Diaz a letter advising him that he was storing "a lot of items in his rear yard," which was a violation and that all items had to be removed from sight within fifteen days. (R. at 17).

9. On May 22, 2008, the Association sent Diaz a letter advising him that he was storing 5 gallon buckets, a trash can and boxes in his yard and driveway. In addition, the letter advised him that he needed to paint his bay window. He was directed to store the items out of view and to paint his bay window within fifteen days. (R. at 16).

10. On August 28, 2008, the Association sent Diaz a letter advising him that he was storing a ladder on the driveway, which was a violation and that Diaz had fifteen days to store the ladder out of sight. (R. at 15).

11. On January 6, 2009, the Association sent Diaz a letter advising him that he was storing "miscellaneous items" by his garage and that his storm door was broken. He was directed to store the items out of view and to repair his storm door within fifteen days. (R. at 14).

12. On July 17, 2009, the Association sent Diaz a letter regarding the vehicle parked in the street, the ATVs and trailer on the driveway and the storage of other items on the driveway. The record contains only the first page of the letter, so it is unclear what action the Association was directing Diaz to do to correct the violations on the property. (R. at 13.)

13. On April 30, 2010, the Association sent Diaz a letter advising him that he was storing material such as building supplies and ladders in his driveway, which was a violation and that these items had to be stored in the garage immediately. (R. at 12).

14. On May 11, 2010, the Association sent Diaz a letter thanking him for removing the building materials from the driveway, but that he had a damaged garage and a number of items stored in his rear yard, which was a violation. The letter told Diaz to have the garage door repaired or replaced and to remove the items being stored in the rear yard within fifteen days. (R. at 11).

15. On June 8, 2010, the Association sent Diaz a letter thanking him for repairing the garage door, but that he needed to paint the garage door and still had items stored in the rear yard. The letter gave Diaz ten days to paint the garage door and to remove the items from the rear yard. (R. at 10).

16. On March 15, 2011, the Association sent Diaz a letter advising him that he was storing old bicycles, traffic cones, gas cans, pieces of shed and tools in his rear yard, which was a violation, and that all items had to be stored out of view within fifteen days. (R. at 9).

17. On April 27, 2011, the Association sent Diaz a letter advising him that the items mentioned in the March 15, 2011 letter remained in the back yard and that the Board of Directors had scheduled a hearing on May 9, 2011 on the violations. (R. at 8).

18. On May 9, 2011, the Board of Directors held a hearing on the violations, although Diaz did not attend it. (R. at 6-7). The Board decided that if Diaz did not bring his home into compliance, the matter would be sent to the Commission.

19. On August 2, 2011, the Association sent Diaz a letter advising him that the hearing had been held and that the Board's decision was reflected in the minutes, which were enclosed. (R. at 5-7).

20. There were no letters or other correspondence in the record to indicate that Diaz responded to any of these letters.

21. On August 15, 2011<sup>2</sup>, the Association filed this complaint against Diaz with the Commission. The complaint alleged that Diaz was storing building and other materials on his lot which were prohibited by the governing documents of the Association. The Association requested that the Commission order Diaz to remove all the materials from the lot. (R. at 1-4).

22. On August 16, 2011, the Commission's staff mailed a copy of the complaint, with a cover letter and other information, to the Diaz and instructed him to answer the complaint within 30 days. The cover letter advised Diaz that if he did not answer the complaint, the Commission could enter a default judgment against him without a hearing. (R. at 128-129).

23. Diaz did not answer the complaint within 30 days or at any other time.

24. On September 29, 2011, after the expiration of the 30-day response time, the Commission's staff wrote to the Association to advise it that Diaz had not answered the complaint and that the Association could move for entry of an order of default against him pursuant to the Commission's Default Judgment Procedures.<sup>3</sup> The staff sent a copy of this letter, and a copy of the Procedures, to Diaz at the same time. (R. at 130)

25. On November 21, 2011, the Association filed a request for entry of an order of default, and sent a copy of its request to Diaz. (r. at 131-132). On November 23, 2011, the staff sent notices to both the Association and to Diaz informing them that the request for entry of an order of default would be considered by the Commission on December 7, 2011, and advising them of the staff's recommendation that the Commission accept jurisdiction of the complaint and issue the order of default. (R. at 133).

26. The Commission voted to take jurisdiction of the complaint and to issue the order to show cause on December 7, 2011, and the staff mailed the order to Diaz on December 15, 2011, by regular and by certified U.S. Mail. The certified mail receipt was signed by "Virginia Lemus" on December 16, 2011. (R. at 136-137)

26. As of the date of this Judgment, Diaz has not responded to the order of December 15, 2011, that he show good cause why a final judgment should not be entered against him.

### **Conclusions of Law**

---

<sup>2</sup> The original complaint was filed on July 11, 2011, but was returned to the Association because the manager signed the form, as opposed to the President or Vice President. (R. at 21 – 28). The revised complaint form with the President's signature was filed on August 15, 2011.

<sup>3</sup> Notably, the record contains only the cover letter and not the enclosures. We assume that the enclosures were included with the letter and frankly, failure of the Commission staff to include the enclosures does not affect this opinion and order.

1. The Commission has jurisdiction of this dispute under Section 10B-8 of the Montgomery County Code.

2. The Commission has jurisdiction over the parties to this dispute under Section 10B-8 of the Montgomery County Code and COMCOR 10B.06.01.03(b)(2).

3. The Commission has personal jurisdiction over Diaz.

4. Diaz has used and is continuing to use his lot for the storage of building materials and trash in violation of the Association's Declaration.

### **ORDER**

1. Within 30 days after the date of this order, Diaz must remove all the items he is storing on his lot, except for any items which the Association, in writing, gives him permission to retain on the lot.

2. Within 30 days after the date of this order, Diaz must reimburse the Association the sum of \$50.00 as its costs in this matter. If he fails to do so, the Association may add this fee to the assessments due and owing from Diaz and proceed to collect it in any manner authorized by its governing documents or the law.

3. The failure of Diaz to comply with this order is a violation of the Montgomery County Code and subject to a fine of up to \$500.00 per day.

Any party aggrieved by this Order may appeal it to the Circuit Court of Montgomery County within 30 days after the date of this order pursuant to the rules of court governing appeals from the decisions of administrative agencies.

Commissioners Caudle and Weinstein concur in this decision.

---

Ursula Burgess, Panel Chair  
May 2, 2012