

Background

This action was filed by Frank R. Supik (“Complainant”), who owns six units within Milestone II Townhouse Condominium Association (“Respondent” or “Association”). In his Complaint, the Complainant alleges four claims against the Association as follows:

- (1) That the Complainant’s unit located within the Association sustained wind damage that is the responsibility of the Association to repair, and related to such repair, the Complainant was subject to an improperly held enforcement action and fines totaling \$185.00, which Complainant paid;
- (2) That the Association’s policy/rule, which authorizes the recoupment of attorney's fees from a unit owner, is unenforceable as such provision can only be adopted through an amendment to the Association’s bylaws;
- (3) That the Association does not uniformly enforce its rules against unit owners, and
- (4) That the Association’s Board of Directors breached its fiduciary duty to the Complainant by failing to provide the Complainant with the requested names of the current Directors and Officers, and members and Chair of the Architectural Committee.

Prior to the commencement of the hearings the Association filed a Motion for Summary Judgment which was taken under advisement by the hearing panel.

Findings of Fact and Discussion

With respect to the Complainant’s first claim, the hearing panel received testimony and evidence from the Complainant and certain Board members, who were called by the Complainant in his case concerning damage to and repair of

the Complainant's unit and fines paid by Complainant. However, before the hearing was concluded and before any findings of fact or determinations were made by the hearing panel, the Complainant and the Association reached a settlement of this claim and placed such settlement on the record at the hearing. The material terms of the settlement included repayment by the Association to the Complainant of the \$185.00 in fines that he paid to the Association and an agreement by the Association to pursue a bylaw amendment which would shift \$1,000.00 of the Association's insurance deductible to a unit owner in the event of future property damage.¹

With respect to the Complainant's second claim, the hearing panel received testimony and evidence from the Complainant and certain Board members, who were called by the Complainant in his case, concerning the Association's policy/rules pertaining to enforcement action and assessment of legal fees against a unit owner. However, before the hearing was concluded and before any findings of fact or determinations were made by the hearing panel, the Complainant and the Association reached a settlement of this claim and placed such settlement on the record at the hearing. The material terms of the settlement included an agreement by the Association to pursue a Bylaw amendment authorizing the Association to assess a unit owner with its attorney's fees in the event enforcement action was taken.

¹ A copy of the transcript of the hearing containing the complete terms of the settlement may be obtained by the parties.

With respect to the Complainant's third claim, the hearing panel received testimony and evidence from the Complainant and certain Board members, who were called by the Complainant in his case concerning the allegation that the Association is not uniform in its enforcement action against unit owners. During his testimony on this claim, the Complainant introduced into evidence photographs allegedly depicting outstanding violations throughout the community. However, when questioned, the Complainant had no personal knowledge as to whether or not the owner of the property depicted in the photographs had been provided a notice of violation by the Association and/or whether enforcement action was underway with respect to the alleged violation. Moreover, as part of his case in chief, the Complainant called as a witness Board Member Monica Brame. Ms. Brame testified in detail as to the process followed by the Association in inspecting properties throughout the community and pursuing correction of violations.

Upon completion of this testimony, the Complainant concluded his case, and the Association renewed its Motion for Summary Judgment. After consideration and review, the hearing panel granted the Association's Motion with respect to this claim as there was no evidence of selective enforcement by the Association. Instead, the hearing panel found that Ms. Brame's testimony reflected that the Association had an established procedure in place for inspecting units and pursuing correction of violations, and that there was no

indication that enforcement action was taken in any manner other than in accordance with the established procedure.

With respect to the Complainant's fourth claim, the Complainant presented testimony and evidence that he had requested from the Association the names of the current Directors and Officers, and members and Chair of the Architectural Committee.² The evidence reflected that while the Complainant was referred by the Association to its website to access this information, the Association never directly provided the requested information to the Complainant or otherwise made it available to him for inspection. It was clear to the hearing panel that the Complainant was entitled to the requested information, albeit not necessarily under a breach of fiduciary duty claim, but instead under the applicable provisions of the Maryland Condominium Act. Upon completion of the Complainant's case in chief, the Association was requested and agreed on the record to provide to the Complainant, within ten days, the names of the Association's current Directors and Officers, and members and Chair of the Architectural Committee. Subsequently, the hearing panel received confirmation that the Association provided the requested information to the Complainant within the ten day period, thus resolving this claim.

² While the Complainant referenced at the hearing additional information requests to the Association, the hearing panel found that the Complaint was limited to a request for the names of the Association's current Directors and Officers, and members and Chair of the Architectural Committee.

Order

In view of the foregoing, and based upon the record in this case, it is this _____ day of November, 2006 by the Commission on Common Ownership Communities,

ORDERED as follows:

1. Complainant's claim numbers 1 and 2 are Settled per the agreement of the parties;
2. Complainant's claim number 3 is Denied, and
3. Complainant's claim number 4 is Granted and deemed Satisfied.

The foregoing was concurred in by panel members Antoinette Negro and Stephen Maloney.

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

Julianne E. Dymowski, Panel Chair
Montgomery County Commission on
Common Ownership Communities