MONTGOMERY COUNTY
COMMISSION ON COMMON OWNERSHIP COMMUNITIES

PARKSIDE CONDOMINIUM ASSOCIATION Complainant	)	
vs.	)	CCOC Case No. 12-13
	)	September 15, 2014
LAURA LOPEZ-CAYZEDO Respondent	)	

DECISION AND ORDER
Before Elayne Kabakoff, Terry Cromwell and Marietta Ethier

The above-captioned case came before the Commission on Common Ownership Communities for Montgomery County ("CCOC") pursuant to Chapter 10B-8(4)(A)(i) of the Montgomery County Code,1994, as amended.

BACKGROUND

Parkside Condominium Association, a condominium association as defined by the Maryland Condominium Act, Title 11 of the Real Property Article of the Code of Maryland (the "Complainant" or "Association"), is located at 10520 Montrose Avenue in Bethesda, Maryland. Laura Lopez-Cayzedo ("the Respondent") is a resident of said condominium association, having purchased her unit in May 2007.

The Complainant alleged that "in accordance with the Association Bylaws a unit inspection program for preventative maintenance has been established in order to determine whether maintenance conditions exist within a unit which might damage the common elements or waste Association resources." The Complainant further alleged that the Respondent has denied the Complainant access for "preventive maintenance inspection since she purchased the unit in May 2007."

The Respondent alleged that she works long hours, is seldom home and that the Association's staff works limited weekday hours and not on weekends. She maintained that the Association should adopt a more flexible schedule.

The Association stated that the Respondent "was provided a reasonable accommodation--an after-hours inspection if she agreed to reimburse the Association for this personnel cost." It further alleged that she was advised "that sanctions of $5.00 a day would be imposed for each day the unit remains in violation of the Bylaws as set forth in Article III, Section 2(j)."

PROCEDURAL BACKGROUND

This matter was filed on March 11, 2013. The Respondent failed to answer to the complaint within the 30 days required by law, and pursuant to the Commission's *Default Judgment Procedures,* the Complainant requested an order of default, which the Commission granted on June 6, 2013, and ordered the Respondent to show cause as to why a final judgment should not be entered against her. Respondent finally replied by email on July 5, 2013, claiming she was often out of town for work and that "I only get my physical mail every couple of months." (Commission Exhibit 1 at p. 161.) She also claimed that she was "never" home during ordinary working hours. The hearing panel assigned to the case decided to vacate the Commission's order of default and to set the matter for a hearing.

While the hearing date was being arranged, the Complainant requested permission from Respondent to enter the unit to investigate the source of a water leak into the unit below. Respondent agreed to an inspection on October 8, 2014, but refused to allow Complainant to inspect the master bathroom because, she claimed, to get to the master bathroom it was necessary to pass through the master bedroom, which contained "sensitive computer equipment." (Commission Exhibit 1 at p. 163.) Consequently, even when Respondent was at home to supervise an inspection of her unit she would not permit a full inspection of her unit.

The panel set the dispute for a hearing on January 29, 2014. On January 28, 2014, the Respondent sent an email to the Commission staff requesting a delay in the hearing on the grounds that she did not understand the law and wanted to obtain a lawyer. Subsequently, on January 29, 2014, Respondent sent the Commission staff another email stating that she did not have a babysitter to take care of her child that night.

The Hearing Panel granted her request for a delay and ordered that there be no further delays at the Respondent's request. The Panel also ordered "that the Respondent must within 7 days of receiving from the Commission's staff the court reporter's bill for the cancelled hearing, reimburse the Commission for the

cancellation fee in full" pursuant to Section 2A-8(j) of the Montgomery County Code. The bill for the court reporter was mailed to Respondent on January 31 and again on April 30, 2014. On the latter date the mailing from the Commission also included the order for the rescheduled hearing on May 28, 2014. The Commission received an email from the Respondent on May 8 acknowledging receipt of the letter mailed to her on April 30, 2014.

On May 27, 2014, the Commission staff sent the parties an email reminder that the case would be heard on May 28, 2014. The Respondent sent an email in response stating that "this is the first that I know of this date. I am in Philadelphia working until Friday late afternoon. I cannot be in Maryland." Respondent requested a postponement.

On May 27, 2014 the Panel issued an order denying Respondent's request for postponement. In denying the Respondent's postponement request the Panel relied on the fact that the certificate of service filed in the record indicated that the rescheduling order that the Commission staff mailed to both parties on April 30, 2014 had not been returned by the U.S. Postal Service. The Panel noted that there is a legal presumption that all mail is delivered. It is presumed in law that a letter properly posted will be delivered to the address in due course. This presumption is rebuttable. *Border v. Grooms,* 297 A.2d 81, 83 (Md.1972).

At the hearing on May 28, 2014, the Respondent was allowed to participate by phone under certain conditions. The Panel Chair informed the Respondent that there was no precedent for such participation; that it was not covered by the Administrative Procedures Act; that the Commission had not ruled on her request to participate remotely; and that her testimony would only become part of the record if the Commission voted to allow same. Respondent agreed to the conditions. The Commission voted to make Respondent's testimony part of the record at its regular monthly meeting on June 4, 2014.

The matter was heard by this Panel on May 28, 2014. Having considered the record herein and the testimony and exhibits produced at and after the hearing, the Panel now makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Complainant is a Maryland corporation. The Association is organized and operates under the laws of the State of Maryland. The property consists of 954 garden-style units in 102 buildings which are divided into five sections, located on 69 acres of land in Bethesda, Maryland. The Respondent's unit is #101 at 10613 Montrose Avenue, Bethesda, MD 201814.

2. Article III, Section 2 of the Association's Bylaws reads in part as follows:

> "Powers and Duties. The Board of Directors shall have and shall exercise the powers and duties of the Association as set forth in Article II, Section 3 hereof, and may do all such acts and things except as by law or by the Declaration or by those Bylaws may not be delegated to the Board of Directors by the Units owners. Without limiting the generality of the foregoing, the Board of Directors' powers shall include the following: (a) Operation, care, upkeep and maintenance of the common elements...."

3. Article V, Section 22 of the Association's Bylaws reads in part as follows:

> Right of Access. A Unit Owner hereby grants a right of access to his Unit to the managing agent and/or other person authorized by the Board of Directors or the managing agent for the purpose of making inspections or for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services or other common elements in his Unit or elsewhere on the Property, or to correct any condition which violates the provisions of any mortgage covering another Unit, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit owner.

4. Article V, Section 12(b)(i) of the Association's Bylaws makes a Unit owner "responsible for the maintenance, repair and replacement, at his own expense of the following: any interior walls, ceilings and floors, kitchen and bathroom fixtures and equipment, air handling units, heating units, air conditioning units, lighting, fixtures, plumbing, and electrical appliances and systems, fixtures and parts thereof..."

5. Section 12(b)(iv) of said Article V states that "Each Unit owner shall be responsible for, and promptly after demand shall reimburse the Association for the cost of maintaining, repairing, or replacing any damage to the common elements or any portion of his Unit required to be maintained, repaired or replaced by the Association which is caused by the negligence, misuse or neglect of such Unit owner."

6. Article V, section 11 of the Association's Bylaws states the following:

> Abatement and Enjoinment of Violations by Unit Owners. The violation of any of the Rules or Regulations adopted by the Board of Directors, or the breach of these Bylaws or of any provision of the Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in

these Bylaws: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass, or (b) to enjoin, abate or remedy by appropriate legal proceeding, either at law or in equity, the continuance of any such breach.

7. On August 20, 1985, the Association's Board of Directors passed Administrative Resolution No II.4 (the "Resolution") which established an In-Unit Inspection Program (the "Program"). The stated purpose of the Program is " (T)o establish a program of unit inspections to determine if conditions exist which might damage common elements or waste Council of Unit Owners resources. Paragraph II of the Program established the following procedures:

1. All unit owners and residents will be given advance notification (at least 10 days) of the inspection date, by regular mail and/or hand delivery. Inspections will be performed between 9:00 a.m. and 5:00 p.m. Monday through Friday. Owners and/or residents have the right to be present during this inspection.
2. All items on Attachment A, which attachment may be changed at management's discretion, will be inspected. Required maintenance and repairs will be noted on the form.
3. If items require maintenance, written notification will be submitted, by regular mail and/or hand delivery, to the unit owner requesting compliance within 15 days upon receipt of notification.

8. Article III, Section 2(j) of the Association's Bylaws states in part:

(T)he Board of Directors shall have the power to levy fines against Unit owners for violations of the Rules and Regulations. No fine may be levied for more than Five Dollars ($5.00) for any one (a) violation; but for each day that a violation continues, after notice, it shall be considered a separate violation. Collection of fines may be enforced against the Unit owner or Unit owners involved as if the fines are a common charge owed by the particular Unit owner or Unit owners.

9. The Association's Board of Directors has adopted administrative procedures for the enforcement of the Bylaws and Rules and Regulations. These procedures provide for an initial informal approach. If that fails formal procedures may be initiated which provide for the filing of a written complaint containing certain information, followed by the issuance of a cease and desist notice. The procedures then provide for notice of a hearing and set forth how the hearing will be conducted.

10. On June 10, 2010, the General Manager of the Association wrote to the Respondent advising her that the Association had provided her "with several extensions to finalize the unit inspection performed on December 29, 2009. In order to finalize the inspection, we need to inspect the work that has been completed and inspect the area of the unit that has not been inspected." The letter further advised Respondent that no further extensions would be granted and that by not granting access for inspection she would be in violation of Bylaws, Article V, Section 22.

11. In a letter dated July 9, 2010, the General Manager reminded Respondent that a checklist of items to be repaired had been provided her and that the Association needed a status of the repairs noted.

12. On July 30, 2010, the General Manager sent Respondent a letter by certified and regular mail informing her that since they had received no information on whether outstanding repairs had been made the Association assumed that repairs were outstanding and were proceeding with enforcement procedures. The letter demanded that violation by the Respondent cease and desist.

13. On November 22, 2010, the Association sent Respondent a notice of hearing with the Board of Directors regarding her violation of the Bylaws, which notice was sent by regular and certified mail. The Hearing was scheduled for December 7, 2010. On December 1, 2010 the Respondent sent an email to the management office advising that she would not be home between December 5-11.

14. There were several subsequent communications between management and the Respondent between December 2 and December 6 in which Management advised Respondent that she could request a postponement of the hearing. She never did so. She then alleged that she had never received a notice of the hearing . Management informed her that they had mailed out hearing notices to five other unit owners at the same time that her notice was mailed and that all other notices had been received.

15. Respondent did not often pick up her mail since all her bills were paid electronically and her mail sometimes accumulated for over a month.

16. On December 7, 2010 the Association's Board of Directors held a hearing to consider the Respondent's alleged violation of the Parkside condominium bylaws, more specifically Article V, Section 22. The Respondent did not attend.

17. In its "Findings of Facts" the Board noted that the Respondent's unit had been inspected on December 29, 2009 but that the master bathroom could not be inspected due to a "locked bedroom door." Despite repeated requests no

further inspection could be scheduled. The Board also found that Ms. Lopez-Cayzedo did "not want anyone entering her unit while she is not present and cannot be present during normal business hours."

18. At this hearing the Board found the Respondent in violation of the Bylaws. However, the Board ruled that if Respondent wanted to schedule inspection during other than normal business hours she could do so if she agreed to pay the increased personnel costs of $66.00 an hour. The Board gave Respondent until February 10, 2011 to comply. The Board then voted that "(F)ailure to comply with the condominium documents in this manner will result in sanctions of $5.00 per day and will continue each day thereafter until compliance with the documents is achieved."

19. Consistent with the administrative enforcement procedures the minutes of the hearing advised the Respondent of her rights of appeal.

20. The minutes of the hearing, including the Board's decision, were sent to the Respondent on December 13, 2010.

21. On June 9, 2011 the General Manager wrote to Respondent advising her that the Association had been unable to complete the annual unit inspection "which was slated to be done between February 7, 2011 and February 11, 2011. We are unable to grant future extensions without initiating rule enforcement procedures."

22. On June 13, 2011, the notice described in paragraph 14 above was sent to the Respondent by electronic mail.

23. On July 6, 2011 the General Manager sent Respondent a letter certified and regular mail stating that unless the Respondent granted access for inspection the Association would proceed with enforcement procedures. It included cease and desist language.

24. On August 9, 2011, the General Manager sent the Respondent a letter, certified and regular mail, advising her of a hearing to be held on August 30 on the inspection issue. On August 11, 2011 the General Manager sent a copy of the notice of hearing to the Respondent electronic mail. Respondent replied by asking for a new hearing date fro the third week in September.

25. On September 7, 2011, the General Manager sent another hearing notice advising Respondent of the new hearing date of September 22.

26. On September 19, 2011, an email reminder of the hearing was sent by the Complainant to the Respondent.

27. On September 19, 2011, the Respondent contacted Complainant to

indicate that she would not be available for the hearing and would be out of town until September 27. The Respondent requested the hearing be rescheduled once again to a date after October 15.

28. On September 21, 2011, the Association noticed the Respondent via electronic mail that per her request the Board had agreed to reschedule her hearing to October 20, 2011.

29. On October 17, 2011, a reminder notice of the October 20 hearing was sent to the Respondent via regular, electronic mail and a notice delivered under her unit door.

30. A hearing was held by the Board of Directors on October 20, 2011. The Respondent did not attend. The Board concluded that the Respondent was in violation of the Bylaws by denying access to the unit for the purpose of an inspection.

31. On October 28, 2011, the minutes of the Board's hearing on October 20, 2011 were sent to the Respondent.

32. There were numerous communications between the parties in the next several months with reference to access to Respondent's unit for inspection, her inability to access her email and that she could not use email "unless she specifically requested." The Association responded that they would discontinue the use of email as a means of communication and that the Respondent could respond to the Board via mail or bringing a response directly to the office. On February 6, 2013, the Respondent sent management an email "that sending emails was ok if she was expecting them, but if they were not expected she might not see them for several weeks." She noted that she often could not access attachments due to security issues and did not want to be held accountable because the management office was aware that her email was not checked on a regular basis.

33. On January 9, 2013, Louis A.D'Angelo, III, President of the Board of Directors of the Association sent the Respondent a letter by regular, certified and electronic mail advising her "(S)ince you purchased your unit in May 2007 you have denied access to complete the unit inspection." The letter stated further that "(A)s a Board, we feel very strongly that the inspection program has been very successful in reducing operation costs, protecting the common elements and minimizing safety hazards. Therefore, we invite you again to a hearing to discuss your concerns, or you may simply schedule a unit inspection... If you do not contact the Board within this time period, we will have no other alternative than to file a complaint with the Montgomery County Office of Common Ownership Community Commission for non-compliance of the bylaws."

34. There were similar communications between the parties in the next

couple of months until the Association filed a complaint with the CCOC on March 11, 2013. The Association has not been able to complete an inspection of the Respondent's unit since the complaint was filed.

35. The Association requested entry from the Respondent in advance and in fact there is nothing on the record to indicate that any representative of the Association ever entered the Respondent's unit without her permission.

36. Requests for access were made in advance as required by the Bylaws and the time for inspections was reasonably convenient to unit owners. The Complainant testified that there had been no requests, other than from the Respondent, for a more flexible inspection schedule and that most unit owners left their key with management so that staff making inspections could have access.

37. The Hearing Panel finds that the Respondent engaged in repeated and continual delays and non-cooperation not only in her interaction with the Association but also in the COCC process. It has also been difficult to communicate with Respondent. Respondent testified that she did not pick up her mail for extended periods and in 2013 informed the Association that she could not receive emails unless she received notice in advance that an email was forthcoming. Obviously, the Association could not notify her in advance if they had no way to communicate with her.

CONCLUSIONS OF LAW

1. Complainant is a condominium association as defined by Sections 11 - 101 & 102 of the Real Property Article of the Code of Maryland and therefore a proper party under section 10B-8 of the Montgomery County Code.

2. Respondent is an owner of a unit within the Association and therefore a proper party under Section 10B-8 of the Montgomery County Code.

3. The CCOC has jurisdiction of this dispute under Chapter 10B-8(4)(A)(i) of the Montgomery County Code, 1994, as amended.

4. Under the Association's By-Laws the Complainant has responsibility for the care, upkeep and maintenance of the common elements and a Unit owner has, inter alia, responsibility for the maintenance, repair and replacement of everything contained within the interior walls of his/her unit.

5. Under Article V, Section 22 of the Bylaws the Association has a broad right of access to a unit to make inspections. This right is not limited to inspections to examine the premises for damage or potential damage to common elements. "Or" is used in said section as a function word to indicate an alternative. "A Unit owner hereby grants a right of access to his Unit ...*for the*

purpose of making inspections or for the purpose of performing installations..." (emphasis added).

6. The Association had the authority to establish an in-unit inspection program. Despite the limited nature of the stated purpose clause other provisions of the Resolution make it clear that the program is broader than the stated purpose and that during inspections "required maintenance and repairs will be noted on the form" and that if items require maintenance, written notification will be submitted...to the unit owner...."

7. The Respondent had reasonable alternatives to being present during normal hours for inspections. She could have availed herself of the Board's willingness to conduct an inspection during other than normal business hours if she agreed to pay $66.00 an hour which the panel considers a reasonable amount. She could also have scheduled inspections when she was home during the normal hours for inspection. She could have arranged with friends, family or neighbors to admit staff to her unit for inspection during normal hours. And even when Respondent did allow access, she refused, at least twice, to allow the inspection of the master bedroom and master bathroom. We conclude that the Respondent's excuses for not permitting inspections have no merit.

8. The Association has the power to levy fines against unit owners under Article III, Section 2(j) of the Bylaws and under 11-109 (d) (16) of the Maryland Condominium Act.

9. The Association complied with its enforcement procedures, giving due notice of violations and hearings and conducting said hearings appropriately according to the Minutes, especially the hearing held on December 7, 2010. The "Decision" section of the Minutes clearly informs Respondent that "(f)ailure to comply with the condominium documents in this manner will result in sanctions of $5.00 per day and will continue each day thereafter until compliance with the documents is achieved." Although the compliance language is somewhat broad and lacks specificity, it is clear from other sections of the minutes and from numerous notices that the violation in question is the failure to grant access to complete inspection. As a result of the Board's hearing, the Board gave the Respondent until February 10, 2011 to grant access.

10. We do not, however, agree that the Complainant is entitled to the full amount of the fines it is seeking. In its complaint the Association asked for "payment of sanctions effective with first hearing Feb. 11, 2011 through Feb. 28, 2013. 747 days x $5.00 a day = $3735". We believe that the essential purpose of fines is to encourage voluntary compliance with the rules of the association. This is beneficial because it can help to avoid the need for litigation in order to compel compliance. But where the fines have accomplished their purpose, or where the fines have proven to be ineffective, it is no longer reasonable to continue to accumulate them.

11. In the recent case of *Kim v. Montrose Woods Condominium Association*, CCOC #28-13 (July 25, 2014), another CCOC hearing panel invalidated at fine of $3950 because the association had violated its own procedures in the process of imposing the fine and also because it was unreasonable. In that case, the homeowner, after an initial delay in responding, was attempting in good faith to comply with the association's requirements but had encountered difficulties that were not his fault. The panel held that the fines had achieved their purpose once the homeowner began to take steps to comply. Therefore there was no longer any need to add yet more fines against him.

12. Similarly, in *Plymouth Woods Condominium Association v. Nejadi & Torres*, CCOC #10-12 (August 16, 2013), the hearing panel upheld a fine of $500 against homeowners who failed to take action to minimize noise emanating from their unit because the panel found the fine schedule to be a reasonable one which assessed daily fines based on the severity of the violation and because the association limited the total amount of the fines to $500, and instead of continuing to add fines, it filed a complaint with the Commission to compel compliance.

13. In this case it is clear to the Panel, and should have been clear to the Complainant, that the fines were having no effect on the Respondent. It fined her on a daily basis for 6 months, and then simply began a new round of inspection requests and violation notices. The panel concludes that it is unreasonable to continue to add fines against a member once it is clear the fines are not achieving their goal of encouraging compliance. At that point, the association should either commence some other more effective remedy, or drop the matter.

14. The Hearing Panel believes the Association is entitled to a fine from February 11, 2011, the day after the deadline date of February 10, 2011 which is the date by which the Board mandated that the Respondent grant access to her unit in the Board's hearing on December 7, 2010, to August 9, 2011 when the Association began a new round of notices. The Association informed the Respondent that sanctions would start in February, 2011, if she had not complied. The Association sent Respondent a notice in July 2011, stating that it would begin enforcement proceedings if no compliance was forthcoming. Respondent did not comply. However, instead of enforcement the Association began a new round of notices which the Association knew or should have known the Respondent would ignore as she had all previous notices. The Hearing Panel therefore finds that the Complainant is entitled to a fine of $900.00 (180 days x $5,00) which the Respondent must pay within thirty days of this order.

ORDER

1. The Respondent must make firm arrangements with the Association

for inspection of her unit in accordance with the Program within 30 days from the date of this Order. If the Respondent has not made such arrangements within such period Complainant may enter Respondent's unit to conduct an inspection after giving Respondent 10 days notice by regular and electronic mail and with a copy of the notice left at Respondent's unit. Any costs associated with entry of Respondent's unit, including the services of a locksmith if necessary, shall be borne by the Respondent, such costs to be added to Respondent's account and collected in any manner authorized by law or the governing documents.

2. The Respondent must comply with the applicable rules and governing documents for annual inspections.

3. Respondent must pay the Complainant the sum of $950.00, representing the reasonable fine as determined by the Panel and, pursuant to Section 10B-13(d) of the Montgomery County Code, reimburse the Complainant for its $50 filing fee within 30 days of the date of this Order. If the Respondent has not paid the fine of $950 within the time period set forth above, the Complainant may record that amount on its books as a common charge in the Respondent's account and collect same as authorized by law or the governing documents.

Commissioners Kabakoff and Cromwell concur.

Any party aggrieved by this decision may appeal it to the Circuit Court for Montgomery County, Maryland, within 30 days in accordance with the Maryland Rules governing appeals from decisions of administrative agencies.

Marietta Ethier

Marietta Ethier, Panel Chair