BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of:

Pamela Prue **Complainant,**	*	
v.	*	Case No. 24-14 January 5, 2015
Old Georgetown Village Condominium **Respondent**	*	

ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for a hearing on August 20, 2014, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12 and 10B-13 of the Montgomery County Code, 1994, as amended, and the duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, determines and orders as follows:

THE DISPUTE

The petitioner, Ms. Pamela Prue, is the owner of a unit in the Old Georgetown Village Condominium. On March 7, 2014, Ms. Prue filed a complaint with the CCOC asserting that the respondent had failed in its obligation to enforce two rules of the Condominium's by-laws against her upstairs neighbor. Specifically, Ms. Prue's complaint asserts that her neighbor had violated Rule 3, which provided that "[n]o resident shall make or permit to be made any unreasonable disturbing noise," and Rule 28f, which governs the floor area of each unit that shall be covered with either carpeting or rugs.

The Commission accepted jurisdiction in this matter over the contrary recommendation of its staff. Ms. Prue declined mediation of the matter and the case was set for a hearing before a duly constituted hearing panel of the Commission.

PROCEDURAL HISTORY

A hearing was held before this panel on August 20, 2014. Though she filed her complaint *pro se*, at the hearing the complainant appeared with a Ms. Pamela Washington, who was introduced as Ms. Prue's attorney. Ms. Washington thereupon proceeded to represent Mr. Prue before the hearing panel as her attorney. During the

course of the hearing Ms. Washington made an opening statement, conducted direct and cross-examination of witnesses, introduced evidence into the record and made a closing statement. She further stated that she would file a response brief addressing an issue raised at the hearing by a member of the hearing panel.

On August 28, 2014, respondent filed a motion with the CCOC seeking a new hearing in the case. In her motion counsel for the respondent asserts that in a post-hearing conversation Ms. Washington admitted that she is not licensed to practice law in the state of Maryland. Respondent now seeks, pursuant to Section 10-206 of the Business Occupations and Professionals Article of the Code of Maryland to have the August 20th hearing declared a nullity and a new hearing be held before a newly constituted panel. Respondent also seeks reimbursement of attorney fees for the August 20, 2014 hearing and for responding to Ms. Washington's filing of October 14, 2014 in the amount of Four Thousand and Thirty Dollars ($4,030.00).

An Order was issued by this Panel instructing Ms. Prue and Ms. Washington to respond separately to respondent's motion. Both did so through their respective counsels.

DISCUSSION

Unauthorized Practice of Law and Nullity of the Hearing

In her response Ms. Prue, through new counsel, notes that as she was preparing for the August 20, 2014 hearing she concluded that she needed legal assistance in presenting her case. Ms. Prue therefore consulted with Ms. Washington, who Ms. Prue states is her niece and whom she knew to be an attorney. Ms. Prue further asserts, however, that she had no knowledge of where Ms. Washington was licensed to practice law "or of her standing before the bar of Maryland or any other jurisdiction." As to whether a new hearing must be held in this matter, Ms. Prue only notes that, "[a]ssuming that *Turkey Point* is applicable to this matter, Ms. Prue does not object to the August 20, 2014 hearing being vacated, and a new hearing scheduled."

Ms. Washington, through counsel, has provided documentation establishing that she was initially admitted to the Maryland Bar in June of 1995. Ms. Washington further acknowledges, however, that at the time of the hearing she was on inactive status with the Maryland Bar, though as of October 6, 2014 Ms Washington has paid her Client Protection Fees and resumed her active status. She does not indicate in her response how long she had been on inactive status. The fact that she was able to pay her fees and resume her active status would indicate that placing herself on inactive status was a voluntary measure on Ms. Washington's part, but she does not address this question.

Old Georgetown Village takes the position that because Ms. Washington was not an active member of the Maryland Bar at the time of the hearing, she was not authorized to practice law in the state of Maryland. Respondent argues that the August 20, 2014 hearing is therefore a nullity and a new hearing must be held before a newly constituted panel. Counsel for Ms. Washington notes, correctly, that there is no allegation that she

failed to conduct Ms. Prue's case in a competent manner before the panel. Therefore, the only issues currently before the panel are whether the hearing of August 20, 2014, is a nullity, whether the case must be referred back to the CCOC for re-assignment to a newly constituted hearing panel, and whether respondent's demand for reimbursement of its legal fees should be granted.

The definition of the practice of law has been described as "inevitably imprecise" and is subject to review on a case-by-case basis. *See*, 90 *Opinions of the Attorney General* 101, 104 (2005)(*citation omitted*). In the Maryland Lawyers' Act, Annotated Code of Maryland, Business Occupations and Professions Article, Section 10-101 *et seq*., the practice of law is defined as engaging in any of the following activities: "(i) giving legal advice; (ii) representing another person before a unit of the State government or of a political subdivision; or (iii) performing any other service that the Court of Appeals defines as practicing law." Finally, in determining whether Ms. Washington's representation of her aunt at the August 20, 2014, hearing, in fact constituted the practice of law, the focus must be on whether the activity required legal knowledge and skill to apply legal principles and precedent. *Attorney Grievance Commission of Maryland v. Hallmon*, 350 Md. 489 (1996).

In requesting that the August hearing be declared a nullity, the respondent relies upon two cases. In *Turkey Point Property Owners' Association v. Anderson*, 106 Md.App. 710 (1995), the court dealt with a layperson who filed a petition for judicial review with the Circuit Court for Anne Arundel County. In *Public Service Commission v. Hahn Transportation Inc.*, 253 Md. 571 (1969), the court was addressing a previously enacted rule in which the Commission prohibited the appearance of laypersons at quasi-judicial hearings. While neither case is directly on point with the facts as they exist in this case, they do provide guidance.

Turkey Point involved a layperson appearing on behalf of a property owners' association before the Circuit Court for Anne Arundel County. Ms. Prue notes that the Business Occupations and Professionals Article of the Code of Maryland was applicable in *Turkey Point* due to the fact that the association was incorporated. Ms. Prue reasons that this section of the Maryland Code is therefore not applicable in this case since Old Georgetown Village Condominium is not an incorporated entity.

In *Hahn*, the court reviewed a rule previously adopted by the Public Service Commission prohibiting either laypersons or non-resident attorneys from appearing before it in a representative capacity at formal hearings. In its opinion, the court held that when acting within its quasi-judicial capacity the Commission was within its power to require that all parties, unless proceeding *pro se*, must be represented by an attorney.

We do note that in neither case did the court address either the competence of the representation nor whether any harm resulted from the representation. We interpret this to mean that the unauthorized practice of law is treated as a strict liability question. The purpose of such a rule is to prevent unscrupulous individuals from preying upon the gullible. Neither is it appropriate for judicial bodies to take the position of determining

post-hearing whether a licensed attorney could have better presented a case than did the layperson that appeared before the court or judicial body. Furthermore, to permit an unlicensed attorney, however competent that attorney might be, to practice before a quasi-judicial body such as this Commission is to undercut the purpose of the state's regulatory scheme.

Attorney Fees

Respondent also seeks the reimbursement of attorney fees incurred both for the August 20, 2014 hearing and for replying to Ms. Washington's subsequent response to its motion. Counsel for Old Georgetown Village has also provided an itemized bill setting forth the work performed in representing the petitioner. We do note, however, that counsel has not itemized the work performed on the day of the hearing nor does she explain what work would need to be duplicated should another hearing be held.

The award of attorney fees, while frowned upon in CCOC precedent, is provided for by section of the Montgomery County Code establishing the CCOC. Section 10B-13(d) provides that reasonable attorney fees may be awarded if a party "(1) filed or maintained a frivolous dispute, or filed or maintained a dispute in bad faith; (2) unreasonably refused to participate in mediation of a dispute or unreasonably withdrew from ongoing mediation; or (3) substantially delayed or hindered the dispute resolution process without good cause."

CONCLUSIONS OF FACT AND LAW

A legal dispute was submitted to the CCOC, an agency created by the Montgomery County Council. The matter was referred to this Panel. During the course of the August 20, 2014, hearing, this panel heard testimony and argument, accepted exhibits into evidence and ruled on objections. The hearing panel was thus acting, on behalf of the CCOC, in a quasi-judicial function.

At the hearing, Ms. Washington conducted examination and cross-examination of witnesses, proffered evidence into the record and made legal arguments on behalf of her aunt. Accordingly, we find that Ms. Washington was acting in the capacity of an attorney representing the petitioner, Ms. Prue.

At the time of the hearing Ms. Washington was on inactive status with the Maryland Bar. The fact that Ms. Washington had previously been an active member of the Maryland Bar is irrelevant. Section 10-601 of the Business Occupations and Professionals Article of the Code of Maryland states that while on inactive status an individual in prohibited from practicing law within the state. Ms. Washington has failed to present a compelling argument as to why this prohibition does not apply in this matter.

The parties appeared before this panel for the purpose of resolving the complaint filed by Ms. Prue. We thus find that Ms. Washington, in representing Ms. Prue at the August 20, 2014 hearing, was engaged in the practice of law. As a result, we see little

choice but to order the August 20, 2014 hearing a nullity and a new hearing held before a newly constituted panel.

In seeking attorney fees, Old Georgetown Village accuses Ms. Prue of acting in "bad faith." We find no evidence of bad faith on the part of Ms. Prue. The only grounds set forth by respondent for attorney fees are the fact that counsel who represented her at the August 20, 2014 was not an active member of the Maryland Bar. It was certainly reasonable for Ms Prue to conclude that she required legal representation at her hearing before this Panel. Moreover, there is no evidence in the record upon which to assume that Mr. Prue was aware of the fact that her niece was not an active member of the Maryland Bar.

The only individual who is at fault in this matter would appear to be Ms. Washington. We further find that, by entering her appearance before the panel, she placed herself under our jurisdiction regarding any misconduct on her part. Accordingly, we find Ms. Washington potentially liable for legal expenses incurred by Old Georgetown Village.

ORDER

For the reasons set forth above, the Panel finds the hearing of August 20, 2014 to be a nullity and the case remanded back to the CCOC for assignment to a newly constituted panel to consider the issues set forth in Ms. Prue's original complaint.

However, this panel retains jurisdiction on the question of legal fees to be awarded. We keep the record open for Old Georgetown Village to file an itemized statement, setting forth the work performed in preparation for the August 20, 2014 hearing and explaining why that work will need to be duplicated in preparing for a subsequent hearing. The respondent has 30 days from the issuance of this Order in which to file its statement. Ms. Washington then has 20 days in which to file her response.

Commissioners Fishbein and Mays concur.

John Sample

John Sample, Panel Chair
Commission on Common Ownership Communities

Copies mailed to:
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1/5/15

BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

Pamela Prue,	)	
	)	
Complainant	)	
	)	
v.	)	Case No. 24-14
	)	August 31, 2015
Old Georgetown Village Condominium Association,	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

The above-captioned case came before the Commission on Common Ownership Communities for Montgomery County, Maryland on April 1, 2015, pursuant to Chapter 10B of the Montgomery County Code. After considering the testimony and evidence presented, the hearing panel finds, determines, and orders as follows.

BACKGROUND

In this case, the Commission considers the limited question of whether Respondent Old Georgetown Village Condominium Association (the "Association") violated the rules of the community by failing to respond in good faith to a complaint lodged by Association resident Pamela Prue ("Ms. Prue") of "excessive noise caused by a neighboring unit by [refraining from] taking action to enforce the [A]ssociation's rules against excessive noise." She specifically requested that the Respondent be ordered to compel the owner of the neighboring unit to install carpeting over 80% of that unit's floor. *Prue v. Old Georgetown Village Condo. Ass'n*, CCOC Case 24-14, Summons, Statement of Charges, and Notice of Hearing (July 28, 2014). The panel answers this question in the negative for the reasons that follow.

FINDINGS OF FACT

After considering the testimony and other evidence, the Panel finds as follows.

A. *The Parties.*

1. Old Georgetown Village Condominium (the "Condominium") is a condominium as defined by Section 11-101(e) of the Real Property Article of the Code of Maryland and is a common ownership community pursuant to Montgomery County Code Section 10B-2(b).

2. The Association's property and actions are subject to restrictions in its governing documents, which include the Association's Bylaws and Rules and Regulations promulgated by the Association's Board of Directors (hereinafter the "Board").[1]

3. The Condominium, which includes 180 units in four buildings, is located in Rockville, Maryland.

[1] The parties did not reference, much less enter into evidence, the Association's Declaration. The Bylaws were introduced into evidence as Complainant's Exhibit 5.

4. Since 2004, Ms. Prue has owned and lived on the second floor of the Condominium at 11420 Strand Drive, Unit 211, Rockville, Maryland 20852.

5. Since the summer of 2013, Ms. Prue's sister, Penny Prue, has also lived in Unit 211.

6. Simon and Genia Gozansky (collectively the "Gozanskys") own and reside in Condominium Unit 311, which is located directly above Ms. Prue's unit on the third floor.

7. The Gozanskys renovated Unit 311 during the summer of 2013. The renovation concluded in or about August 2013. Before the renovation, the floors of Unit 311 were carpeted. During the renovation, hardwood floors were installed.

8. Karen Harris is General Manager of the Condominium, and held this position during the times relevant to this case.

B. ***The Gozanskys seek approval to install hardwood floors.***

9. On or about July 17, 2013, the Gozanskys submitted an Architectural Control Request Form ("Request Form"), seeking approval from the "Architectural Committee/General Manager" to install "engineered hardwood floors." Association's Exhibit A. The request was granted.

10. When the Gozanskys sought approval to install hardwood floors, Rule 28(f) of the Condominium's "Rules & Regulations and Guidelines" provided as follows: "Except for kitchens, bathrooms, closets, and entry halls, each unit shall have not less than 80% of its floor area covered by carpet or rugs." Commission's Exhibit at 39-40, 46 (hereinafter "Comm. Ex."). The Gozanskys acknowledged as much on the Request Form, which provided that, by submitting the application, the Gozanskys agreed that the "Carpet rule of 80% restricts the amount of bare floors. Area rugs must be utilized." (emphasis in original).

11. In July 2013, Ms. Harris inspected the hardwood flooring samples, which included noise-absorbing underlayments, that the Gozanskys intended to use in their construction. In this context, Mr. Gozansky represented to Ms. Harris that he selected more expensive flooring due to its sound-proofing characteristics.

12. No evidence was presented regarding the type of hardwood flooring installed or the Impact Insulation Class rating of the underlay installed with the Gozanskys' hardwood floors.

13. Although no evidence was presented establishing precisely when the hardwood floors were installed, the installation was complete before Ms. Prue lodged the noise impact complaint that is the subject of this dispute.

14. During the Gozansky renovation, Ms. Harris instructed some of her employees to inspect the work.

15. At some point during the summer of 2013, Ms. Harris informed Mr. Gozansky that the Association was considering implementing stricter requirements regarding soundproofing of hardwood floors. In response to this representation, Mr. Gozansky indicated he wanted to comply with whatever stricter standards would be imposed.

C. ***The Association adopts new flooring and carpeting standards.***

16. On or about September 19, 2013, the Condominium adopted new "Flooring/Carpet Standards" as "Revised Rule 36," which were implemented with an eye toward "minimizing noise from walking and other impact sounds that may transmit through the concrete floors that separate apartments," which the Association aspired would, in turn, result in "fewer complaints from residents." Comm. Ex. at p. 35, 71.

17. Notice of the new rule was provided to residents on or about September 23, 2013. Comm. Ex. at p. 34, 70. At that time, the Rule did not specify an effective date. Comm. Ex. at 35, 71. The version of Rule 36 presented to the Commission also failed to so specify. *See id.*

18. Rule 36 urged, but did not compel, Condominium residents to "be mindful of how heavy walking and similar impact noise can affect occupants of adjacent apartments – especially those below," a

concern that is "especially important during those hours when residents are apt to be asleep." Comm. Ex. 1 at p. 35, 71.

19. The Rule required "all new hard-surface flooring," including wood flooring, to "have a noise-absorbing underlay" with an "Impact Insulation Class (IIC) rating" of "60 or higher for hard-surface [floors] other than tile." Comm. Ex. at 35, 37, 71, 73. In this context, the Rule recommends, but does not require, unit owners to install a "moisture or vapor barrier between the bottom of the underlay and top of the concrete floor." *Id.* at 37, 73.

20. In the context of carpeting and padding, the Rule contains various recommendations designed to reduce noise, including the placement of "ample area rugs or carpeting with appropriate padding" in living and dining rooms, bedrooms, dens, foyers, hallways, and closets, as well as under furniture. Comm. Ex. at 37, 73. The Rule further suggests that residents place "felt or other soft cushioning products" under table and chair legs in kitchens and dining rooms to further aid in noise reduction. Comm. Ex. at 38, 74.

21. Although the foregoing requirements did not compel the replacement of hardwood floors installed before Rule 36's effective date[2] to meet such standards, management is obligated to "inspect and may request further information and/or cooperation from the offending unit owner" in the event of complaints of impact noise. Comm. Ex. at 36, 72. After such an inspection, "if management determines that the noise is due to carpeting/padding and/or floor coverage that do not meet the standards outlined in this rule, the unit owner will be *urged* to comply." *Id.* (emphasis added). According to the Rule, an owner/resident's refusal to comply will result in referral to the Board for resolution. *Id.* Notably, however, "Management and the Board recognize that there may be instances where – despite the best intent and effort of all concerned – not all impact noise can be eliminated." *Id.*

22. As a result of the Association's failure to remove Rule 28(f) from the Condominium's Rules & Regulations and Guidelines, *see* Comm. Ex. at 67, which generated some confusion regarding what standards applied, on or about April 4, 2014, Ms. Harris provided notice to Condominium residents that the Rule 36 replaced Rule 28(f).

D. *Noise complaints lodged against the Gozanskys.*

23. On or about October 6, 2013, Ms. Prue lodged a noise impact complaint via a letter to Condominium management and the Board. Comm. Ex. at 8-9. In her letter, Ms. Prue alleged that, when the Gozanskys returned to Unit 311 that week, "the noises emanating from their unit have been noisy and annoying, such as heavy footsteps, what appear to be loud TV sounds late in the evening, and the opening and closing of doors and drawers, etc." *Id.* at 9. Ms. Prue further contended that, although she heard "previous Unit 311 residents as they walked through the hallway that leads from the bedroom to the kitchen, the difference now is that the current owners' movements are heard throughout the unit and at times, sounds as if ceiling joists are vibrating." *Id.* Based on these allegations, Ms. Prue requested that "the staff" examine "the conditions of this unit to ensure [it] meet[s] the rules and regulations currently in force for Condominium unit owners and residents and, if found not to be in compliance, that they are immediately required to do so." *Id.*

24. Beginning on October 7, 2013, Ms. Prue and her sister chronicled the noises purportedly emanating from the Gozanskys' unit in a written record ("Noise Log"). The vast majority of such noises were characterized as "heavy footsteps." *See generally* Prue Exhibit 4. Ms. Prue and her sister characterized the other noises in part as follows: "major renovation sounds"; "heavy footsteps"; "thumping"; "creaking of floors"; "knocking and banging coming from the kitchen area"; "rolling of roller wheels"; "running through unit (by [a] child)"; "movement causing rumbling sounds" and "intermittent" vibrations; "large boom"; and "ceiling vibrations." *Id.* Ms. Prue explained that these sounds substantially impacted her quality of life in the Condominium, which "changed dramatically" for the negative.

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[2] As noted above, the Rule does not, on its face, specify an effective date.

25. The Noise Log also referenced encounters with Mr. Gozansky, including an occasion in which Ms. Prue confronted him after hearing sounds of "running of children's feet" and thereafter observed two young children in the unit during that conversation. Prue Ex. 4 at Feb. 8, 2014 entry. Another entry recalled a conversation in which Mr. Gozansky indicated to Ms. Prue that the occupants above his unit "make lots of noise." *Id.* at July 1, 2014, entry. Some of the entries in the Noise Log correspond to time periods in which the Gozanskys were out of town and, as a consequence, no one was living in Unit 311, including those entries from October 7, 2014, through November 12, 2014. *See* Prue Ex. 4 at entries dated October 7, 2014, through November 12, 2014 (during which Ms. Prue and her sister purportedly heard "heavy footsteps," "loud thumps," "ceiling vibrations/creaks," "very heavy footsteps," and a "child running," among other noises). As to these entries, Ms. Prue failed to establish that the noises she heard emanated from the Gozanskys' unit. Another entry chronicled a visit from the Condominium watchman to Ms. Prue's unit during which he purportedly heard "ceiling creaks," but not the sound of children running, as Ms. Prue reported hearing before his arrival. *Id.* at October 26, 2014 entry.

26. In sharp contrast to Ms. Prue and her sister's Noise Log, the Gozanskys maintained that they undertook efforts to minimize noise emanating from their unit by, among other things, installing hardwood floor containing noise insulating material, rolling out area rugs and runners when their grandchildren (only one of whom could walk at the time of the Complaint) visited, and removing their shoes, among other things.

27. After Ms. Harris received Ms. Prue's noise complaint, she contacted the Gozanskys to investigate.

28. On or about October 14, 2013, Ms. Prue emailed Ms. Harris, requesting a phone call to discuss the noise impact complaint. Comm. Ex. at 24. Ms. Harris responded the following day by email, informing Ms. Prue that Ms. Harris spoke to the Gozanskys, and suggested that the source of the potential noise could have been the product of "some work" neighbors several units down from the Gozanskys performed over the weekend, as "sound carries in the buildings and is sometimes difficult to isolate." *Id.* at 25. After advising Ms. Prue that "routine use of one[']s property is not something that can be regulated and . . . may not rise to the level of a noise abatement issue," Ms. Harris explained that should Ms. Prue wish to discuss the noise complaint further, Ms. Prue should contact her.

29. In addition to email correspondence, Ms. Harris spoke with Ms. Prue "a couple of times," and indicated that, if the noises of which Ms. Prue complained occurred during Ms. Harris' office hours, she should notify Ms. Harris' staff and a staff member would come to Ms. Prue's unit to listen. Ms. Prue did not exercise this option. In addition to her conversations with Ms. Prue, Ms. Harris inspected the Gozanskys' unit and, while she observed some area rugs, she estimated that they covered less than 50% of the unit.

30. On or about November 6, 2013, Ms. Prue emailed Ms. Harris to "request the status of [her] complaint." Comm. Ex. at 26. Ms. Prue reported that the grounds for her complaint persisted – "heavy footsteps, sliding doors/windows, and loud 'thumps' and 'booms' continues," including "a steady series of heavy footsteps and ceiling creaks" that she could hear as she typed the email. *Id.* Ms. Prue further contended that no "unit member should have to tolerate these conditions," which she attributed to "the lack of rugs/carpeting on 80% of the hardwood floors that these unit owners were permitted to install." *Id.*

31. On or about November 7, 2013, Ms. Harris informed the Gozanskys via letter that a preventive maintenance inspection of their unit revealed that it lacked "adequate carpet coverage" in violation of Rule 36 and, relatedly, that she received "yet another complaint regarding noise emanating from your unit due apparently to lack of carpeting." Association Exhibit C. As to the alleged violations of Rule 36, Ms. Harris underlined the following sections: (1) the requirement to install a noise-absorbing underlay under hard-surface floors; (2) the *suggestion* of using "ample area rugs or carpeting with appropriate padding to minimize impact noise"; (3) the standards applicable to such rugs and carpeting; and (4) the Association's and offending unit owner's obligations after a noise impact complaint is lodged where the hard-surface floor was installed before the effective date of Rule 36, including management's obligation to inspect and discretion to request further information and/or cooperation from the offending

unit owner. *Id.* Finally, the letter asked the Gozanskys to "make arrangements to install adequate carpeting and padding" and notified them of a follow-up inspection 30 days from the date of the notice.

32. In a series of emails also on November 7 between Ms. Harris and Ms. Prue, Ms. Harris relayed that the Gozanskys were notified of Ms. Prue's noise complaint and instructed to "provide the appropriate covering" for their hardwood floors. Comm. Ex. at 27-30. Ms. Harris further explained that the Board planned to address the noise complaint at its November 21 Board meeting. *Id.* at 27. Although the Board noted that five noise complaints had been filed, it did not address the substance of Ms. Prue's allegations at the meeting.

33. On or about December 9, 2014, Ms. Harris again wrote to the Gozanskys, reiterating the determination that the unit lacked sufficient carpet coverage in violation of Rule 36 and informing them that their unit was again the subject of a noise impact complaint. Association Exhibit D. The letter requests a "re-inspection" to determine whether the Gozanskys "installed adequate carpeting and padding." *Id.*

34. In response, the Gozanskys submitted a letter dated December 11, 2013, to Ms. Harris from a medical doctor detailing the medical reasons for installing hardwood flooring and refraining from implementing the "adequate floor coverage" suggested by the Association.[3] Association Exhibit E. Ms. Harris submitted the letter to the Board.

35. On or about December 20, 2013, Ms. Prue followed up on her complaint and reported that she continued to hear "heavy footsteps and thumps that are comparable" to the noises identified in her initial complaint. Comm. Ex. at 31. Ms. Harris responded that the matter had been forwarded to the Association's legal counsel. *Id.*

36. On or about January 14, 2014, Ms. Prue requested a "formal written response" from the Board to her noise complaint "stating precisely what corrective actions have been taken to date to resolve this matter" and when she could "expect the installation of floor coverings on the floors in Unit 311." Comm. Ex. at 32. Ms. Prue again informed Ms. Harris that she "continue[d] to hear heavy footsteps above [her] in Unit 311," which she believed were "due to the lack of floor coverings . . . required by [the Condominium's] regulations." *Id.* Ms. Harris responded the next day, replying that the Board would be discussing the matter in an executive session "due to involvement with legal counsel." *Id.* at 33. Ms. Harris further confirmed that she would relay Ms. Prue's request for a written response. *Id.*

37. On January 17, 2014, Ms. Harris sent letters to Ms. Prue and the Gozanskys. Comm. Ex. at 10 (letter to Ms. Prue); Association Ex. E (letter to the Gozanskys). To Ms. Prue, Ms. Harris wrote the following:

> As you are aware[,] you previously notified the association regarding a noise transfer complaint from the unit located above yours. The unit owner has provided information to the association indicating that they will not be installing carpeting for *very compelling reasons*. The Condominium[']s role is to attempt to minimize impact and promote harmony between owners. Therefore, we can only encourage solutions which help to resolve such matters between neighbors. The Carpet and Flooring Standards were adopted to assist [in] this process. Therefore, any measures which can be implemented are appreciated but not required. We of course appreciate your understanding that some noise transfer is expected from routine day to day activities in high density housing.

Comm. Ex. at 10 (emphasis added). Ms. Harris cited Rule 36 in the subject line of the letter. *Id.* She did not recite the nature of the "very compelling reasons" precluding the Gozanskys' installation of carpeting

[3] The parties agreed that the medical information disclosed in this letter will remain confidential.

because, consistent with her practice of not disclosing the medical or personal grounds for granting accommodations to residents, she referred to the grounds for the accommodation as "compelling."

38. In her letter to the Gozanskys confirming that they had "submitted medical reasons for not installing carpeting," Ms. Harris still urged – but did not compel – the Gozanskys to take steps to reduce noise emanating from their unit, replicating the language beginning with the third sentence excerpted above. Association Ex. E.

39. Notwithstanding Ms. Harris' January 17 response, on or about February 9, 2014, Ms. Prue wrote to Ms. Harris, seeking "a formal written ruling from the . . . Board" regarding her noise complaint in light of the Board's failure not only to identify the nature of the "very compelling reasons" upon which it permitted the Gozanskys to install hardwood flooring without adequate carpet coverage, but also its purported failure to consider how the noise emanating from the Gozanskys' unit violated Rules 3 and 28(f).[4] Comm. Ex. at 11. Additionally, Ms. Prue reiterated the subject of her prior noise complaints, supplementing this list with a new complaint involving "incidences of children running on the hardwood floors through the unit above." *Id.*

40. On or about February 24, 2014, Gary Clark, Board President, wrote to Ms. Prue, advising that the January 17 letter constituted the Board's "official 'ruling'" on her noise complaint. Comm. Ex. at 12. As to the substance of her complaint, Mr. Clark advised that the Association's Bylaws "remain silent on flooring coverage and the new rule [36] for flooring standards merely encourages owners to participate but is not mandatory." He suggested that Ms. Prue might turn to the Montgomery County noise ordinance for relief, a copy of which was enclosed with the letter. Comm. Ex. at 12-23. Mr. Clark further advised Ms. Prue that she had "the right to dispute any action to enforce or implement a decision by the Board" to the Commission on Common Ownership Communities. *Id.* at 12.

41. Ms. Prue followed Mr. Clark's suggestion, seeking relief from the Commission on or about March 7, 2014. Comm. Ex. at 5. The matter proceeded to a public hearing before the panel on April 1, 2015.

42. The manner in which the Board and the management responded to Ms. Prue's noise complaint is consistent with its responses to other noise complaints lodged by other Condominium residents.

CONCLUSIONS OF LAW

Ms. Prue has failed to establish that the Association failed to respond in good faith to her noise complaint, as the Board and management's conduct was legally authorized and she failed to present sufficient evidence that the Association's actions were the result of fraud, dishonesty, or incompetence.

The Commission applies the "business judgment rule" in evaluating a Board's failure to enforce a regulation prohibiting excessive noise to a complaining owner's satisfaction and, in this context, considers whether the Board acted in good faith under the circumstances. *Taylor v. Heritage Green Condo. Inc.,* CCOC Case 16-12 at 10-11[5] (Jan. 18, 2013) (holding that complaints of noise were to be judged by an objective standard under which the complainant had to prove the noise was excessive to reasonable people and not to the complainant alone. As the Court of Special Appeals has explained:

> [The business judgment] rule requires the presence of fraud or lack of good faith in the conduct of a corporation's internal affairs before the decisions of a board of directors can be questioned. . . . If the corporate directors' conduct is authorized, a showing must be made of fraud, self-

[4] When Ms. Prue drafted the letter, the Association had not yet delivered its April 4, 2014 letter clarifying that Rule 36 replaced Rule 28(f).

[5] Unless noted, citations to this opinion refer to the Hearing Examiner's Report and Recommendations, which the Commission's hearing panel approved in its entirety in its January 18, 2013, Decision and Order.

> dealing or unconscionable conduct to justify judicial review. This presents an issue of law rather than of fact. . . . Although directors of a corporation have a fiduciary relationship to the shareholders, they are not expected to be incapable of error. All that is required is that persons in such positions act reasonably and in good faith in carrying out their duties. . . . Courts will not second-guess the actions of directors unless it appears that they are the result of fraud, dishonesty or incompetence.

Black v. Fox Hills N. Cmty. Ass'n, Inc., 90 Md. App. 75, 82 (1992) (citations omitted). Thus, under this framework, the panel considers (1) whether the Association's conduct was legally "authorized" under its governing documents and applicable law and (2) whether the Association acted in good faith. *See id.* Because the panel answers both of these questions in the affirmative, Ms. Prue's request for relief is denied for the following reasons.

A. *The Association's conduct was legally authorized.*

The Association's refusal to compel the Gozanskys to install rugs or carpeting over 80% of their hardwood floors, as Ms. Prue requested in her noise complaint, was legally authorized. *Black*, 90 Md. App. at 82. The Association's Bylaws are silent regarding (1) disturbances emanating from within another owner's unit, (2) flooring and carpeting standards designed to reduce noise, and (3) procedures governing the Association's response to noise complaints. *See generally* Prue Exhibit 5. But, related to the topic of disturbances emanating from within another owner's unit, Article V, Section 12(c) of the Bylaws prohibits "immoral, improper, offensive, or unlawful use" of Condominium units. *Id.* at 22. And, as to flooring and carpeting standards and responses to noise complaints, Article III, Section 2(i) of the Bylaws vests the Board with the authority to "[e]nact[], after thirty (30) days['] prior written notice under the apartment door, uniform Rules and Regulations from time to time for the use of the Property, as well as the conduct and the enjoyment of the Unit owners." *Id.* at 6. Relatedly, Article III, Section 2(j) grants the Board the authority to enforce unit owners' obligations and to do "everything else necessary and proper for the sound management of the property," including levying fines against unit owners for violations of the Rules and Regulations." *Id.* In line with the foregoing authority, the Association's Board adopted "Rules & Regulations and Guidelines" that address disturbing noise generated from within individual units and carpeting and flooring standards designed to reduce such noise. *See also* Comm. Ex. at 42 (vesting the "management agent (manager)" with the authority "to enforce the rules"). As to disturbing noises, Rule 3 of the Association's Rules and Regulations and its Flooring/Carpet Standards for Noise Reduction provides in pertinent part as follows: "No resident shall make or permit to be made any unreasonable disturbing noise in . . . the units, nor do or permit anything to be done that would interfere with the rights, comfort o[r] convenience of other unit owners or occupants." Comm. Ex. at 42 (emphasis in original). As to carpeting and flooring standards, when the Gozanskys' Architectural Control Request was approved in July 2013, Rule 28(f) was effective. That Rule provided as follows: "Except for kitchens, bathrooms, closets, and entry halls, each unit shall have not less than 80% of its floor area covered by carpet or rugs." *Id.* at 46. But, after work commenced, the Association replaced Rule 28(f) with Rule 36.

Rule 36, which was enacted in an effort to "minimize[e] noise from walking and other impact sounds that may transmit through the concrete floors that separate apartments," required "all new hard-surface flooring" installed after its effective date to "have a noise-absorbing underlay" with an "Impact Insulation Class (IIC) rating" of "60 or higher for hard-surface [floors] other than tile." Comm. Ex. at p. 35, 37; 71, 73. To assist in its noise reduction goals, Rule 36 outlined many recommendations: (1) throw rugs/mats in kitchens, bathrooms, utility rooms, and closets, Comm. Ex. at 36, 72; (2) installation of a "moisture or vapor barrier between the bottom of the [noise-reduction] underlay and top of the concrete floor," *id.* at 37, 73; (3) "ample area rugs or carpeting with appropriate padding" in living/dining rooms,

bedrooms, and dens with wood or other hard-surface floors,[6] *id.*; (4) "rugs/carpeting . . . under sofas, chairs, beds, and other sitting/sleeping furniture" or, if there is no rug or carpeting, the use of "noise-abating cushioning pads," *id.*; (5) rugs, runners, or carpeting with appropriate padding in foyers, hallways, and walk-in closets, *id.*[7]; and (6) "felt or other soft cushioning products on the bottom of chair legs (and table legs if moved often)," *id.* at 38, 74. As to hardwood floors installed *before* its effective date, Rule 36 provided that such floors need not "be replaced . . . to meet these new standards," but it nevertheless permitted Condominium management to *urge* a unit owner subject to a noise complaint to comply with its dictates as follows:

> [I]f there are complaints of impact noise from residents, management will inspect and may request further information and/or cooperation from the offending unit owner. If management determines that the noise is due to carpeting/padding and/or floor coverage that do not meet the standards outlined in this rule, the unit owner will be urged to comply. Refusal to do so will result in the dispute being referred to the Board for a resolution.

Comm. Ex. at 36, 72. Notwithstanding this process, Rule 36 acknowledged that, "there may be instances where – despite the best intent and effort of all concerned – not all impact noise can be eliminated." *Id.* The Rule further acknowledges that the standards articulated therein are subject to exemptions: "Owners may request exemptions to these standards if they can provide credible information that noise reduction can be achieved by other effective means." Comm. Ex. at 35, 71.

Under the foregoing authority, the Association's refusal to compel the Gozanskys to install rugs or carpeting over 80% of their hardwood floors, as Ms. Prue requested in her noise complaint, was a decision the Board was authorized to make. *Black*, 90 Md. App. at 82-83 ("Whether [the association] was right or wrong; the decision fell within the legitimate range of the association's discretion."). As a threshold matter, as to the 80% requirement, Rule 28(f) was no longer in force when Ms. Prue lodged her noise complaint. Although the Bylaws vest the Board with the authority to enforce the Condominium's Rules & Regulations and Guidelines, such authority does not extend to Rules no longer in effect. In this way, the Board and management lacked the authority to compel the Gozanskys to comply with Rule 28(f). Instead, Rule 36 contained the metric by which the Board could act. Under that Rule, the Board and management followed the procedures applicable to noise complaints arising out of alleged non-compliance with the carpeting and flooring standards and recommendations by (1) inspecting the Gozanskys' unit, (2) issuing a letter to the Gozanskys requesting cooperation with the recommendations of Rule 36 and urging their compliance, (3) referring the dispute to the Board for a resolution, (4) granting the Gozanskys' request for an accommodation arising out of a medical issue, and (5) issuing letters to the Gozanskys and Ms. Prue indicating that the Gozanskys would not be installing carpeting for "very compelling reasons." For the foregoing reasons, the panel determines that the Board and management's actions were legally authorized.

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[6] Notably, the language suggesting such measures instructs that Condominium residents "should" undertake them, not that residents "shall" implement such measures. Comm. Ex. at 73. *Pringle v. Montgomery Cnty. Planning Bd. M-NCPPC*, 212 Md. App. 478, 490 (2013) ("In comparing the definitions of should versus shall, it becomes evident that their meanings, while similar, are indeed distinct. Should is used to express duty, obligation, necessity, propriety, or expediency. Webster's Third New International Dictionary 2104 (3rd ed. unabridged 1993). Shall is used to express a command or exhortation. Webster's Third New International Dictionary at 2085. *Should, while definitely strongly encouraging a particular course of action,* is permissive. Shall requires a particular course of action and accordingly, is mandatory.") (emphasis in original; citations omitted).

[7] *See* footnote 6, which is incorporated herein by reference.

B. ***Ms. Prue failed to establish that the Association acted in bad faith.***

Ms. Prue failed to establish that the Association did not act in good faith in refusing to enforce Rules 3 and 28(f) in response to her noise impact complaint, as she has not shown that the Association engaged in fraud, self-dealing, or unconscionable conduct, or exhibited dishonesty or incompetence. *Black*, 90 Md. App. at 82. At the hearing, Ms. Prue argued that she established by a preponderance of the evidence that the Association exhibited "arbitrary and capricious" conduct because it (1) merely rubber stamped the Gozanskys' request for hardwood flooring and basis for not complying with the Association's carpeting and flooring standards, (2) failed to investigate the noise complaint, and (3) failed to follow and enforce Rule 28(f). Ms. Prue's contentions are unsubstantiated.[8]

As to the first allegation – that the Association merely "rubber-stamped" the Gozanskys' decision not to adhere to the carpeting standards – the record reflects that the Association followed the procedures outlined in Rule 36 for responding to impact noise complaints (and, in so doing, followed the same procedures it uses to respond to all other noise impact complaints). First, Association management inspected Unit 311 and, via letter dated November 7, 2013, informed the Gozanskys that their unit was "not in compliance" with Rule 36 because it lacked "adequate carpet coverage." Second, Ms. Harris requested, as Rule 36 dictates, that the Gozanskys cooperate and urged them take steps to comply with the Rule, especially in light of the noise complaint. Ms. Harris also advised that Unit 311 would be re-inspected to determine whether the Gozanskys complied with the Rule. Third, the noise impact complaints were referred to the Board for resolution. Although the dispute was not taken up at the November 21, 2013, Board meeting, it was addressed at a subsequent executive session in the presence of legal counsel to preserve the confidential nature of the medical note provided by the Gozanskys. The Board granted the request for an accommodation. The dispute was again addressed by the Board and management in letters dated January 17, 2014, and February 24, 2014: in the first letter, Ms. Harris informed Ms. Prue that the Gozanskys would not be installing carpeting for "very compelling reasons"; in the second, the Board President confirmed that the first letter constituted the Board's "official 'ruling'" on the noise complaint, and advised her to turn to the Montgomery County noise ordinance for potential relief (a copy of which was enclosed with the letter) or to pursue the dispute with the CCOC. Further, as the February letter explained, Rule 36 "merely encourages owners to participate" in the new flooring standards and "is not mandatory." Under these circumstances, Ms. Prue has failed to establish that the Association merely rubber-stamped the Gozanskys' actions.

As to the second alleged demonstration of bad faith – that the Board failed to investigate Ms. Prue's noise complaint – the evidence is similarly deficient for the reasons expressed in the prior paragraph. In addition to these efforts, Ms. Harris contacted the Gozanskys and Ms. Prue regarding the complaints, and Ms. Harris and the Board maintained a dialogue with Ms. Prue on this matter from October 2013 through February 2014.

As to the third alleged indication of bad faith – that the Association failed to enforce Rule 28(f) – Ms. Prue's position is misplaced. When she initiated her noise impact complaint, the Rule was no longer in force. Furthermore, the Gozanskys submitted a request for an accommodation absolving them of the need to obtain floor coverage that would have permitted the Association to exempt the Gozanskys from the scope of Rule 28(f) even if were still in force. Instead, the Association turned to Rule 36, following the procedures outlined therein, and urged the Gozanskys to comply, as it lacked the authority –

[8] Ms. Prue further alleged that the evidence established that the Gozanskys never intended to comply with Rule 28(f). Because such an allegation does not bear on whether *the Association* acted in bad faith, we do not address this contention further.

especially in light of the accommodation requested for the reasons articulated in Section A, above – to compel compliance with the Rule and/or its recommendations for reducing noise.

For these reasons, Ms. Prue has failed to rebut the presumption that the Board acted in good faith and in the Association's best interests in declining to enforce Rules 3 and 28(f) in response to her noise complaint. *Reiner v. Ehrlich*, 212 Md. App. 142, 156 (2013) ("under the business judgment rule, there is a presumption that directors of a corporation acted in good faith and in the best interest of the corporation") (citations, internal quotations omitted); *Danielewicz v. Arnold*, 137 Md. App. 601, 638 (2001) ("to rebut a business judgment claim, the party challenging the validity of a board's actions must produce evidence sufficient to rebut this presumption").

C. *Application of the Fair Housing Act and Fair Housing Amendments Act of 1988.*

Because of the nature of the dispute presented before the panel – whether the Association violated the rules of the community by failing to respond in good faith to a noise complaint lodged by Ms. Prue and refraining from taking action to enforce the Association's rules against excessive noise – the panel considers this case by applying the business judgment rule. *See Taylor*, CCOC Case 16-12 (applying this rule in evaluating a board's failure to enforce a regulation prohibiting excessive noise to an owner's satisfaction). However, the Association's persuasive presentation of its defense that it was compelled to act in the manner that it did because failing to do so would have violated the Fair Housing Act[9] and the Fair Housing Amendments Act of 1988 (the "Act") compels a different standard limited to this context: when an Association is obligated under the Act to accommodate a unit owner's disability, it is not within the Association's discretion to fail to do so. *Voloshen v. Sligo Station Condo. Ass'n*, CCOC Case 30-11 at 7 (June 25, 2012) (for these reasons, "[i]n the panel's view . . . the business judgment rule does not apply"). Thus, for the purposes of examining the Association's argument rooted in the Act, we do not apply the business judgment rule.

The Fair Housing Act was established to ensure that people who have historically been subject to discrimination in the housing markets would have an equal opportunity to housing. *People Helpers, Inc. v. City of Richmond*, 789 F. Supp. 725, 731 (E.D. Va. 1992). The Fair Housing Amendments Act of 1988 (the "Act"), codified at 42 U.S.C. § 3601, *et seq.*, extended the protection of the federal fair housing law to persons with a handicap, 42 U.S.C. § 3604(f), which the Act defines as (1) "a physical or mental impairment which substantially limits one or more of [the] person's major life activities," (2) "a record of having such an impairment," or (3) "being regarding as having such an impairment," 42 U.S.C. § 3602(h)(1)-(3). 24 C.F.R. § 100.204(a); 24 C.F.R. § 100.201(a) (defining "physical or mental impairment"); *see also* HUD & Department of Justice Joint Statement on Reasonable Accommodations Under the Fair Housing Act, May 17, 2004, *available at* http://www.hud.gov/offices/fheo/library/huddojstatement.pdf, at 1. One kind of discrimination prohibited by the Act is the "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person with a handicap] equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Maryland courts have applied this prohibition to condominium boards of directors considering reasonable accommodations requested by disabled unit owners under analogous Maryland law provisions.[10] *See, e.g., Bd. of Directors of Cameron Grove Condo., II v. State Comm'n on Human Relations*, 431 Md. 61, 80 (2013).

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[9] Because the Association did not contend that any other provisions applied (e.g., the Montgomery County, Maryland Code, or other federal laws), we solely consider the Federal Housing Act here.

[10] When "the provisions are so similar and . . . the common intent behind them is so clear, we may and should be guided by the case law interpretation of the Federal statute when we examine the State analog." *Wallace H. Campbell & Co. v. Maryland Comm'n on Human Relations*, 202 Md. App. 650, 667 (2011) (citations omitted).

Here, there is sufficient evidence in the record to support a finding that the Association regarded one of the Gozanskys as having a physical or mental impairment that substantially limited one or more of the person's major life activities[11] because, even if the person lacked the impairments outlined in the doctor's note, the Association's actions reflect that the person was "treated . . . as having such an impairment." 42 U.S.C. § 3602(h)(3); 24 C.F.R. § 100.201(d) (defining when a person "is regarded as having an impairment" as, among other things, when the person lacks a physical or mental impairment as defined in 24 C.F.R. § 100.201(a) "but is treated by another person as having such an impairment"). In particular, the Gozanskys submitted a letter from a medical doctor dated December 11, 2013, to Ms. Harris detailing medical reasons for installing hardwood flooring without the floor coverage suggested by the Association. After receiving the letter, the Association forwarded it to its legal counsel and convened an executive session of the Board to address its contents. On January 17, 2014, Ms. Harris informed Ms. Prue via letter that the Gozanskys would not be installing carpeting for "very compelling reasons." Ms. Harris' letter to the Gozanskys from the same day echoed this decision, citing their submission of "medical reasons for not installing carpeting." The Board reiterated its decision in a February 24, 2014, letter to Ms. Prue. These facts reflect that the Association regarded one of the Gozanskys as having a physical impairment. *See Matarese v. Archstone Communities, LLC*, 468 F. App'x 283 (4th Cir. 2012) (apartment building owner and managers violated the Act by discriminating against a resident they "regarded as" suffering from a physical or mental impairment even though the resident did not actually suffer from such an impairment, by not renewing their lease and refusing to rent to plaintiffs at any other of the company's apartment buildings).

The Association argued that, had it failed to reasonably accommodate the Gozansky discussed in the medical note, it would have violated the provision of the Act instructing that it is a violation of the law to refuse to make such accommodations when they may be necessary to afford a person with a handicap the equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B). Rather than risking such a violation, the Association reasonably accommodated, abandoning its efforts to compel the Gozanskys to obtain "adequate floor coverage," though it later acknowledged that Rule 36 recommended, and did not compel, such coverage. Because the Association was obligated under the Act to reasonably accommodate the Gozansky identified in the medical note, it was not within the Association's discretion to fail to do so. *Voloshen*, CCOC Case 30-11 at 7. Thus, to place this determination in the greater context of sections A and B, because the Association was obligated to reasonably accommodate, it follows that (1) the Association was legally *compelled* – rather than merely legally authorized – to so accommodate and (2) the Association's adherence to its obligation further bolsters the presumption that the Board acted in good faith and in the Association's best interests.

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Notwithstanding the above, we pause to acknowledge the understandable angst and frustration of Ms. Prue and her sister as a result of the noise they are experiencing in Unit 211, regardless of its origin. Ms. Prue testified that the noise has decreased her quality of life in the Condominium. But, like the owners in *Malespin v. Sierra Landing Condominium Association*, CCOC No. 551-0, at 3 (June 9, 2003), Ms. Prue is in the untenable position of owning a residence which she believes has a significant noise problem for which this forum can provide little solace. Thus, while the panel empathizes with Ms. Prue's plight, as the *Malespin* panel explained,

> [a]nybody that has ever lived under another apartment can appreciate that noise resulting from another's living habits can be annoying. However, people who live in close quarters, such as apartments and condominiums,

[11] Pursuant to the parties' agreement, to preserve this confidential medical information, we refrain from disclosing the individual or the asserted impairment.

> understand that such noise will occur. . . . Unless the noise is excessive, it must be accepted as part of life in close condominium quarters.

Malespin, CCOC No. 551-0 at 3; *see also Faville v. Brookstone Condo., Inc.*, CCOC No. 560-O (Aug. 21, 2003) (quoting with approval the above language in *Malespin* where, in *Faville*, complainant alleged she periodically heard "booming and banging sounds" and "the sound of running children," which "cause[d] her great distress," but failed to establish that the noise was excessive to a person of "normal sensibilities" and, thus, did not give rise to a duty compelling the Association to act). Further complicating matters is the fact that the evidence established that, with respect to the Noise Log entries from October 7, 2014, through November 12, 2014, the noises Ms. Prue and/or her sister experienced did not emanate from the Gozanskys' unit, as they were not living there at that time. This, in turn, reflects that the Gozanskys' unit is not the sole source of the noises Ms. Prue deems disturbing. But, ultimately, and more importantly for the purposes of the panel's review, the Association treated Ms. Prue's complaint in the manner it treated other similar complaints, sending violation letters and granting an accommodation which they determined federal law compelled. Under the circumstances, while the panel acknowledges Ms. Prue's frustration, it cannot accord her the relief she seeks.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is therefore adjudged and ordered as follows:

1. That the Complaint filed by Pamela Prue is DISMISSED and her request for relief is DENIED; and

That Pamela Prue's request for reimbursement of the Commission's filing fee is DENIED

Panel members Aimee Winegar and Jim Coyle concur in this Decision and Order.

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

Rachel Browder

Rachel Browder, Panel Chair