Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland

In the Matter of

Kathleen S. Moore	x	
And	x	
Judith C. Harwood,	x	
	x	
Complainants	x	
	x	
	x	Case Nos. 374-O and 375-O
vs.	x	August 25, 1998
	x	
Churchill View Condominium, Inc.	x	
	x	
Respondent	x	
	x	

DECISION AND ORDER

The above captioned case came before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing and all arguments on the 18th day of March, 1998, 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. Both the Complainants and the Respondent presented their evidence and the case file and other documents produced by the parties have been entered into the record, without objection as to the evidence admitted or the format of the hearing. Therefore, the Panel makes the following findings of fact and conclusions of law in deciding these cases.

BACKGROUND

Complainants' condominium units were damaged when a pressure water valve burst in a condominium unit owned by another resident. When the Complainants' respective insurance carriers refused to reimburse them for the damage to their individual units, the Complainants requested that the Respondent Churchill Condominium Corporation reimburse them for the repairs made to their units. The Respondent rejected their request, because the Respondent's insurance did not cover the losses suffered by the Complainants.

FINDINGS OF FACT

1. Complainants Kathleen S. Moore and Judith C. Harwood reside at 12908 Churchill Ridge Circle, Germantown, Maryland, in Units G and K, respectively.

2. Respondent Churchill View Condominium, Inc., the legal entity comprising the council of unit owners, governs and administers the affairs of the Condominium Corporation.

3. An elected Board of Directors, composed of five (5) persons, conducts and administers the affairs of the Condominium Corporation, pursuant to Article V of the By-Laws of the Respondent.

4. The incident giving rise to this complaint occurred on June 25, 1997, when a blown pressure relief valve from the water heater located in Unit C, owned and occupied by Lauren and Sharon Greber, burst.

5. The burst pressure relief valve caused water to pour into the units owned by the Complainants, resulting in extensive damage to areas of the involved three units: Complainants' and the Grebers'.

6. Each Complainant, as well as the Grebers, carried current individual homeowners' insurance for their respective unit.

7. The insurance companies insuring each of them, respectively, refused to pay for the damage caused to their respective units, given that the Condominium Corporation's Master Insurance Policy, but not their individual insurance policies, covered such damage.

8. The Condominium Corporation's Master Insurance Policy only covered such damage beyond the $2500.00 deductible required under the policy.

9. The amount of damage to Complainants' respective units amounted to less than the mentioned deductible, thereby resulting in the carrier for the Condominium Corporation's Master Insurance Policy rejecting the Complainants' filed claims against the policy to cover the mentioned damage.

10. Consequently, Complainants requested the Condominium Corporation to reimburse them for the mentioned damage to their units; however, the Condominium Corporation denied their requests.

11. The By-Laws governing the Churchill View Condominium, Inc. state in Article XIII (Casualty Damage-Reconstruction of Damage), Section 2 (Proceeds Insufficient), that, when: "the proceeds of insurance are not sufficient to repair damage or destruction by fire or other

casualty, . . . the repair or reconstruction of any condominium unit shall be accomplished promptly by the Corporation at the expense of the owner of the affected condominium unit." No proceeds from insurance were received.

12. Complainant Harwood gave testimony that the Board of Directors, of which she served on different occasions as President and Vice-President, had previous to the dispute here paid the cost of repair for water damage when the Condominium Corporation's insurance policy failed to cover the entire loss suffered by a condominium owner.

13. On June 12, 1997, or thirteen days prior to the pressure valve bursting in the Grebers' unit, the Board of Directors adopted a policy statement requiring unit owners to pay for any cost of repair to her/his unit resulting from a casualty loss not covered by the Condominium Corporation's insurance.

14. The Condominium Corporation's By-Laws (Article XIX, Section 10, Rules and Regulations), set forth a specific procedure to be followed by the Board of Directors for adopting rules for the condominium owners to obey.

CONCLUSIONS OF LAW

Complainant Harwood testified that she served, respectively, as President and as Vice-President of the Board of Directors of the Churchill Condominium Corporation during different years prior to the event giving rise to this dispute. In her testimony, she averred that the entire losses, not covered by insurance, suffered by a condominium unit owner resulting from a casualty---not caused by the involved owner(s)---were, upon request, reimbursed to the owner(s) by the Churchill Condominium Corporation. Her testimony on the then approved practice by the Board of Directors to reimburse condominium unit owners for such casualty losses went unchallenged and uncontradicted by the Respondent.

Moreover, further testimony supported that the Respondent, rather than the affected unit owner, previously paid for the damage incurred when a casualty occurred within an owner's unit. It was testified to, and credited, that the deductible for the Respondent's insurance had been increased due to the number of casualty losses paid by the insured carrier. To keep the total cost of the Respondent's insurance within a reasonable amount, the current Board of Directors had negotiated the higher deductible of $2500 to be met before the insurance carrier became liable for any casualty loss by any unit owner.

As mentioned, the Respondent's By-Laws (Article XIII, Section 2) state that when "the proceeds of insurance are not sufficient to repair damage or destruction by fire or other casualty, ...the repair or reconstruction of any condominium unit shall be accomplished promptly by the Corporation at the expense of the owner of the affected condominium unit." However, the By-Law does not clearly address what should happen when the loss is less than the amount of the

deductible. The ambiguity in Article XIII, Section 2 as to the deductible's relationship to the proceeds of the insurance leaves room for different interpretations about the Board's responsibility. It has, in fact, been the Board's custom and practice to pay the deductible.

The Board of Directors previously interpreted this By-Law to authorize its practice of reimbursing unit owners for casualty losses uncovered by its insurance. Thus, this practice by the then Respondent's Board of Directors became the rule to be adhered to: making the Respondent, not the unit owner(s), responsible for the entire casualty loss suffered by any unit owner.

We are convinced that the Board of Directors, serving at the time of the incident giving rise to this dispute, recognized and was cognizant that the past Board of Directors' practice had resulted from its interpretation of the mentioned By-Law regarding such casualty losses. For, prior to this dispute, this Board, at its June 12, 1997 meeting, "adopted in principal (sic) a 'strict liability' policy to address unit owners' liability for payment of uninsured losses occurring within a [condominium] unit." See December 19, 1997 letter from the Respondent's attorney, Quinn F. Roy, to the Commission.

Later, in her letter, Ms. Quinn adds that "[t]he finalized policy was presented at the July 12, 1997 Board of Directors meeting," making the unit owners responsible for "that portion of the cost of repair to the unit that is less than the available insurance deductible." Thus, the Board adopted its final policy on casualty losses after the June 25, 1997 incident raised here by the Complainants.

Since the Board adopted its final rule about uninsured losses after the Complainants' losses, we conclude that the policy and practice in effect at the time of Complainants' losses made it obligatory that they be reimbursed accordingly.

Moreover, neither the June 12 nor the July 12 action by the Board changed the previous rule by the Board concerning reimbursement of uninsured losses by unit owners. To change the practice, which became the well-known rule of the Board for reimbursing unit owners for their casualty losses, the Board was obliged to follow the procedure outlined in its By-laws, at Article XIX, Section 10a-e (Rules and Regulations). For example, Section 10a of the By-Laws required:

1. delivered written notice to members proposing the rule change,
2. period for written comments from members,
3. notice of the proposed effective date of the proposed rule, and
4. at least a 15-day notice to members of an open meeting to comment on the proposed rule change.

The record contained no evidence that the Board complied with any of the sections of Article XIX. Therefore, we lack sufficient evidence showing that the Board complied with the requirements of Article XIX and its sections. Consequently, we find and conclude that the Board's actions about uninsured losses, occurring on June 12 and July 12, 1997, failed to change

the previous Board's practice of reimbursing unit owners for such losses, based on its reasonable interpretation of Article XIII, Section 2. Consequently, the present Board remains obligated to reimburse the Complainants for the uninsured losses raised in this dispute.

Respondent's attorney referred to other sections of Respondent's By-Laws to buttress his argument that Complainants' uninsured losses need not be reimbursed to them. None of the arguments raised defeats the clear record that the practice in effect at the time of Complainants' losses obliged the Board to reimburse them. To deny them such reimbursement required the Board to adhere to Article XIX and its sections, to resurrect and make effective the rule in the By-Laws, namely Article XIII, Section 2, placing the uninsured casualty losses on Complainants and other affected unit owners.

The issues involved in this dispute by both parties were genuine and not raised frivolously. Therefore, each party shall be responsible for its own legal fees and other costs.

ORDER

After concluding that, based on the evidence of record, that Respondent is responsible for the casualty losses incurred by the Complainants, it is hereby ordered that:

1. Within thirty (30) days from the date of this order, the Respondent must reimburse each Complainant the amount of any uninsured losses paid by each Complainant to repair the damage to her respective unit caused by the incident raised in this dispute, and the Respondent must pay any outstanding repair bills related to the incident raised in this dispute.

2. Each party shall be responsible for its own legal fees and other costs.

Panel members Pat Huson, and Phillip H. Savage concurred with the foregoing. Panel member Craig Wilson dissented.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Phillip H. Savage / by SBW

Phillip H. Savage, Panel Chair
Commission on Common Ownership Communities

DISSENT

In reviewing the DECISION AND ORDER as drafted by Panel Chair Phillip H. Savage, I, Craig Wilson, have found myself to have an opinion and conclusion that is contrary to that drafted by Mr. Savage.

The core of these disputes is the issue of the party responsible for the repair of damage to individual condominium units after a casualty loss. The incident occurred June 25, 1997, in which a water heater leak in unit C at 12908 Churchill Ridge Circle, Germantown, Maryland, caused damage to units G and K owned by the Complainants. The management agent, Shea Management, dispatched emergency service contractors to the units to effect clean-up and repair. The resulting costs for the emergency services and repairs were less than the deductible amount on the Condominium master insurance policy. Thus, there was no coverage.

Clearly, the By Laws for the Respondent Churchill View Condominium at Article VIII, Section 2, Duty to Maintain, indicate that

> *"... the owner of a condominium unit, at his own expense, repair and maintain his condominium unit and any and all equipment, fixtures, appliances and utilities therein situated..."*

Complainant Harwood did, in fact give testimony that the Condominium paid for the cost of repairs of past water damages to individual units. However, the testimony was that *"the deductibles"* were paid by *"the Association"* when *"CMI was the management agent"*. Thus, #12 of the FINDINGS OF FACT is factually incorrect in noting that *"the Board of Directors ... had previous to the dispute here paid the cost of repair for water damage..."* In fact, Ms. Harwood indicated that they were a novice Board of Directors that really knew nothing about running a Condominium and relied heavily on the management agent's expertise and knowledge to guide them. Ms. Harwood subsequently indicated that the Board of Directors changed management agents from CMI to Shea Management due to *"dissatisfaction with services from CMI."*

It is illogical to argue that the Board had "effectively nullified this By-Law" (Article XIII, Section 2) by its **practice** of reimbursing unit owners for casualty losses uncovered by insurance and that this **practice** *"became the rule."* It is my belief that the testimony was that the Board of Directors relied on their management agent. The **practice** was not questioned as the Board believed that the management agent was handling these matters appropriately. The conclusion would then mean that, when an individual or entity acts improperly for a period of time, they cannot then begin to act properly when their improper actions are realized or discovered. This, of course, is a fallacious argument. A past practice due to ignorance or intentional disregard or the failure to enforce an obligation (in this case, the By Law Article XIII, Section 2), no matter how

long the practice has continued, cannot void the obligation and cannot preclude a change in practice.

The CONCLUSIONS OF LAW discuss the issue of the "strict liability" policy that the Board had drafted and that, as such, the Board of Directors serving at the time of the incident giving rise to this dispute recognized and were cognizant that the past Board of Directors' practice had nullified the By-Law regarding such casualty losses. There was no testimony to this point and it should not be inferred that the Board of Directors believed that the By Law had been nullified. The further discussion of the procedures and time frame for presentation and "adoption" of the "strict liability" policy are irrelevant for two reasons: the above discussion, and the likelihood that the procedures of §11-111 of the Real Property Article of the Annotated Code of Maryland (the Maryland Condominium Act) or Article XIX of the By Laws for the Condominium do not apply to the "strict liability" policy as such a policy is administrative in nature.

The By Laws at Article VIII, Section 5, Limitation of Liability, states in pertinent part:

"The Corporation shall not be liable ... for injury or damage to person or property caused by the elements or from any pipe, drain, conduit, appliance, or equipment."

The above referenced By Law provisions clearly absolve the Condominium Association from the responsibility for the repair of damages to individual units, particularly when the damage is the result of the flow of water from a *"...pipe, drain, conduit, appliance or equipment."*

Based upon the above analysis and opinion it is my belief that the ORDER is incorrect and that the Respondent Churchill View Condominium should not be required to reimburse the Complainants for the costs incurred to repair the damage caused by the subject incident. To the contrary, the Complainants should be ordered to reimburse the Respondent for the costs incurred for the services provided that related to the subject incident. Thus, I thereby respectfully dissent from the opinion and order issued by the Panel Chair for Cases 374-O and 375-O.