MONTGOMERY COUNTY, STATE OF MARYLAND

DEBORAH BEEBE,	: COMMISSION ON COMMON OWNERSHIP COMMUNITIES
Complainant,	:
	: Case No. 41-09
v.	:
	: Hearing Date: February 25, 2010
ORANGE'S HOMEOWNERS ASSOCIATION, INC,	:
	:
	:
Respondent.	: Decision Issued: July 23, 2010
	: (Panel: Burgess, Molloy, and Garcia)
	:

Memorandum Decision and Order By: Ursula Koenig Burgess

MEMORANDUM DECISION AND ORDER

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland ("Commission") for hearing. After hearing testimony from Ms. Beebe, reviewing the evidence, and considering the arguments of the parties, the panel orders as follows:

BACKGROUND

On or about July 20, 2009, the Complainant, Deborah P. Beebe ("Beebe"), filed this Complaint with the Commission challenging the actions taken by the Board of Directors of the Orange's Homeowners Association, Inc. ("Association") to compel her to remove the awnings that she had installed over the windows at the front of her home. (R. at 3). Beebe believes that the Association's Board of Directors ("Board") has a duty to promote the health, safety, and welfare of the residents pursuant to the Association's Articles of Incorporation, which would be accomplished by allowing residents to install awnings in the summer. (R. at 3). In her Complaint, Beebe asked for mediation, for a compromise that the Board allow her to use the awnings in the summer, community

meetings to "decide on a fair process to handle disputes and for choosing HOA Board members and members of [sic] Architectural Control Committee ("ACC")" and "open meetings to discuss what the ACC should consider when reviewing requests i.e. harmony, energy efficiency etc." (R. at 3).

On August 20, 2009, the Association responded to the Complaint with an Answer and Motion for Summary Decision. (R. at 69-87). The Association declined mediation. (R. at 90). Beebe subsequently advised Commission staff that she had a compromise to propose – namely that she be permitted to keep her awnings only during the summer months. (R. at 101). The Association responded that the compromise was not accepted.[1] (R. at 102).

On January 6, 2010, the Commission accepted jurisdiction of the Complaint only on the issue as to whether the Association "violated its obligations under the governing documents by arbitrarily and unreasonably requiring her to remove window awnings that [Beebe] installed on her home and by refusing to grant her permission to re-install the awnings." (R. at 107). The Commission did not rule on the Respondent's Motion for Summary Decision and the hearing was scheduled for February 25, 2010. (R. at 107). At the beginning of the hearing, counsel for the Association made a motion to dismiss the Complaint because the Commission lacked jurisdiction to hear the dispute. After hearing argument and Beebe's responses, the Panel cleared the room for deliberations and subsequently announced that the motion to dismiss for lack of jurisdiction was

[1] There was some argument and discussion at the hearing that some of the emails that the parties exchanged with the Commission staff were included with the record and others were not. Counsel for Respondent took issue that an email exchange between Commission staff and the Association fully addressing the compromise offered by the Complainant and why it would not be feasible was omitted. That email thread was introduced at the beginning of the hearing and was made part of the record without objection by the Complainant.

denied. Subsequently, counsel for the Association argued the Motion for Summary Decision. Since no evidence or testimony had been presented, the Panel denied his motion, but stated that it could be made again at the end of the Complainant's case, which he did. The Panel adjourned the hearing to consider the Association's motion, which the Panel now grants.

FINDINGS OF FACT

1. The Respondent was properly served with the Summons and Statement of Charges in this matter, the Commission has jurisdiction over the Respondent and the Respondent timely filed an Answer in this matter.

2. Complainant Deborah Beebe is the owner of a single family home located at 813 Whitehall Street, Silver Spring, Maryland. This property is subject to the governing documents of the Orange's Homeowners Association, Inc.

3. Respondent is a Maryland incorporated homeowners association within the meaning of the Maryland Homeowners Association Act, Real Property, Section 11B-101, *et. seq.*, Annotated Code of Maryland, and it is located in Montgomery County.

4. On or about August 15, 2008, Beebe received her awnings in the mail and subsequently had them installed over the windows on the front of her home. She installed the awnings without obtaining prior written approval from the Association or the ACC as required by the Association's governing documents. (R. at 3).

5. The installation of the awnings required the moving of the shutters back from the windows. Beebe did not obtain prior written approval from the Association or the ACC to move the shutters as required by the Association's governing documents. *(*R. at 3.)

6. On or about December 7, 2008, Beebe received a letter from the Association asking her to remove the awnings. (R. at 3)

7. On December 15, 2008, Beebe sent a letter to the Board asking that she be permitted to keep the awnings. (R. at 17-23).

8. On or about February 16, 2009, Beebe received a letter from the Association denying her request and asking her to remove the awnings within 45 days. (R. at 26).

9. On or about March 13, 2009, Beebe removed the awnings. (R. at 6).

10. On March 13, 2009, Beebe sent a letter to the Board stating that she needed to use the awnings in the summer, but would remove them from the windows at her expense for the majority of the year "in compliance" with the Association's request. (R. at 27).

11. At the Annual Meeting on May 16, 2009, the Board reiterated their refusal to allow awnings in the Association. (R. at 6).

12. On May 22, 2009, Beebe sent a letter to the Board that there was another awning in the community located on the rear of the home of a Board member. The letter also stated a number of reasons why she believed she should be permitted to use the awnings. (R. at 28-30).

13. On June 22, 2009, Beebe put the awnings back up on her home. (R. at 6). Beebe did not receive any communication from the Board or the ACC authorizing her to re-install the awnings.

14. On or about July 8, 2009, Beebe received a letter from the Board asking her to remove the awnings. (R. at 32-33).

15. The only other awning in the community is an awning located on the back of a home, over a patio and sliding glass door. (R. at 29.)

16. There have been other owners who have made changes to the exterior of their homes without obtaining prior Board approval and the Board has taken action to follow up with those owners. (See Complainant's Exhibit 4).

CONCLUSION OF LAW

At the outset, the panel finds that this is a dispute within the jurisdiction of the Commission as sect forth in Chapter 10B of the Montgomery County Code.

I. The Board was not required to respond to Beebe's letter/email dated May 22, 2009 expressing her compromise to keep her awnings up only during the summer months.

Beebe testified that she believes that she was entitled to install the awnings for the summer when the Board failed to respond to her May 22, 2009 letter within 30 days. Beebe relies on Article V of the Association's Declaration of Covenants, Conditions and Restrictions ("Declaration") which states, in pertinent part:

> No building, storage shed, fence, wall or other structure, or exterior painting, shall be commenced, erected or maintained, upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans, specifications showing the nature, kind, shape, height, materials, color and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

At the hearing, Beebe testified that her May 22, 2009 letter did not include any additional information regarding the awnings because the Board had already seen them and knew what they looked like. Since Beebe removed the awnings as of March 13, 2009, it appears that she is arguing that the May 22, 2009 letter constituted a new application for the awnings as contemplated by Article V, triggering the 30-day time limit for a response.

A review of the language in the letter shows that the purpose of the letter was not to submit a new application, but rather to respond to and refute statements made by Gordon Smith, a member of the Board of Directors. In addition, the language of the letter shows that the compromise proposed was not a new application. Paragraph 2 of the letter states:

> 2. Gordon Smith's responses that apparently the Board had no intention of responding to my last letter (3-02-09); which detailed a compromise on the use of awnings, and that the Board had spent hours (4-5) discussing this issue as if to say the Board had already spent too much time on this. (Emphasis supplied).

Accordingly, Beebe's own words indicate that the proposal to use the awnings in the summer months was a proposed compromise that in fact had been communicated previously to the Board. In fact, this compromise is detailed in the letter dated March 13, 2009. (R. at 27). As such, the letter did not constitute a new application and the 30-day time limit in Article V of the Declaration was inapplicable.

II. The Board was reasonable in disapproving the awnings.

Beebe argues that the Board of Directors had a duty to permit her to use the awnings during the summer in light of Article IV of the Association's Articles of Incorporation which states, in pertinent part:

> … the specific purposes for which [the Association] is formed are to provide for the maintenance, preservation and repair and replacement of those elements on the common areas which must be replaced on a periodic basis, and architectural control of the residence lots and Common Area, … and to promote the health, safety and welfare of the residents within the above-described property … (Emphasis supplied).

There are a total of 34 homes in the Association and photos of the 33 other homes show that there are no awnings on the front of any of them. (R. at 87). Accordingly, the Panel cannot find that the denial of Beebe's request was unreasonable. Certainly the installation of the awnings differentiates Beebe's homes from the others.

Beebe also argues that there are other homes in the community which are "non-harmonious" and the Board has permitted that condition to exist, so she should be permitted to keep her non-harmonious awnings. On cross-examination, opposing counsel asked Beebe several questions regarding harmony and she stated that what constitutes "harmony" is a gray area and that it was not up to Beebe to determine what was harmonious. Beebe's statements set forth the exact reason why the Board (or ACC) is vested with the responsibility of reviewing and deciding exterior modification applications. Having one entity review all applications for the community creates consistency and assists in keeping the appearance of the community harmonious. Maryland courts have consistently held that "any refusal to approve the external design…would have to be based on a reason that bears some relation to the other buildings or the general plan of development; and this refusal would have to be a reasonable determination made in good faith, not high-handed, whimsical or captious in manner." Kirkley v. Seipelt, 212 Md. 127, 133 (1957). The Panel finds that the Board's

decision that one house with front awnings would be different enough from the other homes to be non-harmonious reasonable and made in good faith.

At the hearing, Beebe testified that there were other owners who had made changes to the exterior of their homes without prior approval from the Board. To support this argument, she submitted a document into evidence entitled "Orange's Homeowners Association Agenda" dated October 19, 2008, which included handwritten notes. See Complainant's Exhibit 4. She also submitted three emails into evidence, which were emails between owners and the Board addressing exterior modifications that were done without prior approval of the Board. See Complainant's Exhibit 9. Beebe presented no other evidence of violations in the community that the Board had not enforced and her own evidence showed that the Board was addressing the exterior modifications made without prior approval. When questioned by the Panel, Beebe was unable to provide any examples to the Panel of owners who had violations on their lots which the Board had not enforced. Accordingly, there was no evidence that the Board is selectively enforcing the Association's governing documents by requiring Beebe to remove her awnings.

ORDER

The Respondent's Motion for Summary Judgment is granted. Within 45 days from the effective date of this Order, the Complainant must remove the awnings and restore the shutters to their original location.

Commissioners Molloy and Garcia concurred in this opinion.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days of the date of

this Order pursuant to the Maryland Rules of Procedure governing administrative appeals

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Ursula Koenig Burgess, Panel Chair
July 23, 2010