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

MARK H. SIMONS

Complainant

v.

FAIR HILL FARM HOMEOWNERS ASSOCIATION, INC.

Respondent

Case No. 77-07

DECISION AND ORDER

The above-captioned case came before the Commission on Common Ownership Communities for Montgomery County, Maryland (the "Commission") for hearing on September 17, 2008, pursuant to Chapter 10B of the Montgomery County Code ("MC Code"). The duly appointed Hearing Panel ("Panel"), having considered the testimony and evidence of record, finds, concludes and orders as follows:

I. BACKGROUND.

Complainant Mark H. Simons ("Complainant" or "Mr. Simons") filed a Complaint against Fair Hill Farm Homeowners Association, Inc. ("Respondent" or the "Association")[1] on or about December 4, 2007. The Complainant alleged in his filing that he had been "fined for replacing my (Complainant's) parking space #s 232 to my assigned spaces."[2] The Complainant sought to have the fines removed and his parking space numbers restored. By a letter dated December 12, 2007, Respondent acknowledged the Complaint, that the Complainant had been provided with notice and a hearing, and that the Complainant had been fined $25.00 and billed for the cost of removing the parking space numbers.

II. THE HEARING.

At the outset of the hearing the Panel received into evidence, without objection, Commission Exhibit 1. Commission Exhibit 1 is the Commission's file in this case. It includes

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[1] The Complainant named IKO Real Estate Inc. ("IKO") as the Responding Party, but the Complaint, read as whole and including attachments, clearly indicates the proper responding party as Fair Hill Farm Homeowners Association, Inc. IKO is the management company for that association and appeared at the hearing as its agent. The issue of whether the association was properly named was not raised by the Respondent.

[2] Complainant also alleged that he had been fined for trimming branches growing into his limited common area and blocking his view. However, it was established at the hearing that Complainant had not been fined or otherwise penalized for such action and, therefore, the Panel advised it would not consider this issue.

Mr. Simons' complaint, correspondence between Mr. Simons and IKO and between the parties and the Commission staff, and a copy of the Association's Declaration of Covenants and Community Manual. Mr. Simons was the sole witness during the Complainant's case-in-chief. He testified that he was the first President of the Board of Directors upon the Association's formation. He further testified that he served on the Association's parking committee, explaining that a majority of the Association members indicated they wanted numbered parking spaces and that this decision was approved by the Board of Directors. Spaces remained numbered until the year 2004, when the parking lot was resurfaced or work on it was otherwise done. Mr. Simons explained that the parking lot was re-striped, but the numbers were not re-stenciled; instead, each space was painted with the words "Reserved" or "Visitor".

Mr. Simons testified that he had a problem with a vehicle being parked in his parking spaces and called G&G Towing ("G&G") but G&G refused to tow the vehicle improperly parked in Mr. Simons' space; telling him it would not tow any vehicle that was not in a numbered space. Sometime thereafter, a vehicle again parked in Mr. Simons' space. Mr. Simons related that he called G&G who repeated its prior warning. However, Mr. Simons painted his #232 on the parking space prior to G&G's arrival and G&G removed the unauthorized vehicle.[3]

When the Association learned that Mr. Simons had noted his numbers on his spaces, it issued him a Notice of Violation dated December 19, 2006 and demanded that he remove the "232" marking within fifteen (15) days. When Mr. Simons failed to comply, he was notified by a letter dated January 12, 2007 from the Association and a hearing was set for January 27, 2007 before the Board of Directors. Mr. Simons attended the hearing and was found to be in violation of the Declaration of Covenants due to his failure to remove the #232 marking. By a letter from the Association, through IKO, dated April 16, 2007, Mr. Simons was notified that if the markings were not removed within fifteen (15) days, then the Association would have the work done at Mr. Simons' cost, plus a $25.00 fine would be assessed. The letter further advised "If unauthorized vehicle parking in your reserved spots in the future, please contact a Board member to have the car towed." Mr. Simons did not have the markings removed and, as a result, the Association performed the work, billing Mr. Simons $420.00 and assessing a $25.00 fine. As a result of that action, Mr. Simons filed his Complaint with the Committee.

Ralph Caudle, Community Manager of IKO, testified for the Respondent. Mr. Caudle indicated that he was the custodian of records for the Association. He testified that the Board determined not to re-stencil parking space numbers after the 2004 work. He relied on a letter dated August 24, 2005 from IKO to Mr. Simmons (*sic*.) which advised that stenciling of numbers would not be done "to keep the community's cost expenses down." When questioned by the Panel, Mr. Caudle stated that he did not have any Board resolution or minutes of any meeting memorializing that the Board, in fact, properly determined not to re-stencil. Mr. Caudle also was unable to provide any documents supporting the Board's purported decision to keep the "cost expenses down" or to show that such costs were even considered. The Panel suggested that the cost of labeling each space as "Reserved" or Visitor" would have been

[3] Mr. Simons also testified he was disabled and had requested a handicapped space, but the Association had not provided same. Mr. Simons may have a claim for relief pursuant to certain statues, but this issue is not before the Committee and thus has not been considered.

greater than the cost of stenciling numbers and Mr. Caudle conceded that this was probably correct, as the former required more characters than the latter.

Mr. Caudle also testified that he spoke with G&G and confirmed that it would not tow from any parking space that was not numbered. Mr. Caudle confirmed that this was why the Association decided to put back the parking space numbers.

Ms. Ellis, who stated she was "an original Board Member," also testified on behalf of the Respondent. She contradicted IKO's letter dated August 24, 2005, opining that the parking space numbers were not re-stenciled because of security concerns. She testified that she was not aware of any member, other than Mr. Simons, having difficulty with unauthorized parking, but also acknowledged that she did not know what cars had been towed from the common lot. Ms. Ellis acknowledged that she did not live in the condominium and instead rented it to tenants. She related that, after Mr. Caudle's letter dated April 16, 2007, Mr. Simons knocked on a Board member's door in the evening seeking to have an improperly parked vehicle towed, which alarmed the Board member. In rebuttal testimony, Mr. Simons responded that it was his understanding that knocking on a Board member's door was what he was supposed to do. Mr. Simons further testified, in rebuttal, that "by not having a number, I had my space in name only."

III. FINDINGS OF FACT.

1. The Association is a homeowners association within the meaning of the Maryland Homeowners Association Act, Md. Code Ann., Real Prop. § 11B-101 *et seq.*, and is a common ownership community as that term is used in MC Code Chapter 10B.
2. Mr. Simons is a member of the Association.
3. The Board of Directors authorized the stenciling of numbers on parking spaces in the common lot in 2000.
4. The common lot was repaved or otherwise improved in 2004 and as a result the stenciled parking numbers were removed.
5. The Board of Directors did not properly authorize the removal of parking space numbers.
6. The Association Community Manual (the "Manual"), Section 3, III A (3) provides that each owner has the right to tow any unauthorized vehicle from his reserved parking space by calling the towing contractor listed in Appendix D of the Manual.
7. G&G was the towing contractor listed in Appendix D and continues to be the authorized towing contractor.
8. Sometime after the parking space numbers were removed, Mr. Simons called G&G to remove a vehicle that was improperly parking in his space #232. G&G refused to tow the vehicle because it was not in a numbered parking space.
9. Thereafter, another vehicle improperly parked in parking space 232. Mr. Simons called G&G and was again warned that no vehicle would be towed from an unnumbered space. Mr. Simons numbered his space and the vehicle was towed.

10. Mr. Caudle confirmed with G&G that it would not tow a vehicle from an unnumbered space. It was for this reason that the Association re-stenciled the parking space numbers.

IV. CONCLUSIONS OF LAW AND DISCUSSION.

The Association's Declaration of Covenants, Section 73, provides in pertinent part, as follows:

> "The Association shall be entitled to establish supplemental rules concerning parking or any portion of the Common Area, including, without limitation, rules providing for the involuntary removal of any vehicle violating the provisions of this Declaration and/or such rules."

Pursuant thereto, the Board of Directors established that each parking space would bear a number to identify the space as a limited common element appurtenant to a housing unit. Although the letter dated August 24, 2005, was introduced into evidence, advising that the Board of Directors had decided not to re-stencil the parking spaces, there was no evidence introduced to establish that the Board of Directors property authorized the reversal of its initial resolution. Additionally, the Fair Hill Farm Manual provides that each owner has the right to have an unauthorized vehicle towed from his/her reserved space. Yet, without a parking space and in light of G&G's policy, Mr. Simons was unable to effectively exercise and enforce his right. As Mr. Simons aptly stated, he had a parking right "in name only". Even if other owners were not experiencing parking problems, the Panel does not see how the Association can, selectively and discriminately, require Mr. Simons to forego his right to tow and proceed only through a Board member, as the IKO letter dated April 16, 2007, directs. It is significant that the Association eventually chose to re-stencil the parking spaces.

V. ORDER.

Based upon the foregoing findings and conclusions, it is by the Panel, this 22nd day of October, 2008, ORDERED:

1. That the Complaint is granted in favor of the Complainant; and further
2. That the Respondent's charges to the Complainant in the amount of $420 and $25.00 and any late fees, attorney fees, or other charges assessed as a result thereof, be and hereby are vacated, and the Association shall, within 30 days from the date of this Order, enter a credit for the aforementioned sums, which shall be reflected in the Fair Hill Farm HOA Statement of Account for Mark. H. Simons.
3. That each party will bear his or its own costs, including attorney's fees.
4. That the Association shall, at its own cost, distribute this decision, in its entirety, to all owners of record.

Commissioners Vicki Vergagni and Clara Perlingiero concurred in this decision.

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

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Mitchell Alkon, Panel Chair