

**Before the
Commission on Landlord-Tenant Affairs
Montgomery County, Maryland**

In the Matter of:

Frances Murray,

Complainant

vs.

Porter and Virginia Conerly, and

Charles Hayes, Hayes Real Estate, Inc

Respondents

Case #: 24684

Rental Facility: 9961 Forest View Place,
Montgomery Village, MD

Rental Facility License #: 15389

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DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (the "Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 20th day of May, 2003, found, determined, and ordered, as follows:

BACKGROUND

On September 24, 2002, Frances (nee Haaser) Murray (the "Complainant"), former tenant at 9961 Forest View Place, Montgomery Village, Maryland, (the "Property"), a licensed single-family rental facility in Montgomery County, Maryland, filed a formal complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, (the "Department"), in which she alleged that Porter and Virginia Conerly (the "Respondents"), owners of the Property, and Respondents' agent, Charles Hayes, Hayes Real Estate, Inc. ("Respondents' Agent"): (1) assessed unjust damages against her \$700.00 security deposit plus \$112.00 accrued interest after the termination of her tenancy, in violation of § 8-208(f)(1) of the Real Property Article, Annotated Code of Maryland, 2001 as amended ("State Code"); and (2) failed to honor an agreement to reimburse her for plumbing repairs she made to the Property and for the purchase of a new refrigerator.

Specifically, the Complainant does not dispute that she owes *pro rata* rent to the Respondents for the period August 1-9, 2002, however, she asserts that: (1) she did not damage the Property in excess of ordinary wear and tear during her tenancy; (2) the costs assessed against her security deposit were to repair damages that were either pre-existing and caused by the previous tenant who had pets, or were caused by a leaking roof that damaged the carpet; (3) during her tenancy she paid for plumbing repairs, in the amount of \$350.00, that were not her responsibility, and the Respondents' Agent failed to reimburse her for those expenses after agreeing to do so; and (4) the Respondents' Agent failed to replace a defective refrigerator in the Property, and refused to reimburse her for the cost she incurred, \$557.85, to purchase a new one.

The Respondents and/or Respondents' Agent contend that: (1) the Complainant held-over in the Property from August 1, 2002 through August 9, 2002, and failed to pay rent for that period of time; (2) the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy; (3) they incurred actual expense to repair damage that exceeded the amount of the Complainant's security deposit plus accrued interest; and (4) they never agreed to reimburse the Complainant for the cost she incurred to replace the refrigerator. However, the Respondents and/or Respondents' Agent concede that the Complainant is entitled to a credit of \$350.00 for the cost she incurred to make plumbing repairs to the Property during her tenancy.

The Complainant is seeking an Order from the Commission for the Respondents to refund her security deposit (\$700.00) plus accrued interest (\$112.00), less *pro rata* rent for the

period August 1 – 9, 2002 (\$169.19), and to reimburse her for plumbing repairs (\$350.00) and the cost she incurred to purchase a new refrigerator (\$557.85), for a total award of \$1,550.66.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on February 4, 2003, the Commission voted to conduct a public hearing on March 19, 2003. The public hearing in the matter of Frances Murray v. Porter and Virginia Conerly and Charles Hayes, Hayes Real Estate, Inc, relative to Case No. 24684, commenced on March 19, 2003, and concluded on that date.

The record reflects that the Complainant, the Respondents and Respondents' Agent were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were the Complainant, Frances Murray, and the Respondent, Virginia Conerly, on behalf of herself and her husband, Porter Conerly. Also providing testimony and evidence were two (2) witnesses called by the Complainant, her boyfriend, Guillermo Parra, and a friend, Daisy Albanese, and two (2) witnesses called by the Commission, Respondents' real estate agent, Charles Hayes, Hayes Realty, Inc., and the Respondents' repairman, Irwin Duncan.

Without objection from the Complainant or Respondent, Virginia Conerly, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1.

FINDINGS OF FACT

1. The Respondents are the owners of the Property, a licensed single-family rental facility in Montgomery County, Maryland.

2. The Property was managed by Charles Hayes, Hayes Real Estate, Inc. ("Respondents' Agent"), during the Complainant's entire tenancy. Mr. Hayes, who has been in the property management business for 31 years, testified that he manages approximately 100 rental properties in Montgomery County, Maryland.

3. On May 13, 1998, the Complainant and the Respondents' Agent entered into a one-year lease agreement for the rental of the Property (the "Lease") which commenced on June 1, 1998, and expired on May 31, 1999. The rent for the Property was \$700.00 a month.

4. On or about May 13, 1998, the Complainant paid the Respondents' Agent a security deposit of \$700.00, which is properly receipted in the Lease.

5. The Commission credits the testimony of Respondents' Agent that at the time the Complainant moved into the Property, June 1, 1998, the downstairs carpeting was approximately 3 years old, and the carpet in the remainder of the Property was approximately 10 years old. The Commission also credits the testimony of the Complainant and Complainant's witnesses that at the time she moved into the Property the carpeting had not been cleaned, and the carpets in two upstairs bedrooms were "in bad shape," with blackened and deteriorated padding, and that she reported this condition to Respondents' Agent. The Respondents' Agent failed to respond to the Complainant's notification regarding the condition of the carpets, and therefore, she removed the carpeting and padding from the two upstairs bedrooms, and after cleaning the floors, replaced the carpeting and padding with an area rug in the larger bedroom and plastic sheeting in the other.

6. The Respondents and/or Respondents' Agent failed to deliver the Property to the Complainant at the commencement of her tenancy in a clean and sanitary condition. At the time the Complainant moved into the Property it was in a generally unclean condition, especially the kitchen and bathroom, the yard was overgrown and strewn with trash and debris, the screen door was broken, and the carpeting throughout was worn-out and foul smelling. This finding is supported by the credible testimony of the Complainant and Complainant's witnesses. The Commission does not find credible or believable the testimony of Respondents' Agent that the Property was delivered to the Complainant in a clean and sanitary condition, or that he could not remember whether the Complainant reported the deficiencies in the Property to him soon after she moved in.

7. After the expiration of the initial lease term, May 31, 1999, the Complainant remained as a tenant in the Property on a month-to-month basis.

8. The Commission credits the testimony of the Complainant that the refrigerator in the Property stopped working on August 17, 2001, and that she removed it from the Property because it was leaking a "brown fluid" onto the floor, and that she ordered and paid for a new refrigerator, at a cost of \$557.85. The Commission further credits the Complainant's testimony that she reported the defective refrigerator as well as a leaking roof and a variety of plumbing problems, to Respondent's Agent on August 20, 2001.

9. The Respondents and/or Respondents' Agent failed to repair a defective and leaking roof at the Property, after the condition was reported by the Complainant, which resulted in water damage to a third floor ceiling and carpeting.

10. The Commission credits the testimony of the Complainant that during a telephone conversation on or about September 5, 2001, the Respondents' Agent authorized her to make the necessary plumbing repairs to the Property and to purchase a new refrigerator, and that she would be reimbursed for those expenses but "not all at once." The Commission does not find credible or believable the testimony of Respondents' Agent that he does not recall authorizing the purchase of the refrigerator, or that the Complainant failed to report a leaking roof.

11. The Commission finds that on September 4, 2001, the Complainant paid Peterson Pump & Plumbing Co., Inc., \$350.00 to make a variety of plumbing repairs in the Property (See Invoice #32654 at page 19 of Commission's Exhibit No. 1), and that the repairs were authorized by Respondents' Agent. During the hearing, the Respondents' Agent conceded that the Complainant is due a credit, in the full amount of \$350.00, for the plumbing repairs she made to the Property during her tenancy.

12. The Commission finds that in August 2001, the Complainant paid Best Buy the sum of \$557.85 for a new refrigerator and that the purchase was authorized by Respondents' Agent. The Commission does not find credible or believable the testimony of Respondents' Agent that he did not authorize the purchase of the new refrigerator. The refrigerator was not delivered and installed at the Property until July 2002, and therefore, due to delivery problems and not due to negligence on the part of the Respondents or Respondents' Agent, the Complainant was without a working refrigerator from September 2001 until mid-July 2002. Based on the Commission's finding that the Respondents' Agent had agreed to reimburse the Complainant for this expense, and as of the date of the hearing had failed to do so, the Commission finds that the Respondents and/or Respondents' Agent are liable to the Complainant for the cost she incurred to purchase the new refrigerator, in the amount of \$557.85.

13. On March 29, 2002, the Complainant executed a four-month "Lease Extension" with Respondents' Agent that commenced on April 1, 2002, and expired on July 31, 2002. The rent for the Property remained at \$700.00 per month.

14. By a letter dated May 23, 2002, Respondents' Agent issued the Complainant proper written notice to quit and vacate the Property at the expiration of the Lease Extension, on July 31, 2002.

15. The Complainant failed to vacate the Property as of July 31, 2002, and held-over in the Property, with the consent of the Respondents and Respondents' Agent, from August 1, 2002 until August 9, 2002, however, she failed to pay rent to the Respondents for the hold-over period of August 1, 2002 until August 9, 2002.

16. By a letter dated September 10, 2002, Respondents' Agent sent notice to the Complainant advising her that her security deposit plus accrued interest was not being refunded due to unpaid rent and damages caused to the Property in excess of ordinary wear and tear. The charges were itemized as follows:

Deposit	\$ 700.00
Interest	<u>112.00</u>
TOTAL	\$ 812.00
Charges	
Rents Due:	\$ 169.19
WSSC Water Bill:	
Hole in BR wall	25.00
Carpet damage	500.00
Storm window	N/C
Storm door	N/C
Cat odor	200.00
Paneling gouged by animals	150.00
Professional cleaning	<u>150.00</u>
TOTAL CHARGES	\$1,194.19
BALANCE DUE:	\$ 382.19

17. Based on the Complainant's failure to pay rent to the Respondents for the period August 1 – 9, 2002, the Respondents were within their rights to withhold \$169.19 from the Complainant's security deposit for unpaid rent for the holdover period.

18. Regarding the assessment against the Complainant's security deposit of \$25.00 to repair a hole in the bedroom wall, the Commission finds that although Respondents submitted an invoice that included this charge (See Invoice #159434 from Irwin Duncan at page 17 of Commission's Exhibit No. 1), this damage was never repaired by the Respondents or Respondents' Agent. This finding is supported by the testimony of Respondents' Agent at the hearing that the hole in the bedroom wall had not been repaired and that the \$25.00 charge was waived. Therefore, the \$25.00 charge assessed against the Complainant's security deposit for repair of the hole in the bedroom wall is unsupported and disallowed.

19. The Commission finds that at the commencement of the Complainant's tenancy the carpeting on the first floor of the Property was 3 years old and the carpeting in the upper two levels of the Property was approximately 10 years old, worn-out, soiled and in need of replacement, and the carpeting on the third floor had been damaged by an un-repaired and leaking roof. The Commission concludes, based on the age of the carpeting in the upper two levels of the Property (10 years), that it had exceeded its reasonable life expectancy and that its deteriorated and soiled condition was not caused by the Complainant. Furthermore, the Complainant reported this condition to Respondents' Agent soon after moving into the Property, and Respondents' Agent failed to take action to replace the carpet or repair the leaking roof because, the owners "were very ... short of funds and we had to delay doing the ceiling."

20. After the termination of the Complainants' tenancy, the Respondents assessed against her security deposit the sum of \$500.00, a *pro rata* portion of the \$1,750.00 cost incurred to install new carpeting in the Property. A review of the Invoice from Respondents' repairman, Irwin Duncan (See Page 18 of Commission's Exhibit No. 1), reveals that after the termination of the Complainant's tenancy the first floor carpeting was not replaced, and the \$1,750.00 charge was to install "beige carpet on the upper 2 levels and stairwells," replacing the old and deteriorated carpeting that the Complainant had removed. The Commission finds that although the Complainant did not receive authorization from the Respondents or Respondents' Agent to remove the carpet, at the time she did so, it was soiled, not useable and had no value. The Commission further finds that the assessment of \$500.00 against the Complainant's security deposit for carpet replacement on the upper two levels of the Property is directly contradicted by Respondents' Agent's testimony that, "We had not charged you for carpet upstairs." (See Transcript Page 95, lines 18 and 19). Therefore, the Commission finds that the \$500.00 charge assessed against the Complainant's security deposit for carpet replacement is disallowed.

21. During her tenancy, the Complainant's five (5) cats, which she was authorized to have pursuant to Paragraph 5, "Pets," of the Lease, damaged the wall in the bathroom in excess of ordinary wear and tear, and the Respondents incurred actual expense, in the amount of \$150.00, to repair that damage after the termination of the Complainant's tenancy. This finding is supported by the credible testimony of Respondents' repairman, Irwin Duncan, that it

appeared to him that the Complainant's cats had been using the wall as a "scratching board," and further supported by the invoice (See page 17 of Commission's Exhibit No. 1), that includes a charge of \$150.00 to replace "paneling gouged by animals." Therefore, the Commission finds that the Respondents and/or Respondents' Agent were within their rights to withhold from the Complainant's security deposit the sum of \$150.00 for the repair of the bathroom wall.



22. The Complainant failed to properly clean the Property and remove all of her personal items at the time she vacated, which constitutes damage in excess of ordinary wear and tear, and as a result, the Respondents incurred actual expense in the amount of \$150.00 to clean the Property and remove trash and other items left by the Complainant. This finding is supported by the credible testimony of Respondent, Virginia Conerly, and Respondents' repairman, Irwin Duncan, and further supported by Invoice #159434 (See page 17 of Commission's Exhibit No. 1) that includes the statement "excessive cleaning with trash removal," the charge for which is itemized on Invoice #039186 (See page 18 of Commission's Exhibit No. 1) in the amount of \$150.00. Therefore, the Commission finds that the Respondents and/or Respondents' Agent were within their rights to withhold from the Complainant's security deposit the sum of \$150.00 for cleaning the Property and removing personal items and trash left by the Complainant after she vacated the Property.

23. Regarding the \$200.00 charge assessed against the Complainant's security deposit to remove "cat odor" from the Property after the termination of the Complainant's tenancy, the Commission finds that the Respondents and/or Respondents' Agent failed to produce any probative evidence or testimony that this cost was ever actually incurred. This finding is supported by the credible testimony of Commission's witness, Irwin Duncan, that he did not smell a cat odor in the Property after the Complainant had moved out. The Commission further finds that the \$200.00 charge assessed against the Complainant's security deposit was to "seal all flooring prior to work" (See Invoice #039186 from Irwin Duncan at page 18 of Commission's Exhibit No. 1), not to remove cat odor. The Commission also credits the testimony of Respondent, Virginia Conerly, that, "You're not being charged for the sealing of the floors." Therefore, based on Respondents' and/or Respondents' Agent's failure to produce any probative evidence, such as a paid receipt or invoice, indicating that they incurred actual expense to remove cat odor from the Property, the charge of \$200.00 assessed against the Complainant's security deposit is unsupported and disallowed.

24. The Respondents and/or Respondents' Agent charged against the Complainant's security deposit the cost of repairs that were never made (\$25.00 for repair of hole in bedroom wall and \$200.00 for removal of cat odor), and for the cost to repair damage that was not in excess of ordinary wear and tear (\$500.00 *pro rata* carpet replacement), which constitutes a violation of § 8- 203, "Security Deposits," of the State Code, and has caused a defective tenancy.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission of Landlord-Tenant Affairs concludes:

1. The Commission notes that Title VIII, "Landlord and Tenant," of the State Code, including § 8-203, "Security Deposits," has been amended, and that the amendments became effective as of October 1, 1999. Therefore, although the Lease was entered into prior to October 1, 1999, the Respondents' and/or Respondents' Agent's alleged violations of § 8-203 took place after October 1, 1999, and as a result, the newly enacted amendments apply in this case.

2. Pursuant to Section 29-27(m) of the County Code, and Paragraph 5a of the Lease, entitled, "Acceptance of Property," the Respondents and/or Respondents' Agent were required to deliver the Property to the Complainant at the commencement of her tenancy "in a clean, habitable and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws." The Commission concludes that the Respondents and/or Respondents' Agent failed to deliver the Property to the Complainant at the commencement of her tenancy in a clean and sanitary condition, which constitutes a violation of Section 29-27(m) of the County Code and a breach of Paragraph 5a of the Lease, and has caused a defective tenancy.

3. Pursuant to Section 29-30(a)(3), "Obligations of landlords," of the County Code, the Respondents and/or Respondents' Agent were required to, "Make all repairs and arrangements necessary to put and keep the dwelling unit and the appurtenances in as good a condition as they were, or should by law or agreement have been, when the tenancy began," and further, that tenants are not responsible "...for replacement of or repairs to...major appliances... or plumbing systems...unless replacement or repair of these items is required because of actions of the tenant or any person for whom the tenant is legally responsible." The Commission concludes that the Respondents and/or Respondents' Agent failed to make needed and necessary repairs to the roof or plumbing system at the Property, and failed to replace a defective and non-working refrigerator, which constitutes a violation of Section 29-30(a)(3) of the County Code, and has caused a defective tenancy.

4. The Respondents and/or Respondents' Agent failed to reimburse the Complainant for the costs she incurred to make plumbing repairs to the Property during her tenancy, in the amount of \$350.00, although Respondents' Agent agreed to do so. Therefore, the Respondents and/or Respondents' Agent are liable to the Complainant for the cost she incurred to make plumbing repairs, in the amount of \$350.00.

5. The Respondents and/or Respondents' Agent failed to reimburse the Complainant for the costs she incurred to purchase a new refrigerator during her tenancy, in the amount of \$557.85, although Respondents' Agent agreed to do so. Therefore, the Respondents and/or Respondents' Agent are liable to the Complainant for the cost she incurred to replace the refrigerator, in the amount of \$557.85.

6. The Complainant failed to pay rent to the Respondents and/or Respondents' Agent for the hold-over period August 1 – 9, 2002, which was her obligation pursuant to the terms and conditions of the Lease. Therefore, the Respondents were within their right to assess the sum of \$169.19 against the Complainant's security deposit for unpaid rent.

7. At the time the Complainant removed it, the carpeting in the upper two levels of the Property was worn out, soiled, and at least 10 years old, thus exceeding its reasonable life expectancy. Furthermore, although the Complainant removed the old carpet without the permission of the Respondents or Respondents' Agent, at the time she did so, it was in need of replacement and had no value. This conclusion is further supported by Respondents' Agent's testimony (See Findings of Fact # 20 above) that he did not charge the Complainant for the replacement of the upstairs carpet. Therefore, the Commission concludes that the assessment of \$500.00 against the Complainant's security deposit for a *pro rata* portion of the cost incurred to replace the carpeting is unsupported and disallowed.

8. Pursuant to § 8-203 (f)(1)(i) of the State Code, "The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord." However, pursuant to § 8-203 (f)(2) of the State Code, "The security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach." Based on the Respondents' and/or Respondents' Agent's failure to produce any credible, reliable or persuasive testimony or evidence at the hearing that they incurred any actual expense to repair a hole in the bedroom wall (\$25.00) or remove cat odor (\$200.00), these charges are unsupported and disallowed.

9. Pursuant to § 8-203 (f)(1)(i) of the State Code, the Respondents and/or Respondents' Agent properly withheld from the Complainant's security deposit the amount of \$150.00, which is the cost they actually incurred to repair damage caused to the Property by the Complainant in excess of ordinary wear and tear, and the amount of \$150.00, which is the cost they actually incurred to clean the Property and remove trash and personal items left by the Complainant which was damage in excess of ordinary wear and tear.

10. The Respondents and/or Respondents' Agent failure to handle and dispose of the Complainant's security deposit in accordance with § 8-203 of the State Code, which has caused a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondents to pay the Complainant **\$1,250.66**, which sum represents the Complainant's security deposit (\$700.00), plus accrued interest (\$112.00), less *pro rata* August 2002 rent (\$169.19), and repair costs properly withheld (\$300.00) plus reimbursement for plumbing repairs (\$350.00), and reimbursement for the purchase of new refrigerator (\$557.85).ⁱⁱⁱ

The foregoing decision was concurred in by Commissioner Lyana Palmer and Commissioner Mattie Ligon, Panel Chairperson. Commissioner Christopher Toven dissented.

To comply with this Order, Respondents, Porter and Virginia Conerly, and/or Respondents' Agent, Charles Hayes, Hayes Real Estate, Inc., must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check payable to Frances Murray, in the full amount of \$1,250.66.

Respondents, Porter and Virginia Conerly, and Respondents' Agent, Charles Hayes, are hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a \$500.00 civil fine Class A violation, should the Commission determine that the Respondent and/or Respondents' Agent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this 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 governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondents and/or Respondents' Agent choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$1,250.66) if they seek a stay of enforcement of this Order.

Mattie Ligon, Panel Chairperson

Commission on Landlord-Tenant Affairs

[2\[1\]](#) The Commission is troubled by the testimony of Respondents' Agent at the hearing that he informed the Complainant that, "We've had a lot of difficulty with having the inspectors from this department here. There are quite a few. And it is true what I told you [Complainant] that when many, many repairs have to happen to a house, and we just already told you the house was not in perfect condition, that the rent would go up." (See Transcript at page 96, lines 20-25). Furthermore, in response to Complainant's question, "Do you recall telling me in any phone call not to let him [the Department's Inspector] in," that Respondents' Agent answered "Yes." Not only did Respondents' Agent fail to make needed and necessary repairs to the Property after being put on notice by the Complainant, which was his obligation pursuant to Paragraph 9, "Maintenance," of the Lease and Section 29-30, "Obligations of landlords," of the County Code, but his statement to the Complainant threatening to raise her rent if she allowed access to the Property by the Department's Housing Code Enforcement Inspector was retaliatory, and his actions constitute a serious violation of Section 29-32, "Prohibited practices," of the County Code.

Tenants in Montgomery County are guaranteed the right to complain to their landlords or the Department about defects in rental properties and to request that those defects be repaired in a timely manner without fear of retaliation, including a threat to increase the rent based on such reporting. Furthermore, it is not only the obligation of tenants under the terms of the lease to report defects to their landlords, but it is in the landlord's best business interest that such defects are reported to prevent deterioration of the rental property.

The Respondents and Respondents' Agent are hereby notified that it is a serious violation of Chapter 29 of the County Code to advise a tenant not to allow access to rental property by the Department's inspectors, or to attempt to coerce a tenant, under threat of a rent increase, not to allow such inspections, and that any such future violation may result in the immediate revocation of the Rental Facility License(s) for any and all rental properties owned, operated or managed by the Respondents and/or Respondents' Agent in Montgomery County, Maryland.
