

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

SUPERIOR COURT
DOCKET NO. 2176CV00112

HENRY N. SCHIFFMAN¹

vs.

BOARD OF TRUSTEES FOR THE ROLLING HILLS CONDOMINIUM TRUST

FINDINGS OF FACT, RULINGS OF LAW, AND ORDER OF JUDGMENT

The plaintiff, Henry Schiffman, as Trustee of the Henry Norman Schiffman Revocable Living Trust, owns unit 3-9 in the Rolling Hills Condominium (the Condominium) in Lenox. In 2021, he filed this action against the Condominium's managing body, the Board of Trustees for the Rolling Hills Condominium Trust (the Board), challenging its denial of his request to install a picture window in his unit. The plaintiff's first amended complaint has two counts. In the first, he seeks a declaration that the Board's actions violate the Condominium's governing documents and an order that the Board approve the proposed window or that the court remand the matter to the Board for such approval. In the second count of his complaint, the plaintiff claims that the Board breached a covenant set forth in the Condominium's governing documents.

On June 9, 2025, the Court held a jury-waived trial at which the plaintiff and two Board members testified. The parties presented evidence of, inter alia, the Board's proceedings and the governing documents. Upon consideration of the credible evidence, the governing documents, and the oral and written submissions of the parties, the Court makes the following findings of fact and rulings of law and orders judgment for the Board.

¹ as Trustee of the Henry Norman Schiffman Revocable Living Trust

FINDINGS OF FACT

The Condominium consists of 108 apartment-style units, with twelve units in each of nine buildings. The Condominium is governed by a Master Deed and a Declaration of Trust, which includes by-laws. The Master Deed, § 9(e), provides in pertinent part that the Condominium units and common areas are

“subject to the restrictions that, unless otherwise permitted by instrument in writing duly executed by the Board . . . pursuant to the provisions of the By-Laws hereof, . . . the architectural integrity of the building and the Units shall be preserved without modification, and to that end, without limiting the generality, no awning, screen, antenna, sign, banner or other device, and no exterior change, addition, structure, projection, decoration or other feature shall be erected or placed upon or attached to any such Unit . . . [and] no addition to or change or replacement of any exterior light, door knocker or other exterior hardware shall be made, and no painting, attaching of decalcomania or other decoration shall be done on any exterior part or surface of any Unit nor on the interior surface of any window, nor shall any curtains or draperies which are visible from the outside be installed or maintained unless they are white or lined with white materials.”

Section 4 of the Master Deed provides that improvements may be made to the units pursuant to plans and specifications approved by the Board, which shall not unreasonably withhold such approval.

Article V, § 1, of the Declaration of Trust gives the Board members, subject to G.L. c. 183A, “absolute control, management, and disposition of the Trust property . . . as if they were the absolute owners thereof, free from the control of the Unit Owners” The Declaration of Trust, Article V, § 4(c), further provides that if a unit owner proposes to make an improvement to or affecting common areas of the Condominium at the unit owner’s own expense, and the Board determines in its reasonable discretion that the improvement would be consistent and compatible with the provisions and intent of the Master Deed, the Board “may, but shall not be obliged to, authorize such improvement,” at the expense of the unit owner proposing the

improvement, and “subject to such improvement as the [Board] in their reasonable discretion deem to be necessary or desirable in the circumstances.”

On February 9, 2021, the plaintiff sent the Board a request for approval to install a picture window, 47 1/2 inches by 59 inches, on the north wall of his second floor living room. The window would add natural light, would face a wooded area, would not be visible to most other unit owners, and would conform to all replacement window specifications for the Condominium.

The boundaries of the second floor of the plaintiff's unit extend to the wall studs and the entire portion of existing doors and windows. The exterior siding is part of the common area of the Condominium. No unit owner has, since the 1976 construction of the Condominium, ever added a window, nor was any evidence presented that unit owners have ever made improvements which involved opening up large holes in exterior walls of the buildings.

On February 17, 2021, the Board met for the first time to discuss the plaintiff's proposed window, and agreed to review the Master Deed and discuss the request further at the Board's next meeting. On February 19, 2021, the plaintiff sent the Board a supplemental submission which, inter alia, highlighted what he viewed as relevant provisions in the Condominium's governing documents. On February 26, 2021, the plaintiff sent the Board another supplemental submission and asserted that the visual impact of his proposed window was less than the visual impact of awnings which had been allowed.

On March 3, 2021, the Board met a second time to discuss the plaintiff's request. The plaintiff was present via Zoom. The Board members articulated their various understandings of how the governing documents applied to the plaintiff's proposal. One Board member opined that the proposed window would not be permitted because it affected the architectural integrity of the

building. There was an implicit reference to § 9(e) of the Master Deed, which mandates that the architectural integrity of the Condominium *shall be preserved without modification* unless otherwise permitted in writing by the Board. The Board member pointed out that the architectural integrity goes to the building's original design and composition, i.e., the building itself, which is different than awnings. Another Board member opined that even if the Board had authority to allow the proposed window, it would be a bad idea because other unit owners "could do the same thing," meaning opening up exterior walls of the Condominium buildings. Following that discussion on the second scheduled meeting by the Board to address the plaintiff's request for approval of his proposed window, in light of the governing documents, the Board unanimously voted to deny the plaintiff's request.

The plaintiff, through his counsel, twice asked the Board to reconsider its denial of his request for approval of the picture window installation. On March 24, 2021, the Board met and unanimously voted to reaffirm its decision.

The plaintiff complains that the Board had no legitimate, good faith reason to deny his request to install a picture window, and asserts that the Board's denial is arbitrary, capricious, that it contravenes the Condominium's governing documents, and is inconsistent with the Board's approval or acquiescence of other improvements. For example, he points out that despite the prohibition in the governing documents of awnings without the Board's approval, the Board has approved or acquiesced in the installation of awnings of different colors and designs to many units. The Board has also approved other improvements, such as the removal of solid wood floors and the installation of doors with windows for the front doors of twelve units.

RULINGS OF LAW

Condominium unit owners' interests are subject to the limits set forth in the Master Deed.

Joy Street Condominium Assoc. v. Board of Appeals of Boston, 426 Mass. 485, 487 (1988).

Individual condominium unit owners cede the management and control of the common areas to the organization of unit owners, with the master deed setting the rules of the game. *Flynn v. Parker*, 80 Mass. App. Ct. 283, 288-289 (2011).

The plaintiff's proposed window installation would require the removal of the exterior siding, a common area of the Condominium. The Declaration of Trust accorded the Board reasonable discretion to authorize requests for improvements to or affecting common areas of the Condominium if such proposed improvements would be compatible with the Master Deed's provisions and intent. See Declaration of Trust, Art. 5, § 4(c). The Board is not obligated to approve such requests.

The Board's denial of the plaintiff's request to install a picture window did not contravene the governing documents. The proposed work would require opening a large new window, which has not been done anywhere in the nearly fifty-year-old Condominium, and removing part of the exterior of the building, which is part of the common area of the Condominium. The Board's authority to approve the picture window was not simply a question of assessing the visual impact, as the plaintiff appears to argue. Instead, at issue is whether opening a hole in the exterior wall, and therefor altering the envelope of the building, would be compatible with the intent or provisions in the Master Deed. The Board reasonably concluded that it would not, and that the proposed window installation would violate the Master Deed's directive to preserve the architectural integrity of the buildings without modification.

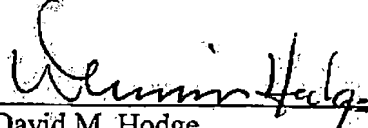
The plaintiff has not shown that the Board unreasonably denied his request or abused its discretion, or acted arbitrarily or capriciously. There is no support for the plaintiff's contention that the Board treated him unfairly because it had approved or acquiesced to comparatively

minor, largely cosmetic modifications, such as awnings and storm doors, which have visual but not structural impacts. Finally, the Board also reasonably expressed a legitimate concern that allowing the plaintiff's request would pave the way for other unit owners to make holes in other walls of the Condominium buildings. Under any view of the evidence at trial, the Board's decision was proper and reasonable.

ORDER

For the foregoing reasons, it is hereby **DECLARED** and **ADJUDGED** that the defendant's denial of the plaintiff's request to install a picture window in Unit 3-9 was reasonable, was not an abuse of discretion, and did not contravene the Master Deed or the Declaration of Trust.

It is further **ORDERED** that judgment shall enter for the defendant, the Board of Trustees for the Rolling Hills Condominium Trust and against the plaintiff, Henry N. Schiffman, as Trustee of the Henry Norman Schiffman Revocable Living Trust, on both counts of the plaintiff's complaint.



David M. Hodge
Justice of the Superior Court

Dated: November 7, 2025

