



COMMONWEALTH of VIRGINIA  
Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

August 24, 2018

Brian Ball  
Secretary of  
Commerce and Trade

Complainant: Robert Sledzaus and James Moran  
Association: Purple Sage Cluster Association  
File Number: 2019-00489

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*The Office of the Common Interest Community Ombudsman has been designated to review final adverse decisions and determine if they may be in conflict with laws or regulations governing common interest communities. Such determination is within the sole discretion of the Office of the Common Interest Community Ombudsman and not subject to further review.*

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Complaint

The Complainant submitted a complaint to the Association, dated April 4, 2018. The Association provided a response to the Complainant dated July 16, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 13, 2018 and received the same date.

Determination

The Common Interest Community Ombudsman (CICO), as designee of the Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18VAC 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §55-530(F) (Code of Virginia) and the Common Interest Community Ombudsman Regulations (Regulations). A NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and, as very specifically set forth in the Regulations, "shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

Under the Regulations, applicable laws and regulations pertain solely to common interest community laws and regulations. Any complaint that does not concern common interest community laws or regulations is not appropriate for submission through the association complaint procedure. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant alleged that the Association failed to provide the books and records requested from the association in accordance with §55-510 B<sup>1</sup> of the Property Owners' Association Act. Among other documents, the Complainant requested invoices, receipts, punch lists, and work orders from vendors, contractors and law firms.

The Association responded to the allegations by stating that “[t]he Board determined that you will be provided copies of the requested records subject to review of counsel invoices for redaction of privileged matter and payment of the charges set forth in the Cost Schedule.”

The Complainant, in a cover letter included with the NFAD stated that it has not received the documents it requested, nor has it been provided a cost estimate for the documents. While this office generally gives little to no deference to anything submitted with the NFAD that was not part of the initial complaint, the association’s decision, or any other document required under the Common Interest Community Ombudsman Regulations, in this particular instance I will consider the information provided in the cover letter. Because the final decision from the Association was provided 28 days prior to the submission of the NFAD, it does seem unreasonable that the Complainant has not received notice of the cost for obtaining the requested books and records, which in turn would lead to receipt of the books and records, once the fee had been paid.

I acknowledge that the volume of books and records requested may prove substantial and may take time to amass. In addition, the need to redact information from attorney records will slow things down as well. However, based on the information provided it does not appear that any forward movement has taken place on the request for copies of the books and records.

### Required Actions

The Association must provide the Complainant a cost schedule<sup>2</sup> as required under §55-510(E) and estimate of the cost for the requested books and records. In addition, the

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<sup>1</sup> B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association, shall be available for examination and copying by a member in good standing or his authorized agent including but not limited to:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

<sup>2</sup> E. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost

requested documents must be provided to the Complainant in a timely fashion. The Association must ensure that it provides the Complainant the cost schedule and estimate within ten days of the date of this determination if it has not done so already. Once the Complainant has paid the charge for the requested books and records, the Association must provide the requested books and records within five days.

A failure to provide the documents in a manner that complies with the provisions set forth in the Property Owners' Association Act may result in a referral of this matter to the Common Interest Community Board for any enforcement action it may deem appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Purple Sage Cluster Association

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schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

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