



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

April 12, 2019

Brian Ball
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Carmen Bucci
Association: Fox Hall Homeowners Association
File Number: 2019-02369

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.

Complaint

The Complainant submitted two complaints to the Association, both dated February 4, 2019. The Association provided a response to the Complainant dated February 25, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 15, 2019 and received March 20, 2019.

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 included a cover letter with his NFAD that was not part of the association complaint submitted to the Association. As has always been the case, this office does not consider additional information submitted in a cover letter if that information was not part of the original complaint to an association.

The first complaint submitted by the Complainant was that the Association violated §55-510.1¹ of the Property Owners' Association Act by failing to provide the Complainant the opportunity to speak and make comments at a Nominating Committee Meeting and a Budget meeting.

The second complaint alleged that the Association violated §55-513² of the Property Owners' Association Act when it adopted a rule allowing owners to speak for three minutes at meetings. The Complainant alleged that the "homeowners have not been provided with any notice of such a rule, its adoption, establishment, publication and distribution."

In its response to the allegations contained in the association complaint, the Association wrote that the Complainant, "like all other attendees" was "provided with the opportunity to speak" at both meetings. As to the allegation that the Association did not distribute the rule related to member comment at board meetings, the Association responded that the rule had been in place for many years and that such rule "has been made available to all attendees of the meeting and it has also been posted on the Town Square website." The Association further noted that the Complainant's allegation regarding publishing and distributing rules and regulations was incorrect since §55-513 of the Property Owners' Association Act requires the reasonable publishing or distribution of rules and regulations only to the extent that they pertain to the use of the common areas or other areas of responsibility assigned to the association by the declaration.

There was no evidence or information included in the complaint that provided proof that the Complainant was denied the right to speak at either meeting. Minutes from one of the meetings were included, but those minutes did not contain any information about a public comment period or anyone speaking during that time. I cannot conclude that the failure to specifically include the Complainant in those minutes is sufficient evidence to prove that he was not permitted to speak.

¹ D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide a designated period of time during a meeting to allow members an opportunity to comment on any matter relating to the association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the board of directors may limit the comments of members to the topics listed on the meeting agenda.

² A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose shall repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or actual damages, during which the court may award to the prevailing party court costs and reasonable attorney fees.

As to the distribution of the rule regarding public comment at a meeting, the Association stated that it had distributed the rule and made it available to members of the Association. Moreover, I agree with the Association that the rule does not pertain to the use of common areas and therefore is not required to be published or distributed. As to whether the rule would pertain to "other areas of responsibility assigned to the association by the declaration, I do not know, since this office cannot review or interpret the governing documents of any association. Based on the Complaint and the Association's response to the Complaint, I can find no evidence of a violation of common interest community law.

Required Actions

Nothing is required of the Association at this time.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Fox Hall Homeowners Association