



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

Mary Broz-Vaughan
Director

August 10, 2020

Complainant: Michael and Barbara Paris
Association: Newgate Homeowners Association
File Number: 2021-00145

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 a complaint to the Association dated January 17, 2020. The Association provided a response to the Complainant dated July 3, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 13, 2020.

Authority

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 §54.1-2354.4 (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.

Determination

The Complainant has alleged that the Association violated §55.1-1819(C)¹ of the Property Owners' Association Act when it failed to mail notice of a due process hearing fourteen days prior to the date of the hearing. The hearing was scheduled for November 25, 2019 and the notice of hearing letter was dated November 11, 2019 and received November 14, 2019. The Complainant included additional allegations and information in a cover letter, but as is always the case, this determination cannot address any complaint directly, but instead, can only accept Notices of Final Adverse Decision after a complainant has utilized his or her association complaint procedure. Therefore, the additional allegations cannot be addressed here.

The Complainant included a copy of an envelope and receipt for the letter sent by the Association. The Pitney Bowes stamp on the letter is dated November 11, 2019, and a date stamp on the letter, perhaps from the post office, is November 12, 2019. The bar code on the receipt for delivery can be pulled up on the USPS website and indicates the letter arrived at the USPS Distribution Center in Merrifield, Virginia on November 12, 2019 at 10:16 pm. A phone call to my local postmaster was helpful, as I learned that there was a missing element in the tracking information found online. Nowhere did it provide the date when the post office **accepted** the letter, which is generally considered the date of mailing. Therefore, the letter could have been accepted any day prior to or on the 12th of November. If the letter was mailed on the 11th, it would have been mailed in a timely manner and within the statutory requirements. If mailed on the 12th of November, it would have been mailed a day late.

In its final determination, the Association stated that the hearing notice was mailed November 11, 2019, which would have provided the required 14 days prior notice outlined in the statute. The Association also noted that the Complainant's hearing was ultimately continued to January 27, 2020 and the Complainant was provided "a full opportunity to be heard by the Board" at that meeting. The Association also approved a motion at its June 29, 2020 meeting to remind the Community Manager "that mailing

¹ C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § [55.1-1815](#). If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

time-sensitive material a day or two prior to the deadline by which such material must be mailed would avoid such complaints in the future.”

This office was provided no evidence that proved the letter was mailed on the 11th of November, nor was it provided proof that it was mailed at any time after that date. Absent proof that the letter was mailed on time, or that the letter was mailed too late, this office cannot provide a determination as to whether or not there has been a violation of common interest community law, and specifically §55.1-1819(C) of the Code of Virginia.

Required Actions

While no violation of common interest community law was found, I would encourage the Association to be more careful in the future and ensure that not only does it mail documents in a timely manner but also that it maintains proof of timely mailing.

In addition to the notice issue, the Complainant also provided information in the NFAD that indicated the wrong association name was contained in the association complaint procedure. While this office has no authority over governing documents, that may be something the association may wish to review and address if appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Newgate Homeowners Association