



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

April 22, 2021

Complainant: Philip Coletti
Association: Clark's Corner Homeowners Association, Inc.
File Number: 2021-02068

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 November 17, 2020. The Association provided a response to the complaint dated February 15, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 9, 2021 and received on March 16, 2021.

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 provided several pages of introductory information that was not part of the complaint submitted to the Association. As such, it cannot be considered and cannot be part of this determination.

The Complainant alleged that his Association failed to provide him a copy of a 2019 income expense report with itemized transaction details, despite his multiple requests for this document. According to the Complainant, these reports were a monthly requirement under the Association's contract with its prior management company and are also required under the bylaws of the Association. The Complainant appears to be alleging that the Association is in violation of its bylaws by failing to provide the requested document. The Complainant does not, however, allege a specific violation of common interest community law in his Complaint. While §55.1-1815 of the Property Owners Association Act, which provides a right of examination and copying to members in good standing would likely be the applicable statute if the Complainant had made reference to it, the gist of the complaint appears to be more about the preparation of a statement of income and expenditures and the Association's obligations under its bylaws. We have no jurisdiction over the governing documents of an association nor can we enforce those documents.

The Association's final decision stated that the "HOA Aboard believes it has met its obligations and provided the association's 2019 income and expense reports that include actual expenses." The Association further noted that it did not receive a 2019 end of year income and expense report from the management company. The Association did state that it had simplified its financial reporting to include an annual budget and expense report with actuals and had provided these to the Complainant.

The Complainant noted in his complaint that he had received the 2019 budget summary and the 2019 annual report (actuals). Based on the Association's response to the complaint, it appears that the Association did not receive a 2019 income and expense report from the former management company but did provide the Complainant its own income and expense reports. Whether those reports meet the requirements of the bylaws this office cannot determine. Nor can this office enforce the bylaws or require the Association to create the document requested by the Complainant.

I do not find that there has been a violation of common interest community law here since it appears the Association provided the documents it had that it believed were responsive to the Complainant's document request, there was no evidence provided that demonstrated that the exact document requested by the Complainant exists, and if the Association is required to create that document, it is a requirement under the governing documents of the association and not common interest community law. For these reasons I do not find there has been a violation of common interest community law.

Required Actions

No action required. Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Clark's Corner Homeowners Association, Inc.