



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

April 22, 2021

Mary Broz-Vaughan
Director

Complainant: Stephen Kim
Association: Clark's Corner Homeowners Association, Inc.
File Number: 2021-02074

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 December 12, 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 which was received on March 9, 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 has alleged that the Association failed to adhere to the requirements of §55.1-1816 of the Property Owners’ Association Act (Act). The Complainant wrote that his Association transferred money from reserves to an operating account in November 2019 and did not inform the membership or provide a copy of special meeting minutes to the membership. Because of these actions the Complainant believes the Association is in violation of §55.1-1816.

The Association’s final decision stated that there had been a failure by the former management company to apprise the board of its obligation to notify owners of the transfer of funds. The Association stated that it later realized owners should have been notified prior to the transfer, but it did notify owners at a later annual meeting. As for the meeting minutes, the Association stated that it posts all minutes on the association’s website, but more importantly, the Association wrote that there was no meeting to discuss the transfer of funds as the management company asked for an immediate response from the board in its email requesting approval for the transfer take place.

The Complainant included additional information in a cover letter that was not part of his original complaint and alleged additional violations. As is always the case, we cannot include that information in this NFAD since the Association has not been provided an opportunity to respond.

The Complainant was not specific about which portion of §55.1-1816 he believed the Association to have violated. The two allegations contained in the complaint do not appear to stem from possible violations of that statute. Notifying homeowners of a transfer of funds is not required under that statute and if such notification is required, it would be a requirement under the governing documents of the Association, over which we have no authority.

The second allegation that no special meeting minutes were provided to owners is not addressed in §55.1-1816 either, as there is no requirement in the Act that requires an association to provide owners meeting minutes, unless of course, they have been requested in writing. There was no evidence in the complaint that the Complainant had requested a copy of meeting minutes. Further, if there was no meeting, there can be no minutes of that meeting. I do not find, based on the complaint submitted to the Association and the Association’s response, that there has been a violation of §55.1-1816 of the Property Owners’ Association Act.

Required Actions

No action is required of the Association. Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather S. Gillespie". The signature is fluid and cursive, with a small mark above the end.

Heather S. Gillespie
Common Interest Community Ombudsman

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