



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

June 15, 2021

Brian Ball
Secretary of
Commerce and Trade

Mary Broz-Vaughan
Director

Complainant: Constantino Panayides
Association: Lafayette Park Condominium
File Number: 2021-02471

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 March 19, 2021. The Association provided a response to the complaint dated April 22, 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 May 7, 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 and we cannot provide a determination.

Determination

As is always the case, this office will not utilize the documents and additional information provided that were not part of the original complaint to the Association. This has always been the policy of this office since it is unfair to provide either party another bite of the proverbial apple. Only those documents included in the complaint, and reviewed and responded to by the Association, can be considered.

The Complainant has alleged that the Association failed to provide him a copy of its forensic audit. Such a failure would be a violation of §55.1-1945(B)¹ of the Condominium Act. The Complainant stated that he had requested the audit five months after the audit was commissioned. He also made another request for the audit a month later. The Complainant has not received a copy of the audit. The Complainant has also asked that the Association inform all owners of the existence of the audit and that it post the audit on its online library. The Complainant believes that a failure to post the audit online would "rob me and the rest of the owners of our right to have access to a forum where we can communicate among ourselves on any matter concerning the Association."

The Association's final determination reminded the Complainant that he had been notified via email in March 2021 that the audit had not yet been received by the Association. The Association wrote that "[i]t still has not yet been received, because it has not been completed, although work on it is continuing. Therefore it is impossible to provide you with a copy." The Association did write that when it receives the audit, it would review it and make any portions of it that are appropriate for release under §55.1-1945(C)² subsections 1-9 available to owners upon request.

This office has no authority to force the Association or the auditor to complete the audit in a particular timeframe. If an association does not have a document that has been requested by an owner under the provisions of §55.1-1945, the association cannot provide the requested document. I do not find that there has been a violation of the

¹ B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. 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 a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

² The final determination referenced §55.1-1965 rather than the correct §55.1-1945. This office has received confirmation from the Association that this was merely a typographical error.

Condominium Act, and specifically §55.1-1945(B) in relation to the Complainant's request for a copy of the forensic audit. I would also note that the Association has no obligation under any common interest community law to inform the owners of the audit or to post the audit online.

The Complainant included several statutes and regulations that he believed the Association violated when it issued its final decision. He alleged that the Association failed to set a mutually convenient time for delivery of the requested document, which if true, would be a violation of §55.1-1945(B). However, no such violation could have occurred as that particular provision only pertains to the inspection and copying of association records, not the delivery of a copy of an association document. The Complainant also alleged that the Association was in violation of §55.1-1949(B)³ because counsel for the association provided a final determination on the complaint without a meeting and did so only several days after the submission of the NFAD. The Complainant wrote that he submitted his complaint on March 19 and the attorney provided the final determination on March 22. This is not the case based on the documents in the NFAD. The NFAD submitted by the Complainant was dated March 19, but the final determination from the Association was dated April 22, 2021 not March 22, 2021. Attorneys are not bound by the Condominium Act and do not have to hold meetings to carry out their work. In addition, there was no evidence provided that the Association held a meeting without notice to the owners.

The Complainant also alleged that the final decision violated the Regulations: he stated that the Association failed to send notice of consideration and that it failed to utilize the association complaint procedure when it asked him to withdraw his complaint. The Association did provide notice, however, and if it was delayed, that is unfortunate, but our goal is always compliance and it appears the Association did comply with the Regulations. There is nothing in the Regulations that prohibits an association from asking a complainant to withdraw his or her complaint. The complainant should, of course, always have the right to demur and ask that the complaint procedure be followed, which appears to be what happened in the present case since the Complainant received his final decision and was able to file a NFAD. Finally, the Complainant wrote that he believed the Association failed to include specific citations to applicable laws in its final decision when it referenced §55.1-1965 instead of §55.1-1945. I have since touched base with the Association and learned that this was merely a typographical error and in context, it seemed that it was fairly obvious that the Association meant §55.1-1945 and not §55.1-1965 which is related to reserves.

³ B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent that the condominium instruments or adopted rules expressly provide, send notice by electronic means if consented to by the officer to whom the notice is given. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.

2. Notice of the time, date, and place of each meeting of the executive board or of any subcommittee or other committee of the executive board, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

Required Actions

Nothing is required of the Association. Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Gillespie". The signature is fluid and cursive, written over a light blue horizontal line.

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Lafayette Park Condominium