



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

July 8, 2021

Complainant: Richard Johnson
Association: Ruxton Services, Inc.
File Number: 2021-02573

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 that was undated, but according to the Association was filed on March 8, 2021. The Association provided a response to the complaint dated May 3, 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 19, 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.

Determinations issued by this office are final and not subject to further review.

Determination

The majority of the complaint submitted to the Association centered on alleged violations of the Association’s governing documents and the Virginia Nonstock Corporation Act. As noted above, our only authority is over common interest community law, which does not include governing documents or the Virginia Nonstock Corporation Act. The primary concern set forth in the complaint was that the Association had failed to appoint an elections committee and therefore was depriving the membership of its right to serve on the board. In addition, the Complainant believed that the existing board of directors was not properly elected.

While the Property Owners Association Act was referenced several times, there were only two instances where a specific statute was cited. We cannot address general references to the POA Act, but instead, require specific references in order to provide a determination as to whether an association is in violation of common interest community law. The two specific references in the Complaint were to §55.1-1807(5)¹ of the Property Owners’ Association Act. However, the Complainant did not specify how the Association violated this statute. Instead, he wrote that it was a right afforded to owners and guaranteed under the Property Owners’ Association Act. Which is true, but this does not explain how the Complainant believes the Association has violated the statute.

The Association addressed the allegations related to the governing documents and Nonstock Corporation Act, but did not address the reference to the Property Owners’ Association Act.

I cannot find that there has been a violation of common interest community law here. The bulk of the Complaint alleged violations of the governing documents and the Nonstock Corporation Act, neither of which fall under our authority and are therefore not appropriate topics for an association complaint or a notice of final adverse decision. While there was a reference to §55.1-1807(5) of the Property Owners’ Association Act, there was no information that explained why or how the Complainant believed that the Association was in violation of that particular statute.

¹ Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

5. The right to serve on the board of directors if duly elected and a member in good standing of the association, unless the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § 55.1-1828.

Required Actions

No action is required of the Association.

You are welcome to contact my office if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather S. Gillespie". The signature is fluid and cursive, with the first name being the most prominent.

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Ruxton Services, Inc.