



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

July 13, 2021

Complainant: Richard Johnson
Association: Ruxton Services, Inc.
File Number: 2021-02643

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 April 6, 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 27, 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 Complainant has alleged a violation of §55.1-1805¹ of the Property Owners’ Association Act. The Complainant believes that the Association has imposed unlawful charges against association members for legal fees. The Complainant also believes that the existing board of directors was never properly elected but that is not something this office can address.

The Complainant alleges that the Association improperly used member assessments for purposes other than those specified in §55.1-1805. The Complainant believes that a total of approximately \$23,772.60 of legal fees were charged that were not specific to common area usage. The Complainant believes that member assessments were used to pay for legal opinions and meetings with owners about issues that should have been addressed by the board of directors. The Complainant suggested that if the board of directors was unable to answer the questions posed by owners, that the individual owners should have sought their own legal counsel. There were additional allegations of improper assessments in 2017, but because our authority extends back only three years, those allegations cannot be considered.

In its final determination, the Association wrote that the Complainant had incorrectly quoted the statute (§55.1-1805) and that in addition to the language contained regarding assessments for services provided or related to use of the common area, the statute also contains language that permits the Association to make assessments as authorized in its declaration. The Association further wrote that Article V, Section 2 of its declaration “sets forth various items that can be included in the assessments. It incorporates the Articles of Incorporation and Bylaws” and permits the Association to engage attorneys for legal services.

While the Complainant has alleged a violation of common interest community law, specifically §55.1-1805, this is a statute that relies upon the contents of an association’s governing documents. In this case, the Association has stated that the declaration of the Association allows it to engage attorneys for legal services, in addition to other costs that can be included in assessments. This office cannot review or interpret the governing

¹ Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association shall (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55.1-1810 or 55.1-1811 that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55.1-1810 or 55.1-1811. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order pursuant to § 54.1-2352.

documents of an association to determine if they are applicable in a situation such as this. Because of this, no determination can be provided on this matter since the only way to determine if the declaration allows for the assessment of attorney fees would be by reviewing and interpreting that document and applying it to the present situation.

Required Actions

No action is required of the Association.

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

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Ruxton Services, Inc.