



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

July 19, 2021

Mary Broz-Vaughan
Director

Complainant: Dana W. Wiseman
Association: The Tivoli at Cardinal Forest Condominium
File Number: 2021-02919

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 an undated complaint to the Association on May 24, 2021. The Association provided a response to the complaint dated June 9, 2021 and amended the final determination on June 19, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman which was received July 2, 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

As is always the case, additional information provided with the NFAD that was not part of the original complaint submitted to the Association cannot be considered in this determination since the Association has not had an opportunity to respond to the additional information.

The Complainant is concerned about a delay in roof replacement for his building. A reserve study completed in 2020 slated the roof to be replaced this year, and it had last been replaced in 1999. According to the Complainant, the roof had a replacement lifetime of 15 years, although some estimated that lifetime to be less. The Complainant references §55.1-1965 of the Condominium Act and notes in his Complaint that the annual budget should be developed to meet needed reserves and operating expenses, according to the reserve study. The Complainant did not, however, allege an actual violation of the Condominium Act in his NFAD. He did ask the Association for an explanation of how it came to the decision to delay the roof replacement for his building and expressed concern about the fiduciary obligations of the board.

The Association responded to the Complainant by stating that it agreed with his assertion that assets of the association must be protected and that spending must be prudent. The Association explained that it considers the reserve study “a guide and not a mandate,” and that the Complainant’s roof currently has no structural defects and that based on the manufacturer’s estimates, its lifespan can be as long as 30 years. The Association plans to build the reserves, replace one roof per year, repair defects as appropriate, replace roofs with structural defects, and move quickly when necessary to obtain roof replacement. The Association also noted in a June 19 addendum to the final determination that its initial response was based on the Complainant’s request for an explanation. Upon learning that the Complainant wished to file a NFAD, the Association provided the addendum, which included the Association’s Common Interest Community Board Registration Number as well as notice of the Complainant’s right to file a NFAD with this office.

While I understand the Complainant’s concerns about his roof, this is not a matter that is appropriate for the complaint process. The Complainant referenced common interest community law in his complaint, but there was no specific allegation that the Association was in violation of §55.1-1965 or any other law. This office, as noted in the opening paragraphs to this Determination, can only provide a determination on

complaints that allege a violation of common interest community law or regulation. Because no such allegation was contained in the initial complaint to the Association, no determination can be provided.

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 blue ink that reads "Heather Gillespie". The signature is fluid and cursive, with the first name being more prominent.

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Tivoli at Cardinal Forest Condominium