



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

February 25, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Adam Rubinstein
Association: The Lofts at Reston Station Condominium Association
File Number: 2022-01720

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 31, 2021. The Association provided a response to the association complaint dated January 28, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated and received February 14, 2022.

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 on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

This Determination is final and not subject to further review.

Determination

The Complainant alleged that the Association did not provide notice of a meeting when it voted on a contract on September 24, 2021. A failure to hold an open meeting may constitute a violation of §55.1-1949(B)(1)¹ of the Condominium Act.

The Association responded to the Complaint by referencing its Bylaws, Article 3, Section 3.8. The Association believes that this Bylaw provision allows the Board of Directors to take action without a meeting, if all the directors consent in writing to such an action. The Association wrote that “[t]he Board acted in accordance with the documents...and has since ratified this action in the Board of Directors meeting...”

Under Section 55.1-1949 of the Condominium Act, all meetings are required to be open, “except as otherwise provided in the condominium instruments.” This office cannot interpret the condominium instruments, but based on the information provided by the Association, it appears the Association’s Bylaws may allow the Board to take action without a meeting, and such action would not be in violation of the Condominium Act. In the event that the information provided by the Association is inaccurate, or if the Association has improperly interpreted its Bylaws, this office can provide no further review of the matter since the key issue is whether the Bylaws do allow for action without meeting. Because the Association is relying upon its governing documents in its

¹ 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. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.

response to the complaint, and because we cannot review or interpret those condominium instruments, this office cannot provide a determination on this matter.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Lofts at Reston Station