



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

March 16, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: The Condominium at Gunston Corner
Association: Gunston Corner Townhouse Homeowners Association, Inc.
File Number: 2022-01723

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 June 29, 2021. The Association provided a response to the association complaint dated January 18, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 2, 2022 and received February 9, 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 Condominium at Gunston Corner (Complainant) submitted additional information with the NFAD that was not part of the original complaint for which a final decision was provided by the Gunston Corner Townhouse Homeowners Association, Inc. (Association). As is the policy of this office, since this additional information was not available to the Association for review as part of the association complaint, it cannot be considered in this NFAD. In addition, the Regulations do not provide for submission of such documents.

The Association and the Complainant, according to the complaint, share certain responsibilities and obligations under an Easement Agreement between the two entities. The Complainant has alleged that despite multiple attempts to obtain documents from the Association, it has still not received all the documents requested. The Complainant believes that this failure to provide documents constitutes a violation of §55.1-1945¹ of the Condominium Act. In addition, the Complainant alleges a

¹ A. The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

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

violation of §55.1-1991 of the Condominium Act, based on its inability to provide complete resale certificates and its belief that it is entitled to the requested documents. The Complainant alleges it is unable to provide complete resale certificates because it has not received the documents it has requested from the Association and those documents are necessary for a complete resale certificate. §55.1-1991 sets forth what documents and information must be included in a resale certificate and how that resale certificate is to be delivered. The Complainant says that it has stated a proper purpose in its request for documents, namely to perform an audit and be reimbursed.

The Association responded to the Complaint by raising the question as to whether the Complainant had standing to file the complaint, since the Association believed the Complainant did not have an operating Board of Directors.

The Association also wrote that it had already produced hundreds of pages of documents, and intends to provide another audit. It then stated that it does not believe the Complainant has a right to examine the books and records of the Association. The Association does not believe it is in violation of the Condominium Act as alleged by the Complainant. The Association provided the following reasons for why it does not believe it is in violation of the Act:

1. The Association asserted that the rights provided under §55.1-1815 of the Property Owners' Association Act (which is the applicable act and the sister statute to §55.1-1945) only apply to a member in good standing. Neither the Complainant nor the President of the Complainant association are members of the Association;
2. Virginia Code §55.1-1991 does not apply to the Association and "merely sets forth the required contents of resale certificates." Further, the Association wrote that it "does not require the Association to permit your client (the Complainant) to inspect its books and records;" and
3. §55.1-1945 is inapplicable to the Association, since it is the mirror provision found in the Condominium Act and thus only applies to condominiums.

There was more to this complaint than I have included here. My focus is solely on the portions of it that related only to common interest community law. The relationship between the two entities, the legal obligations required under the easement agreement, the status of the condominium board of directors and any other aspects that were not directly related to common interest community law were excluded from

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.

consideration for this determination. This office has no authority to determine or address civil law issues.

I do not find that the Association is in violation of §55.1-1815 of the Property Owners' Association Act. I do not believe that the similar statute under the Condominium Act (§55.1-1945) is applicable. I agree with the Association that the Complainant is not a member of the Association and therefore does not have a right to examine or receive copies of the association documents. Whether there is a legal right under the agreement between the parties is not something this office can determine. Under §55.1-1800,² a person who owns a lot in a development is considered to be a member and must pay assessments. There was nothing in the complaint that suggested the Complainant owned a lot in the Association.

As a property owners' association, the Association is not governed by §55.1-1991 of the Condominium Act and therefore cannot be in violation of that statute. If the Complainant must rely upon the Association to provide complete resale certificates, that is a legal issue outside the scope of this office.

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 Condominium at Gunston Corner

² "Development" means real property located within the Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.