



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

January 3, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Nathan Schultz
Association: Chimney Hill Community Association, Inc.
File Number: 2023-01241

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 July 21, 2022. The Association provided a response to the association complaints dated October 18, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 15, 2022 and received November 16, 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 has alleged that the Association denied him the right to inspect its books and records. The Complainant wrote that he provided a written request to inspect the records and the Association then provided a copy of the pool rules, budget, and an income statement for purchased pool and guest passes. He was not, however, given access to the records as he had requested.

The Association stated that it provided the Complainant the only documents available for review that were related to the Complainant’s request. The documents provided included the annual budget, the income statement, and the pool rules and regulations.

The Complainant was dissatisfied that he received copies of the documents instead of being given the opportunity to inspect the books and records as he had requested. §55.1-1815(B)¹ of the Property Owners’ Association Act specifically allows

¹ B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association’s membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

for examination and copying of the records by a member in good standing. While the Association may have provided the Complainant the records it had on hand that were related to his request, in this instance the Complainant had requested to inspect the records, not receive copies. The Complainant should have been given the opportunity to inspect the documents.

Required Actions

If the Complainant wishes to inspect the documents, after having received them, the Association needs to provide him that option. Going forward, the Association must ensure that it responds to document requests in a manner that aligns with the request – providing an opportunity to inspect the records if requested or providing copies if requested.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Chimney Hill Community Association, Inc.

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 an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.