



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

April 3, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Richard Schlorff
Association: Pine Harbour Property Owners' Association
File Number: 2023-02205

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 1, 2022. The Association provided a response to the association complaint dated March 5, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 8, 2023 and received March 10, 2023.

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 stated in his complaint that he disagreed with the Association's decision not to release records to him as required by §55.1-1815¹ of the Property Owners' Association Act. The Complainant referenced an email string from the Association President in support of his allegations. He also included a list of documents that he had

¹ A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

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.

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.

requested. There did not appear to be a purpose provided for the documents requested, which is a requirement under the Property Owners' Association Act. If no purpose is provided, an association is not obligated to provide access to books and records.

In his cover letter, the Complainant referenced charges for the copies he had requested and the fact that the association failed to provide him the documents on a flash drive. These concerns were not part of the original complaint to the association and therefore cannot be considered as part of this determination since the Association was not provided an opportunity to respond to the allegations.

The Association's final decision stated that the Complainant had been permitted to review the requested records on January 14, 2023, and the Association had provided consideration of the complaint.

It appears that the Complainant was provided the opportunity to inspect the documents he requested, and the Association provided copies of documents by email. There was nothing in the Notice of Final Adverse Decision that suggested the Complainant had not received the totality of what he had requested. I will note that I did not see any purpose included in the initial request for access to the books and records, which is a requirement under the law. It appears, however, that a purpose was later provided when the Association requested it and provided a breakdown of costs for providing the requested documents and the Association's cost schedule. Because the Association appears to have provided the documents requested, and there was nothing in the complaint to suggest otherwise, I do not find a violation of the Property Owners' Association Act as it pertains to the Complainant's access to books and records.

Required Actions

No action is required of the Association.

Please contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Pine Harbour Property Owners' Association