



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

September 5, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Raymond Olkin
Association: Stratford Condominium Unit Owners Association
File Number: 2024-00336

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 April 14, 2023. The Association provided a response to the association complaint dated July 17, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 7, 2023 and received August 11, 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.

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

This Determination is final and not subject to further review.

Determination

The Complainant has alleged that the Association failed to respond to his requests for documents related to water damage to his unit. The complainant wrote that he hand delivered a request for documents to the Assistant Manager of the association. The Complainant believes that by failing to provide him the documents he requested, the association has violated §55.1-1939.1 and §55.1-1945 of the Virginia Condominium Act.

The Complainant provided a list of the documents he had requested and noted that he had only received one page of the documents requested. The Complainant alleged that while the Association stated that he had received all the documents, in fact, he had not. The documents he requested included a damage estimate, invoice estimate, a contract, payment records, and correspondence.

The Association responded to the complaint by noting that it had provided the Complainant the documents he sought by letter dated June 30, 2023. The Association also provided the Complainant a copy of the requested contract with its final decision. The referenced letter was not included in the NFAD so, in line with its right under the law and regulations that govern the complaint process, this office reached out to the Association to obtain a copy of it. We did not request copies of the documents it referenced since they amounted to hundreds of pages.

According to the letter sent to the Complainant by the Association dated June 30, 2023, the Complainant was provided a copy of the master insurance policy, repair estimates for damages to building 1860 and Unit 1-280, invoices for water remediation in the same building, the Purofirst contract for the same building, copies of payment

issued from Erie Insurance related to the flood damage claim for the same building and unit, and all other written communications with Erie Insurance related to the flood.

Based on the Association's correspondence, it appears that they have provided the Complainant the documents that he requested. The only disconnect I could find is that the Complainant requested the Purofirst contract for reconstruction and it appears the Association provided the Purofirst contract for remediation. I cannot tell from the complaint or association response if these are the same or different documents.

While it does appear that the Association failed to provide the documents in a timely manner, it appears that it has now provided the requested documents and come into compliance with the statute that governs access to books and records. While it was likely frustrating for the Complainant to wait several months to receive the documents, our goal is always compliance, and it appears that compliance has been obtained or that we are extremely close to compliance.

Required Actions

If the Complainant did not receive the Purofirst contract for reconstruction, which appears to be the only document that might be outstanding in his list of requested documents, I ask the association to provide this document if it exists. Please copy me on any correspondence to the Complainant regarding the contract. If it does not exist, please let me know via email that the document is not available.

Please contact me if you have any questions. Thank you for your assistance in addressing the Complainant's concerns.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Stratford Condominium Unit Owners Association

Candice Wade
Community Management Corporation