



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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April 29, 2024

Complainant: Adam Rubinstein
Association: The Lofts at Reston Station Condominium Association
File Number: 2024-01760

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, Adam Rubinstein, submitted a complaint to The Lofts at Reston Station Condominium Association dated December 10, 2023. The Association provided a response to Mr. Rubinstein's complaint dated January 24, 2024. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman dated January 25, 2024, and the NFAD was received by our Office on January 30, 2024.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 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 of the Code of Virginia of 1950, as amended ("Va. Code") 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.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, 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 conflicts 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 Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board. Further, this Determination is final and not subject to further review pursuant to Va. Code § 54.1-2354.4(C).

Determination

In the NFAD, the Complainant asserted that the Association violated Va. Code § 55.1-1949 by discussing “the contractual impact to the budget in executive session.” Specifically, Mr. Rubinstein acknowledged that the Association Board could discuss contracts in a closed session but that a discussion about the budget was improper and should have been conducted in a meeting open to unit owners.

In general, Va. Code § 55.1-1949 provides that executive boards must conduct the business of associations in open meetings, with limited exceptions. To ensure that unit owners can fully participate in the governance of their associations, Va. Code § 55.1-1949 requires that the executive boards properly and effectively notice the meetings to the unit owners and provide them time at such meetings to offer public comments. Most pertinent here, Va. Code § 55.1-1949. C allows the executive board to “discuss and consider contracts” in an executive, i.e., closed to the public, session. But any votes on a contract can only be held once the executive board has reconvened in an open session. Further, this statute does not allow executive boards to conduct budgetary discussions in closed session.

The crux of the complainant’s assertion centers on a meeting notification published by the Association Board on or about October 26, 2023, in which it is announced that:

Special Meeting of the Board of Directors on 10/31/2023 @ 6pm

The Board of Directors will hold a special meeting to discuss the contractual impact to the budget on 10/31/2023 at 6:00 p.m. The contract discussions will be in an executive session and not open to the residents.

There was no further specificity on the "contractual impact to the budget" with the notification. Nor is there any further evidence that establishes that the Association Board actually conducted any budgetary business in that executive session.

In its response to the Complainant, the Association Board, through its property manager Carolyn Smallwood, noted in the decision issued on January 24, 2024, that the Board explained in its January 17, 2023[sic] meeting that there were no budget discussions during the October 31, 2023, meeting, only a discussion for the "consideration of contracts, among others." The decision further stated that there were no minutes for the October 31, 2023, meeting because no votes were taken. Ms. Smallwood then stated that all budget discussions and considerations occurred in the Finance Committee meetings and the November board meeting, all of which were open to the unit owners. The decision closed by apologizing for any confusion caused by the October 26, 2023, notification and noted that it will "endeavor to be clearer to avoid such confusion."

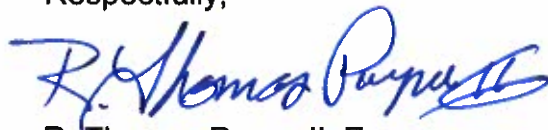
The facts and information set forth in the complaint packet do not support a determination that the Association Board for The Lofts at Reston Station Condominium actions conflict with Va. Code § 55.1-1949, therefore, the Office of the Common Interest Community Ombudsman will close this matter with a **no violation** determination.

Required Actions

Because there was no violation found, there are no required actions. We do, however, agree with the Association's executive board that greater care in the drafting of its notifications may help avoid confusion in the future. In the above notice, the phrase "contractual impact to the budget" sent an understandably mixed message, as it blended both permissible and impermissible topics for an executive session. The Board's greater care with future messages should help avoid such confusion, and the proactive measure is appreciated.

Please contact us if you have any questions.

Respectfully,



R. Thomas Payne II, Esq.
Acting CIC Ombudsman/Deputy Director,
Compliance & Investigation Division