



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Kishore S. Thota
Director

December 26, 2023

Complainant: Amy Hayden
Association: South Run Regency
File Number: 2024-01403

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 October 3, 2023. The Association provided a response to the association complaint dated November 15, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 12, 2023 and received December 14, 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 is a member of the Board of Directors of her association. She has alleged that the Association has failed to provide her certain documents that she had requested that were related to a motion for recusal at a board meeting. The Complainant wrote that she did not receive a response from the association manager but did receive one from the President, stating that the request had been referred to counsel.

The Complainant believes the failure to provide her the information she requested is a violation of §55.1-1815(F) of the Property Owners' Association Act. The Complainant also alleges violations of the governing documents of the Association, the management agreement, and that the failure to provide the documents impacted her ability to consider and evaluate the board motion. As noted in the prefatory language, this office can only address violations of common interest community law. As such, only the possible violation of the Property Owners' Association Act will be addressed in this Determination.

The Association responded to the Complaint by stating that the association manager had responded to the document request and had explained to the Complainant that he did not have any email correspondence related to the recusal. He also wrote that the only time he recalls the topic being discussed was at a prior meeting in August and that the Complainant had been part of that August email exchange. A copy of the exchange was included in the NFAD.

The Association also referenced the Complainant's more recent request for information about the date of an upcoming hearing and the next steps for the association and told the Complainant that if she believes she needs to review the books and records relating to the hearing in furtherance of her duties on the board, the documents will be made available to her as a Trustee.

It appears that the documents requested by the Complainant did not actually exist and therefore, the Association had no obligation to create them or provide them. The Association did offer the Complainant the opportunity to review the books and records related to an upcoming hearing if she thinks it is necessary in furtherance of her duties on the board. It does not appear that the Association is in violation of §55.1-1815(F) since it could not provide documents if they do not exist, and it has already offered the Complainant the opportunity to examine the books and records for the upcoming hearing.

Required Actions

No action is required of the Association.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
South Run Regency