



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

February 128, 2018

Esther Lee
Secretary of
Commerce and Trade

Complainant: Valeriya Kotova
Association: The Village homes of Stoney Run Condominium Association
File Number: 2018-01812

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 11, 2017. The Association provided a response to the Complainant dated December 15, 2017. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 31, 2017 and received January 5, 2018.

Determination

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 §55-530(F) (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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant has alleged that the Association is charging fees that are unlawful. The Complainant references unbundling of certain expenses from the general assessment, and believes the cost of meter reading and the issuing of statements to be operational expenses and not services to owners. The Complainant argues that the cost of the sub meter reading contractor is no different from any other contractor performing services for the association and the assessments for such cost should be part of the general assessment not unbundled from it. She believes this is a violation of §55-79.83 of the Condominium Act which pertains to different types of assessments in condominiums, namely additional, general and limited common element.

The Association responded to the complaint by stating that “[t]he Board determined their actions for which you complained complied with [Section of the Code and Bylaws] of the [Virginia Property Owners Act or Virginia Condominium Act].” This sentence, including the bracketed language, was pulled verbatim from the final decision of the Association.

The Complaint submitted to the Association is difficult to understand, perhaps because there is not enough information to flesh out the details of the alleged violation. That being said, it does not appear that this office has jurisdiction to determine whether the assessment of certain services are appropriate or not and whether they can be “unbundled” from a general assessment. While the Complainant did allege a violation of §55-79.83 of the Condominium Act, she did not specify precisely how the action of the Association violated that provision. In addition, even if she had, this office cannot review the condominium instruments to determine if they contain language that may or may not permit the Association to assess as it has done. A review of Va. Code 55-79.83 demonstrates that it must be read in conjunction with the condominium instruments of the association as the bulk of the statute relies upon what may or may not be contained in the condominium instruments.

Required Actions

While I do not find that the Association has violated common interest community law or regulations related to the Complaint, I do find that the Association failed to adhere to the Regulations when it provided a final determination to the Complainant.

The Association failed to include certain requirements set forth in the Regulations when responding to the Complaint. Under 18 VAC 48-70-50(9) and (10)¹ the final

¹ The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.

determination from an association must include specific citations to applicable laws or regulations that lead to the final determination. While I assume the final determination's failure to update the bracketed information was an oversight, such oversight provided the Complainant very little information to help her understand the Association's position. The Association is now on notice that it must ensure compliance with the Regulations in their entirety, when responding to a Complaint. A failure to do so in the future may result in a referral of the matter to the Common Interest Community Board for enforcement.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Village Homes of Stoney Run Condominium Association