



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

April 3, 2013

James S. Cheng
Secretary of
Commerce and Trade

Gordon N. Dixon
Director

Complainant: William Coleman
Association: Runnymede Homeowners Association
File Number: 2013-02168

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

Complainant submitted a complaint to the Runnymede Homeowners Association dated October 29, 2012. The complaint alleged several violations of the Association's governing documents as well as a violation of the Property Owners Association Act and a violation of the Common Interest Community Manager Regulations (Manager Regulations). The Association provided Complainant a Final Decision dated January 29, 2013. Complainant subsequently submitted his Notice of Final Adverse Decision (NFAD) to this office on February 14, 2013.

Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the NFAD in its entirety. Any additional information submitted by Complainant that was not part of the original Complaint submitted to the Association was reviewed but not utilized in the Ombudsman's determination.

There were several numbered concerns set forth in the Complaint submitted to the Association. Items 1(a) and 1(b) will not be addressed in this Determination as they relate solely to the enforcement of the governing documents of the Association, and therefore do not fall under the jurisdiction of the OCICO. Item 1(c) alleges that the Association failed to provide requested Association books and records as required by §55-510 (and portions of

the governing documents which will not be addressed here). Item 2(a) alleges that the Association's management company failed to act in accordance with the Association regulations, thus violating 18 VAC 48-50-190(7) which classifies the "intentional unjustified failure to comply with the ...association governing documents" as a Prohibited Act under the Manager Regulations.

The Association's response in relation to the issues over which this office has jurisdiction did not appear to be adverse to what the Complainant sought. Specifically, Complainant requested access to

1. The current property management agreement;
2. All minutes and/or transcriptions of Board and/or Committee Meetings since June 24, 2010 wherein decisions were taken that resulted in the creation of new Resolutions (excluding governance Resolution #1): modifications or amendments to existing Resolutions; and decisions by the Board of Directors concerning the enforcement or non-enforcement of Resolution in effect; and
3. Any decision taken at any time that provided special or individual dispensations from the Resolutions.

In its Final Decision, the Association concluded that the management company should provide the Complainant with the information that he requested, and noted that he should have received an acknowledgement of his initial request for books and records. Based on the information provided in the NFAD, it appears that the initial request to examine the books and records was misplaced or lost, as the Complainant has a signed return receipt showing that his request was delivered to the management company by U.S. Mail, but the management company had no record of receiving the request to examine the books and records of the Association.

The Association also noted in its Decision that all minutes of the Board of Directors from June 24, 2010 to October 23, 2012 are available on the Association's web site. The Association also stated in its Decision that to the best of its knowledge, there are no known decisions in the past 30 years where "special or individual dispensations from the Resolutions" were made that were not included in the documents readily available to owners in the minutes or the unanimous written consent summaries that are appended to the minutes.

Finally, the Association directed the management company to provide the Complainant with the Finance and Taxes Resolution 4 and asked that the management company schedule a time for the Complainant to examine the requested materials. As noted in the Decision, the Association has the right to impose appropriate fees in accordance with its required Schedule of Costs and Fee (§55-510(D)). At the time of this Determination the management company had not scheduled a time for the Complainant to examine the books and records of the Association.

The portion of the NFAD that alleges a violation of the Common Interest Community Manager Regulations will be briefly discussed here, but is not an allegation

that will be addressed in this Determination. Complainant alleged that the management company failed "to act in accordance with the Association Resolutions concerning the taxicab parked continuously in violation of RHOA parking resolutions." It is the Complainant's belief that the management company is in violation of 18 VAC 48-50-190(7) and has intentionally and unjustifiably failed to comply with the association governing documents.

No information was provided in the Complaint or the NFAD as a whole that indicated that any perceived failure on the part of the management company to enforce or comply with the governing documents was intentional or unjustified. In addition, the responsibility of this office is to determine if there has been a violation of law or regulation governing common interest communities. Managers fall under Common Interest Community Manager Regulations and these regulations do not govern common interest communities.

Based on my review of the Notice of Final Determination, I do not find that there has been a violation of any law or regulation governing common interest communities.

Required Actions

As promised in the Association's Final Decision, the Association, on its own or through its management company, must contact Complainant and set up a time when he can examine the books and records of the association. All applicable common interest community laws and regulations apply, therefore, the Association may withhold any documents that may be excluded according to §55-510(C)). In addition,

"Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made." (Code of Virginia, §55-510(D).

I would ask that the Association notify me in writing (email is acceptable) when it has scheduled a time for the Complainant to review the books and records. In order to ensure that there continues to be no violation of law or regulation governing common interest communities, I need to receive the notification within 30 days of the date of this Determination, which is **Friday, May 3, 2013**. A failure to schedule the review of the books and records may result in a referral of this matter to the Common Interest Community Board for further review and any action it deems appropriate.

While I do not believe that there is a provable violation of the Manager Regulations, based on the information provided in the NFAD, Complainant may submit a complaint to

the Common Interest Community Board, which is the Regulatory Authority for Common Interest Community Managers. A complaint form for such a submission can be obtained from our website at www.dpor.virginia.gov.

If either party has any questions regarding this determination, you are welcome to contact me. This Determination is final and there will be no further review.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Runnymede Homeowners Association