



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

James S. Cheng
Secretary of
Commerce and Trade

Gordon N. Dixon
Director

July 31, 2013

Complainant: Greg Viggiano
Association: Colecroft Station Condominium
File Number: 2014-00037

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 Colecroft Station Condominium (Association) dated March 18, 2013. The Association responded to Complainant with a letter dated June 5, 2013 that referenced several prior letters and the decisions contained in those letters, specifically a May 25, 2012 letter and a March 12, 2012 letter. The Complainant submitted a Notice of Final Adverse Decision to the Office of the Common Interest Community Ombudsman dated June 25, 2013.

Determination

The Office of the Common Interest Ombudsman has reviewed the Notice of Final Adverse Decision (NFAD). 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.

Complainant alleges that the Association's notice of violations was defective and inadequate, that it contained mistakes and errors, that the Association failed to comply with Policy Resolution No 4.I.L.5, that the decision drafted and forwarded to Complainant by the Association's attorney was not sufficient to meet the requirement that the Covenants Committee provide a decision, that the Complainant was not permitted access to unredacted statements from the attorney, and finally that the Association has no justification for assessing legal fees against the Complainant and that doing so violates the Bylaws of the Association.

The initial Complaint to the Association was related to renovations that Complainant made to his unit. The Association found that the Complainant had not fully complied with the approvals that had been granted and after several hearings, assessed the Complainant for the violations and for attorney fees related to the violations. The Bylaws of the Association appear to provide the Association the right to assess attorney fees, but interpretation of the condominium instruments does not fall under the purview of this office so any such conclusion is based solely on a cursory review of the Bylaws.

The majority of the Complainant's concerns are not issues that would properly fall under the jurisdiction of this office, and are not appropriate for submission through the complaint process required by the Common Interest Community Ombudsman Regulations (Regulations) as they are related to the condominium instruments and not to possible conflicts with common interest community laws or regulations. The sole issue raised in the Complaint that might constitute a possible violation of common interest community law was Complainant's belief that he should have been provided unredacted copies of the billing statements from the attorney.

Complainant was issued copies of the billing statements and payments made with information redacted. The attorney for the Association explained to Complainant in a letter dated March 28, 2012, that the redacted information pertained to attorney client privileged information. Under §55-79.74:1(C)(5) of the Condominium Act, "Communications with legal counsel which relates to subdivisions 1 through 4 or which is protected by the attorney-client privilege or the attorney work product doctrine" may be withheld from examination or copying by unit owners. Because attorney-client privilege has been claimed, and because there is an exclusion under the Condominium Act for attorney-client privilege, the Association does not have an obligation to provide unredacted copies of the statements and payments to the Complainant.

Required Actions

No action is required of either party. However, I would caution the Association to be more careful in the future when responding to Complaints. In this particular instance, the vast majority of the Complaint was related to the condominium instruments and therefore not appropriate for submission under the Complaint Process required by the Regulations. However, the portion of the Complaint related to the billing statements and subsequent payments, alleging that Complainant should have been provided unredacted copies, was an allegation that was appropriate for the complaint process.

Because this was an allegation of a conflict with common interest community law or regulations, the Association should have, at least in relation to that allegation, issued a Final Determination to the Complainant. That Final Determination should have been labeled as such and it should have also contained information regarding 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 (18VAC48-70-50)." This was not included and must be included in all future Final Determinations.

If either party has any questions regarding this determination, you are welcome to contact me.

Sincerely,

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

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Colecroft Station Condominium