



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

June 30, 2014

Jay W. DeBoer
Director

Complainant: Linda Gray
Association: Monarch Walk Condominium Association
File Number: 2014-03642

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 Association dated May 14, 2014. The Association provided a response letter to the Complainant dated May 29, 2014. The Notice of Final Adverse Decision (NFAD) was received by this Office on June 9, 2014.

Determination

The Complainant submitted a complaint alleging seven "counts" against the association. A portion of two of the counts alleged a violation of the Condominium Act but nowhere else in the Complaint submitted to the Association was there any allegation that the Association had violated common interest community laws or regulations. The counts were as follows:

Count 1 – Breach of Fiduciary Duties. Count 1 included allegations that the Association had violated provisions of the Condominium Act, specifically §55-79.90(A)(4), (12). In addition, this count also alleged that the Association had failed to follow the governing documents, and was not reasonable, consistent, or prudent in its actions.

The application of §55-79.90 is not a proper application of that statute. It pertains solely to the responsibilities of the Declarant in relation to the Public Offering Statement (POS). The Association does not have a responsibility to update the POS, but instead, is responsible for providing a resale certificate, if one is requested. An allegation that the Association failed to follow the governing documents, or in this case, the condominium

instruments is not an allegation that is appropriate for consideration by this office, nor are the additional allegations regarding the actions of the Association.

Count 2 – alleges, again improperly, a violation of §55-79.90(A)(15) by the Association.

Count 3 – again alleges a breach of fiduciary duties by the Association based on the Association’s adoption of a new resolution for use of the Association clubhouse.

Count 4 – also alleges a breach of fiduciary duties resulting from a perceived conflict of interest when a board member also serves on a committee.

Count 5 – alleges improper notification of new clubhouse rules and regulations.

Count 6 – alleges that improper assessments are being made that do not comply with the declaration.

Count 7 – alleges that contrary to the bylaws, the association has failed to give notice by newsletter or conspicuous posting. A letter was sent to all owners that the board will meet on every 4th Thursday.

The Complainant also requested seven counts of injunctive relief, which will not be addressed in this Determination.

The Office of the Common Interest Community Ombudsman (OCICO) has the authority and responsibility to provide a determination for Notices of Final Adverse Decision. A Notice of Final Adverse Decision must be filed with the OCICO in accordance with §55-530(F) (Code of Virginia) and the Common Interest Community Ombudsman Regulations. In order to meet the requirements of both common interest community law and regulations, all Notices of Final Adverse Decision must evolve from an original complaint submitted through an association complaint procedure or process. The complaint must be submitted in accordance with the association complaint procedure and, as very specifically set forth in the Common Interest Community Ombudsman 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 Common Interest Community Ombudsman Regulations, applicable laws and regulations pertain solely to common interest community laws and regulations. Any complaint that does not pertain to common interest community laws or regulations is not appropriate for submission through the association complaint procedure, and is not a complaint that should ever be the subject of a Notice of Final Adverse Decision. In the event that such a complaint is submitted to this office as part of a Notice of Final Adverse Decision, no determination will be provided.

The great majority of allegations contained in the Complaint were not related to common interest community law or regulations. For those allegations, no determination can be provided. The three references to the Condominium Act were misapplying the

responsibilities of a declarant to the association board, and therefore those references were not correct and it is inappropriate to apply the provisions from the Condominium Act intended for the declarant to the association board. I find no violation of common interest community law or regulations by the Association as it relates to the alleged violations of 55-79.90(A)(4), (12), and (15).

Required Actions

The Association provided the Complainant a letter that appears to have been intended as a final determination. The letter lacked a number of elements that are specifically required by the Common Interest Community Regulations. These include the license number of the management company, if applicable, the registration number of the Association, and notice of the Complainant's right to file a Notice of Final Adverse Decision with this office, along with the contact information for this office. The Association is on notice that any future final determination received by this office must contain all the necessary elements of a final determination as outlined in the Common Interest Community Ombudsman Regulations. A failure to include these requirements will result in the matter being referred to the Common Interest Community Board for whatever action it deems appropriate.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Monarch Walk Condominium