



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

January 9, 2015

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Michael Dandar and James Dandar  
Association: Highland at Gunston Corner  
File Number: 2015-01509

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*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.*

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## Complaint

Complainant submitted a complaint to the Association dated October 21, 2014. The Association provided a final determination to the Complainant dated November 11, 2014 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 17, 2014 and received November 19, 2014.

## 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 alleges in his Complaint that the Association has violated 55-79.83(E) of the Virginia Condominium Act, Section 6.2(d) of the Association By-laws, implemented a special assessment without authority, denied members of the association the right to vote upon a special assessment, and abrogated its fiduciary responsibilities. In addition, the Complainant believes the same allegations apply to the management company for the Association. The specific allegation is that by including a certain assessment, entitled "special assessment for operational losses" in the 2014 budget, an assessment that was more than 15% of the annual budget, the Association failed to comply with a provision in the By-laws that requires approval of such an assessment by the majority of owners.

The Association responded to the Complaint by stating that the 2014 budget was intended to "address the immediate financial needs of the Association, in accordance with the obligations imposed in Article VI, Section 6.1(b) of the By-Laws." The Association also noted in its response that the use of the term "special assessment" in the budget may have caused confusion as it was not intended to be used or interpreted in the same manner as the phrase is used in a separate Section of the By-Laws of the Association.

As noted above, this office only has jurisdiction over common interest community law and regulations, and Complaints are intended only to address such violations. As a result of the jurisdictional issues, the only allegation that will be addressed in this NFAD is whether the Association violated §55-79.83(E) of the Code of Virginia. §55-79.83(E) relates to additional assessments that may be necessary in the event that the "assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association." The Complainant did not specify how the Association violated this portion of the Condominium Act. There is no approval component in this provision of the Condominium Act, and under this portion of the Condominium Act, the owners have the right to protest the assessment if they do so within 60 days of the notice of the assessment. I do not find that this portion of the Condominium Act is applicable to the Complaint, nor do I find that there has been a violation of this provision.

I would provide an additional note that this office does not address violations by licensed managers of the Common Interest Community Manager Regulations. Such allegations would need to be submitted through the complaint process for the Department of Professional and Occupational Regulation, which is a complaint process separate and distinct from association complaint procedures. The information for submitting a complaint about a licensee can be found on our website at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Required Actions

No actions are required.

Sincerely,

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

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
The Highland at Gunston Corner