



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

May 20, 2016

Maurice Jones
Secretary of
Commerce and Trade

Complainant: Mark Lepnew
Association: Bella Vista Condominium Unit Owners Association
File Number: 2016-02534

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 March 3, 2016. The Association provided a final determination to the Complainant dated March 25, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 25, 2016 and received the same day.

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 two violations of the Condominium Act. The first allegation is that the Association violated §55-79.75(D)¹ by providing him a limited time period to speak during the open forum portion of a board of directors meeting. The Complainant also alleged that others were given more time than he had been given to speak during the open forum. The Complainant alleged that this happened at more than one board meeting.

In addition, the Complainant alleged that the Association violated §55-79.75(B)² by showing subjectivity in determining when to send surveys to owners regarding potential purchases or other expenditures for the benefit of the association. Further, the Complainant stated that a survey “was not completed with a board vote in an open HOA meeting.” The Complainant believes that the owners should have had the opportunity to review the survey draft and make comments before the Association voted to send it out to the owners.

The Association responded by stating that it found the complaints to be without merit. It further stated that the Complainant had been given opportunities to speak during the board meeting, outside the members’ forum, in addition to the time used during the forum. The Association noted that it has permitted owners to contribute and comment outside the members’ forum in the past, but as a result of the concerns expressed by the Complainant, it will now limit comments to no more than three minutes to ensure that all members are given equal time to speak.

In response to the allegation that the Association had violated §55-79.75(B), the Association noted that there had been a vote on the survey, and the vote had taken place at the February 18th meeting and was reflected in the minutes of that meeting. As a result there was no violation of the Condominium Act.

I agree with the Association that the allegations contained in the Complaint do not constitute violations of the Condominium Act. The Association has provided owners an opportunity to speak during board meetings, and the Complainant has only expressed dissatisfaction with the length of time he was provided, not that there was no opportunity to be heard. The Condominium Act does not require a particular amount of time for each owner to speak; it merely requires that owners be given “an opportunity to comment on any matter relating to the unit owners’ association.” There was no allegation that the

¹ D. Subject to reasonable rules adopted by the executive organ, the executive organ shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners’ association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive organ may limit the comments of unit owners to the topics listed on the meeting agenda.

² B. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners’ association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record.

Complainant was not allowed to comment; only that he was allegedly not permitted to speak for the same amount of time as others during the forum.

As to the complaint that a meeting was held without notice, there was no information provided that indicated a meeting had been held without notice. The Association has confirmed that the survey in question was voted upon in an open meeting and that the minutes of the meeting reflect that vote. As to whether or not the owners of the Association should have been given the opportunity to provide opinions and suggestions about the survey before it was voted upon by the board, that is a question outside the scope of this office and not suitable for a determination.

Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Bella Vista Condominium Unit Owners Association