



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

June 28, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Mark Lepnew
Association: Bella Vista Condominium Unit Owners Association
File Number: 2016-02796

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 April 7, 2016. The Association provided a final determination to the Complainant dated April 22, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 21, 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 three violations of the Condominium Act in his Complaint. The first allegation is that the Association violated §55-79.75(B)¹ when the Chair of the Covenants Committee appeared to tape the meeting with her phone without announcing her intent to record the meeting. The Complainant also taped the meeting, but announced in advance that he would be doing so.

The Complainant also alleged that the Association violated §55-79.75(B)² by failing to have a 2014 minutes book at the front desk, by failing to sign meeting minutes from 2015, and failing to include information in 2015 minutes related to attendees at a meeting. The Complainant further alleges that the failure to have the Covenants Committee minutes in the minutes book at the front desk is a violation of §55-79.75(C)³, implying, it would appear, that the lack of minutes is proof that improper executive session meetings were held.

Additional allegations were contained in the Complaint, but will not be addressed in this Determination as they were not allegations related to violations of common interest community law or regulations.

The Association responded by stating that it found the complaints to be without merit. The Association noted that in relation to the recording of the meeting, “[e]ven if she had she done so, you fail to identify how...recording of the meeting violates Va. Code Ann. 55-79.75(B) or even a rule of the association.”

¹ Any unit owner may record any portion of a meeting required to be open. The executive organ or subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

² 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. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

³ The executive organ or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant thereto for which a unit owner, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive organ shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the executive organ or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

I agree with the Association that there was no evidence that the Condominium Act had been violated, and in fact, announcing that you are recording a meeting is only required if an association chooses to make such a requirement. There was no violation of §55-79.75(B) in relation to the recording of a Covenants Committee meeting.

The Association addressed the allegations regarding an additional violation of §55-79.75(B and C) resulting from a failure to include meeting minutes at the front desk by stating that “all Board meeting minutes are available for inspection and copying by members upon request...” The Association further stated that “these are not the official meeting minute records,” referring to the minutes kept at the front desk. The Association also addressed the Complainant’s allegation that a failure to include minutes from the Covenants Committee was also a violation of the Condominium Act by noting that §55-79.75(B) only requires that “[m]inutes of the meetings of the executive organ shall be recorded and shall be available...”

There is no requirement under the Condominium Act that meeting minutes be kept in a public place, therefore any perceived inaccuracies or deficiencies the Complainant might have alleged regarding the minutes books at the front desk are not actionable, since the Complainant never made a request for access to the official books and records of the association. I find no violation of §55-79.75(B) or (C) of the Condominium Act as it pertains to any of the allegations about the minutes books that are available at the front desk of the association.

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