



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

October 24, 2016

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Jack Rochevot
Association: Eagle Pointe at Cahoon Plantation, A Condominium
File Number: 2017-00674

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

The Complainant submitted a Complaint to the Association dated August 3, 2016. The Association provided a final determination to the Complainant dated August 19, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 7, 2016 and received September 14, 2016.

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 that the Association's President, by replacing addresses with case numbers when owners apply for modifications to common elements, is denying all owners the right to know where these modifications are being requested. The Complainant has asked that this methodology be terminated and that the address be used in the future, as has been done for the prior ten years. In addition, the Complainant alleged that the Association made the decision to use the case number method outside of a board meeting and without the approval of the board. The following statutes are the specific statutes the Complainant believes the Association has violated: §55-79.41, §55-79.42, §55-79.47, §55-79.54, §55-79.55, §55-79.74:1, and §55-79.80:1. The Complainant has also alleged violations of the Declaration, Bylaws, and other documents of the Association, but we have no jurisdiction over those documents and they will not be part of the consideration of this Notice of Final Adverse Decision.

The Association responded by noting that there is nothing in the Virginia Condominium Act (or the condominium instruments) that "prohibits the Board and the ARC from assigning case numbers to Applications." The Association also noted that the Bylaws grant the President "all of the general powers and duties which are incidental to the office of president of a nonstock corporation" and that there is "no prohibition in the Virginia Nonstock Corporation Act or the Bylaws for the Board President to make an administrative decision to assign case numbers to ARC applications."

The Complainant has failed to explain how the Association violated the specific provisions of the Condominium Act that he listed in his Complaint and it is not possible for this office, based on the information provided, to ascertain exactly how the alleged actions were in violation of the statutes set forth in the Complainant's initial Complaint to the Association. As previously noted, any possible violations of the condominium instruments cannot be considered due to our lack of jurisdiction over those documents. Because there was no specific explanation as to how the Association violated the Condominium Act, a Determination cannot be provided.

Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Eagle Pointe at Cahoon Plantation, A Condominium