



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

November 16, 2016

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Albert Schibani
Association: Lakeside Plaza Condominium Association
File Number: 2017-01016

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 22, 2016. The Association provided a final determination to the Complainant dated September 20, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 15, 2016 and received October 18, 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 Complaint submitted to the Association alleged that the Association has violated "open meeting" requirements of §55-79.75 of the Condominium Act¹ by discussing inappropriate topics in executive session, including rules and regulations changes and renovation plans.

The Association responded to the Complaint by stating that it has been "working with legal counsel to determine whether to edit and revise the Association's rules and regulations." The Association went on to state that "Section 55-79.75 of the Act expressly permits the Board to convene in executive session to consult with legal counsel. Accordingly the Board did not violate Section 55-79.75 of the Act."

The Complainant provided no proof that inappropriate topics were being discussed in executive session in violation of the Condominium Act. Such proof is usually difficult to come by, however, owing to the confidential nature of executive sessions. The Association, while it noted in its response that it has the right, under the Condominium Act, to consult with legal counsel in executive session, never actually stated in its letter to the Complainant that it did, in fact, convene in executive session in order to consult with counsel.

Because there is not sufficient information from either the Complainant or the Association to make a determination none will be provided.

Required Actions

While there was no determination that the Association has violated common interest community law, I would encourage the Association to be absolutely certain in the future that any executive session it may convene is carried out in strict accordance with the

¹ 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.

requirements set forth in the Condominium Act.

Sincerely,

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

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Lakeside Plaza Condominium Association