



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: 2017-01017

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 Complainant has alleged that the Association, in violation of §55-79.75:1¹ of the Condominium Act has failed “to provide a reasonable, effective and free method for unit owners to communicate among themselves regarding any matter concerning association.” The Complainant also alleged that “the Board is effectively censoring the bulletin board in violation of section 55-79.75:1 by removing unit owners’ postings within minutes of posting.” In this case, the Complainant had written the words “Lakeside Plaza Criminal Investigation” on a document from the Fairfax County complaint inquiry website that had been posted on the bulletin board and referenced an open complaint about a contractor at 3800 Powell Landing.

In its response to the allegations, the Association stated that “unit owners may submit written communications to the general manager’s office or submit communications by electronic mail.” The Association also noted that it provides a bulletin board where owners may post information and that there is a comment period during board meetings. The Association further stated that the handwritten statement placed by the Complainant on the posting was defamatory and exposed the Association to possible liability. The Association also stated that it did not use an unlicensed contractor and the association was not the target of a criminal investigation. The contractor complaint was ultimately closed.

While bulletin boards may be considered antiquated in today’s current technologically advanced era, they can still meet the requirements for a reasonable, effective and free method of communication as outlined in §55-79.75:1 of the Condominium Act and there was no argument that they did not do so in the present case. As to the Association’s decision to remove the document upon which the Complainant had written, the Association did not require prior approval of the handwritten note, which may have been a violation of the Condominium Act. Instead, after the posting took place, the Association removed it because it believed the posting was defamatory and potentially placed legal liability on the Association.

This office cannot determine whether the posting was defamatory or a potential liability, and therefore cannot provide a determination as to whether the Association acted appropriately when it removed the posting. Such a determination is a civil matter and not

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A. The executive organ shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive organ regarding any matter concerning the unit owners’ association.

B. Except as otherwise provided in the condominium instruments, the executive organ shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners’ association.

one that would fall under the jurisdiction of this office since there is nothing in common interest community law or regulation related to defamation or association liability.

Required Actions

No action is required of the Association.

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