



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 3, 2016

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Michael Thompson
Association: Kempsville Lake Community Association, Inc.
File Number: 2017-01183

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 October 5, 2016. The Association provided a final determination to the Complainant dated October 25, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 14, 2016 and received November 15, 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.

In his Complaint to the Association, the Complainant alleged that the Association has violated §55-513 of the Property Owners' Association Act by assessing owners for covenant violations in a manner that is inconsistent with the statute. The Complainant provided copies of policy resolutions and a letter that had been previously sent to the homeowners in support of his allegation. The Complaint provided general allegations of prior and ongoing violations of the statute, but did not provide a specific instance where the Association had violated §55-513, nor did the Complainant specify which portion of the statute had been violated or how it had been violated. Ultimately, the Complainant alleged that the policy resolutions themselves were erroneous and that the Association had improperly interpreted and applied Va. Code §55-513.

The Association responded to the Complaint by stating that "it is the opinion of the Board of Directors that the due process policy procedure is correct and the Board of Directors concur that we will continue to follow the policy."

This office cannot provide a Determination regarding the alleged violation. In order to do so, this office would be required to read and interpret the specified resolutions of the Association. Such interpretation is not within the jurisdiction of this office. While the allegations made by the Complainant do relate to possible violations of common interest community law, the only way in which to determine if such violation has occurred is by an extensive review of the resolutions as well as the other governing documents of the Association. This office does not have such authority or jurisdiction and therefore cannot provide a Determination.

Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Kempsville Lake Community Association, Inc.