



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

May 30, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Avis Bracey
Association: Villages at Rippon Landing Homeowners Association
File Number: 2017-02574

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 January 30, 2017. The Association provided a final determination to the Complainant dated March 16, 2017 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 12, 2017 and received April 14, 2017.

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 much wrongdoing on the part of the Association. Of the many allegations set forth in the Complaint to the Association, the only allegation made by the Complainant that pertained directly to common interest community law, was her allegation that she had not been provided due process regarding a violation of the architectural guidelines for her association. The Complainant stated that she had painted her shutters two years ago and was asked approximately six months later if she wanted “to have a hearing on the shutters.” The Complainant stated that the hearing did not take place, and upon application for a pool pass in May 2016, she was denied her pool pass due to the alleged violation.

In its response, the Association noted that many of the complaints submitted to the Association dated back several years and as such would not be addressed since they took place under prior boards. The Association went on to address many of the other complaints that did not pertain to common interest community law or regulations.

As to the alleged violation of the governing documents, the Association stated that it was clear, based on the documentation the Complainant included with her Complaint, that she was “aware of the violations alleged against your property, that you received multiple notices of the violations as well as ample opportunity to cure. The allegations that you were unfairly treated or ‘targeted’ are unfounded.” The Association went on to state the Complainant had been informed of the suspension by “Notice of Hearing Result, dated July 28, 2016.” It further noted that the Board had the right, under the declaration, to “suspend a member’s rights to services for nonpayment of assessments which are more than 60 days past due.”

Upon review of the NFAD packet, I found that the Complainant had included numerous notices pertaining to the hearing as well emails that were related to the shutter violation and hearing. I counted five emails and four letters either from the Complainant or the Association, all related to the same violation – the color of the shutters. It appears that the Complainant did have ample notice of the violation. However, it was not clear that the Complainant had received notice of the hearing. No hearing notice was included in the NFAD and the Association’s response to the Complainant did not state that the notice had been provided nor was there a copy of such notice included in the Association’s response. It was clear, however, that a hearing had taken place since the Complainant received a “Notice of Hearing Result.” On the flip side of this issue, the notices provided to the Complainant regarding the shutter violation had waiver language stating that the right to a hearing was waived if the individual did not respond to the letter and neither the Complainant nor the Association provided any evidence that a response had been made.

The Association did send an email to the Complainant in March 2017, where it offered a resolution to the Complainant, which would remove all fines and late fees, restore access to the common areas, and provide clearance for her to obtain visitor placards, as long as the shutters were repainted by April 30, 2017. The Association also mailed a

Notice of Rules Violation to the Complainant by certified mail on April 7, 2017, with the hearing to be held April 27, 2017 and the Complainant acknowledged receipt of this Notice on April 10, 2017.

Because I cannot verify that an actual notice of a hearing was sent out, as required by §55-513 of the Property Owners' Association Act¹ I find that the Association failed to adhere to this provision of the Property Owners Association Act. There were multiple notices of the actual violation, and there was a notice of the hearing result, but no evidence that the actual notice of the hearing had been provided in a manner that complied with §55-513.

Required Actions

According to the documents provided with the NFAD, the Association has since provided proper notice of a hearing and an opportunity for the Complainant to wipe the slate clean of late fees and suspension if the violation is resolved and the shutters are painted a color that comports with the Association's architectural guidelines. While the Association may not have provided proper notice of the hearing held in July of 2016, it has since rectified this matter by providing a subsequent notice of a new hearing and the opportunity to resolve this entire issue by painting the shutters. Because of this, there is no further action required by the Association in relation to the NFAD submitted to this office.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Villages at Rippon Landing Homeowners Association

¹ Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55-510. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.