



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

June 15, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Jason Dispenza
Association: Parc Reston Condominium Unit Owners' Association
File Number: 2017-02876

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 two complaints to the Association, one dated August 15, 2016 and another dated March 18, 2017. The Association provided a response to the Complainant dated May 5, 2017. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 14, 2017 and received May 18, 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 submitted two separate Complaints to the Association. The first Complaint was dated August 15, 2016 and alleged that the Association's manager violated 18 VAC 48-50-190(1)¹ of the Administrative Code of Virginia. The Complainant stated that the manager had abused her power as the "gatekeeper" of the Association's master email list by not sharing the list on an equal basis and picking and choosing the individuals included in emails. The Complainant further alleges that the manager failed to provide access to the list to the Complainant on three separate occasions, even when the Complainant was serving on the board of directors. In order to resolve the Complaint, the Complainant asks the Association to create a list-serve with all members' emails that can be used to send emails to all members but from which individual member emails cannot be viewed or determined.

The second Complaint was dated March 18, 2017 and alleged that the manager for the association had been involved in "election rigging" by being dishonest about the number of proxies and candidates and sending different proxies to different populations.

The Association responded to both Complaints. The first response was to the August 2016 Complaint. The Association noted that the (prior) manager denied any such behavior or action and it further noted that §55-79.74:1C.9² allows an association to deny access to information that is part of an individual unit owner's file. The Association considers email addresses to be private, confidential, and part of an individual owner's file and therefore not appropriate for dissemination to other owners or members of the board of directors. The Association did state that it would be more than happy to provide a membership list along with corresponding addresses of record to "any requesting unit owner in good standing so long as the request is for a proper purpose related to the requestor's membership in the Association..."

In its response to the Marcy 18, 2017 Complaint, the Association stated that "[t]he Board resoundingly rejects your assertions that they, the Association's on-site manager...and the Association's managing agent...engaged in any election rigging." The Association provided additional information about the proxies used for the election, and specifically that only one proxy form was provided by the management company on behalf of the Association.

The Complainant did not provide specific evidence as to how the manager may have violated, induced another to violate or cooperated with others in violating any provisions in the Condominium Act, which is the applicable Act in this particular situation. There was no specific allegation of a violation of the Condominium Act, and as the Association said in its final decision, the Association does have the right, under §55-79.4:1C.9 to withhold information contained in an individual unit owner's file. For these reasons I do not find that the Association has violated common interest community law or regulations in regard to the allegations contained in the August 2016 Complaint.

¹ 1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia, Chapter 24 (§ 55-424 et seq.) of Title 55 of the Code of Virginia, Chapter 26 (§ 55-508 et seq.) of Title 55 of the Code of Virginia, or Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia, or engaging in any acts enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.

² Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

The Complaint dated March 18, 2017 did not allege any violation of common interest community law or regulation and therefore no Determination can be provided.

Required Actions

No action is required.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Parc Reston Condominium Unit Owners' Association