



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

July 27, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Jerry King
Association: Pleasant Valley Condominium Owners Association
File Number: 2017-03017

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 April 11, 2017. The Association provided a response to the Complainant dated June 1, 2017. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated June 6, 2017 and received June 13, 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 a Complaint to the Association alleging that no money is being deposited into the reserve fund and that money from the reserves is being used to pay bills. Bank statements were provided that appeared to show several transfers of money from one account to another. No other information was provided to prove the allegations.

The Association responded by stating that they do not believe any money was used improperly and that the governing documents allow for use of reserves to pay for maintenance of the complex.

There was simply not enough information in the Complaint or the Final Decision to determine if there has been any violation of common interest community law or regulation, and no particular law or regulation was cited. If we stretch to fit this complaint under the provisions related to reserve funds, §55-79.83:1, the only language that would appear to be applicable would be paragraph A(3); “[m]ake any adjustments the executive organ deems necessary to maintain reserves, as appropriate.” The Association’s executive organ has the power and authority to maintain the reserves as it deems appropriate in accordance with the reserve study. I can find no violation of the Condominium Act based on the information 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
Pleasant Valley Condominium Owners Association