



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

July 30, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Mark Lepnew
Association: Bella Vista Condominium Association
File Number: 2016-00122

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 May 7, 2015. The Association provided a final determination to the Complainant dated June 8, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 7, 2015 and received July 8, 2015.

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, the Complainant requested the agenda, minutes, and final voting results from an executive session that took place prior to the monthly board meeting in May 2012 during a special board meeting. The Complainant noted that he had previously requested this information from the board in a board meeting. The Complainant does not allege a violation of common interest community law or regulation by the Association, but instead suggests that if the requested information is not available the unavailability is a result of a violation of the Condominium Act.

The Association responded by noting that the only still-serving member of the board of directors that was in place in May of 2012 provided his recollection of the alleged meeting and a diligent search of the records was carried out. The Association indicated in its response that neither the recollection of the board member nor the search provided any reason to believe that there was a special meeting in May of 2012. The Association stated that the only known meeting in May 2012 was the regular board meeting, and minutes were available for that meeting.

Several issues arise in this Notice of Final Adverse Decision. The first being that the Department of Professional and Occupational Regulation has a three year time limit for filing complaints. That time limit requires that a complaint be received "within three years of the act, omission, or occurrence giving rise to the violation." (§54.1-307.1 Code of Virginia) As the Complainant noted, the alleged meeting took place in May of 2012, which means that we are well past the three year time limit for filing a complaint about that meeting. In addition, this office and the Common Interest Community Board do not have jurisdiction over individuals in associations. Our jurisdiction lies only with the governing board of an association (§54.1-2351 and §54.1-2345 Code of Virginia), which would be the present board rather than members of a prior board. Therefore, we are not able to hold prior board members accountable.

Finally, if there is no proof of a meeting, and no recollection of a meeting, it is not possible for an association to provide any documents related to that meeting. If that meeting did take place, it was not during the present board's administration, and if there were documents related to the alleged meeting, based on the Association's response to the submitted Complaint, they are no longer or never were, part of the books and records maintained by the Association.

It does not appear that the Association has violated common interest community law or regulations. In addition, such a determination may be moot, since the time limit for filing a complaint related to the alleged meeting has passed, and the CICB, if enforcement became necessary, has no authority to pursue individual members of a governing board that was in place over three years ago.

Required Actions

No action 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
Bella Vista Condominium Association