



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

February 10, 2016

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

Complainant: Nicholas Christodoulou
Association: Bluewater Property Owners' Association, Inc.
File Number: 2016-01772

Jay W. DeBoer
Director

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 his complaint to the Association on November 29, 2015. The Association provided a final determination to the Complainant dated December 15, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 13, 2016 and received on the same date.

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 that the Association violated §55-509.3 and §55-514 of the Property Owners' Association Act when it purchased flowers for the families of

deceased association owners. The Association responded in its final determination that no special assessment had been made or was going to be made and therefore §55-514 was inapplicable. It also stated that Section 5.2 of the Association's Covenants, Conditions, and Restrictions permits the Association to assess "for the purpose of promoting the health, safety, and welfare of the residents..." The Association did not address the allegation that it had violated §55-509.3 of the Property Owners' Association Act.

No evidence was provided that indicated a special assessment had been made by the Association or that one was scheduled to be made. As such, §55-514 of the Property Owners' Association Act does not come into play in the present situation and there is nothing in the Complaint that would indicate the Association has violated §55-514.

The key issue to be determined is whether the Association has the authority to utilize association funds to purchase flowers for the families of deceased owners. §55-509.3 of the Property Owners' Association Act states

Except as expressly authorized in this chapter, *in the declaration* (emphasis added), or otherwise provided by law, no association may (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in §55-509.6 or 55-509.7 that is not expressly authorized in those sections.

The Association has stated in its Final Determination that its own Covenants allow the Association to utilize association assessments for the welfare of the residents of the association. As can be seen above, §55-509.3 authorizes an association's declaration (covenants) to provide for charges or assessments other than those set forth in that statute, which ultimately means that the determination as to whether the Association can purchase flowers is based on the covenants of the Association. Therefore, I cannot make a determination as to whether the Association has violated §55-509.3. If the Association's covenants permit the Association to use its assessments for the purpose of buying flowers for the families of deceased owners, the Association may do so. This office cannot offer an opinion as to whether the covenants do, in fact, provide such authorization as we do not have the authority to review or interpret the governing documents of any association.

Required Actions

No action is required of the Association.

Sincerely,



Heather S. Gillespie

Common Interest Community Ombudsman

cc: Board of Directors
Bluewater Property Owners' Association, Inc.