



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

February 19, 2016

Maurice Jones
Secretary of
Commerce and Trade

Complainant: Mark Lepnew
Association: Bella Vista Condominium Association
File Number: 2016-01874

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 a Complaint to the Association dated December 1, 2015. The Association provided a final determination to the Complainant dated December 28, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 26, 2016 and received January 27, 2016.

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 alleges that the Association made a common area alteration when it added two computers behind the lobby front desk area in the fall of 2015. The Complainant expressed concern that this was not brought up at an open meeting. The Complainant alleges a violation of §55-79.75(B) of the Condominium Act, and specifically the following sentence: "All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record."

The Complainant raised other issues in his complaint but they were related to matters that do not constitute appropriate topics for a complaint utilizing the association complaint procedure.

The Complainant also alleges that the Association violated its own bylaws, which in turn caused it to violate §55-79.48 of the Condominium Act which pertains to the execution of condominium instruments. The Complainant does not provide an explanation, however, as to how the Association violated this provision and therefore the alleged violation cannot be addressed in this Determination.

The Association responded to the Complaint by noting that the Board had approved the purchase and installation of the computers by unanimous, written approval, which it stated was authorized by the Association's bylaws. This action without meeting was then ratified at its October 15, 2015 meeting which was held after proper notice to the owners. The Association also commented on the Complainant's failure to define the manner in which §55-79.48 may have been violated and therefore concluded that it had not been "acting in violation of this statutory section."

The Complainant has provided no evidence that the Association held a closed meeting or failed to provide notice of a meeting where the purchase of new computers was addressed. It appears instead, that approval was obtained without a meeting. In addition, the fact that the Association did approve the purchase in a manner that it states is permissible under its bylaws and subsequently ratified that approval in an open meeting, appears to be sufficient to demonstrate that the purchase was discussed in an open meeting and approved.

Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Bella Vista Condominium Unit Owners Association