



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

April 19, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Mark Lepnew
Association: Bella Vista Condominium Association
File Number: 2016-02239

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 February 4, 2016. The Association provided a final determination to the Complainant dated February 19, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 15, 2016 and received March 18, 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 alleged that the Chair of the Covenants Committee, during a board meeting, asked that a member be removed from the association, and it is the Complainant's belief that the member to whom she was referring was himself. While other allegations were contained in the Complaint, only those that fall under the jurisdiction of this office will be addressed here. The Complainant was not appointed to the Covenants Committee, and it is primarily for that reason that he submitted a Complaint to the Association. The Complainant alleges that the vetting of candidates and subsequent selection of candidates by the current board of directors was not done in an open meeting in violation of §55-79.75(B)¹. In addition, the Complainant alleged that the Association violated §55-79.48² of the Condominium Act by not following the Bylaws of the Association and appointing him to the Covenants Committee.

The Association responded to the allegations by noting that the Board of Directors voted at the February 18, 2016 meeting to re-appoint all three of the then current committee members. The Association also stated in its response that §55-79.48 is not applicable to the Complaint and that the Complainant "failed to identify any facts supporting your contention that this statute was violated."

There does not appear a violation of the Condominium Act in the submitted Complaint. The Association voted on the re-appointment of the committee members in an open meeting and therefore there was no violation of §55-79.75(B). The Complainant has submitted prior Notices of Final Adverse Decision that contained Complaints alleging a violation of §55-79.48, and in those Complaints, as here, the Complainant provided no evidence or background to explain how that particular statute was even applicable and if applicable, how the Association had violated it. A violation of the bylaws would not constitute a violation of §55-79.48. There was no violation of §55-79.48 in the current Complaint, and that statute has no connection to the topics raised in the Complaint. I ask the Complainant to carefully read that statute, and contact this office for a more detailed explanation of the provision if needed.

¹ 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.

² The declaration and bylaws, and any amendments to either made pursuant to § 55-79.71 shall be duly executed by or on behalf of all of the owners and lessees of the submitted land.

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