



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

March 9, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Mark Lepnew
Association: Bella Vista Condominium Unit Owners Association
File Number: 2017-02042

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 January 5, 2017. The Association provided a final determination to the Complainant dated January 26, 2017 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 25, 2017 and received the same day.

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.

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The Complainant has alleged that the Association violated §55-79.75(B)¹ of the Condominium Act, since it appeared that appointments to the Covenants Committee were done prior to an open board meeting and that a Chairperson had also been appointed, which the Complainant believes must indicate that a meeting took place without notice to the owners. The Complainant further noted that "nothing in the bylaws states the board has the ability to determine or appoint the chairperson of the Covenants Committee." The Complainant also raised concerns about the lack of a "vetting" process for the members of the Covenants Committee, but no allegation of common interest community law or regulation was put forth so this issue will not be addressed here.

The Association responded by stating in its final decision that it found the Complaint to be without merit. Specifically, the Association noted that there had been a vote in the open board meeting held on December 16, 2016 and that vote was to appoint three people to the Covenants Committee. This was done in open session and parliamentary procedure was followed. The Association also wrote that the appointment of a chairperson for the Covenants Committee had not yet taken place, and that "[t]he members of the Covenants Committee would determine, at an open meeting, who shall serve as chairperson of the committee."

In addition to the written records provided, the Complainant provided an audio clip from the board meeting in question, and in it, a board member states that five people volunteered for the Covenants Committee, and the board appointed three of those individuals. I do not believe that the method by which the board appointed the individuals indicated that a prior meeting had taken place without notice, instead it sounded as though the names of three of the five individuals was put forward and the board approved those three. Other board members could have suggested a different group of three, but no one did. In addition, the Board stated that one of the members was willing to continue as chairperson of the committee, but there was no vote to appoint that individual as chair again, and the Association's written final decision clearly states that the appointment of a committee chair will take place at an open Covenants Committee meeting in the future. I can find no evidence that the Association has violated §55-79.75(B) of the Condominium Act.

Required Actions

Nothing is required of the Association.

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. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

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 Unit Owners Association