



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

August 24, 2018

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

Complainant: Robert Sledzaus and James Moran
Association: Purple Sage Cluster Association
File Number: 2019-00490

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

The Complainant submitted a complaint to the Association, dated April 4, 2018. The Association provided a response to the Complainant dated July 16, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 13, 2018 and received 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 alleged that the Association failed to respond to four submitted complaints in a manner that complied with the Common Interest Community Ombudsman Regulations. Specifically, as required by 18 VAC 48-70-50¹, the Association failed to acknowledge receipt of the complaints within seven days.

The Association responded to this complaint by stating that it would “make better effort to acknowledge receipt of complaints within seven days.” and “[d]irect management to acknowledge receipt of internal complaints within seven days when such complaints are submitted or forwarded to management; and [g]ive best efforts to follow the procedure set out in CICB Regulations and Resolution 2012-02.”

While the Complainant expressed concern in a cover letter included with the NFAD that the Association’s response and its intent to “make ‘better and best efforts’” was “not satisfactory,” at this point there is nothing further that can be done as it pertains to the Association’s failure to acknowledge receipt of the complaints. Because the complaints that were not acknowledged have already been considered by the Association and some have been submitted as Notices of Final Adverse Decision, we cannot turn the clock back and force acknowledgement at this time. Our goal is generally to obtain compliance and at this time no compliance can be obtained. The Association has essentially stated that it will do its best to respond appropriately to complaints in the future and until it fails to do so, we must take it at its word.

Required Actions

While no action is required of the Association, the Association must ensure in the future that it provides acknowledgement of complaints within seven days of receipt, as required by the Common Interest Community Ombudsman Regulations. While no action will be taken at this time regarding this matter, future violations of this requirement may be referred to the Common Interest Community Board for its review and any enforcement action it may deem appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Purple Sage Cluster Association

¹ 4. The association shall provide written acknowledgment of receipt of the association complaint to the complainant within seven days of receipt. Such acknowledgment shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided, or if consistent with established association procedure, by electronic means provided the sender retains sufficient proof of the electronic delivery.