



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

September 27, 2018

Esther Lee
Secretary of
Commerce and Trade

Complainant: Steven Salzmann
Association: Seaview Property Owners Association
File Number: 2019-00725

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 March 14, 2018. The Association provided a response to the Complainant dated August 7, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 28, 2018 and received September 6, 2018.

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 made three allegations in his Complaint. All three were related to §55-509.3¹ of the Property Owners' Association Act. The first complaint was that no service was being provided in relation to grass cutting of wooded lots and that members were being disproportionately billed for grass cutting service. The second complaint was "[g]arbage [c]ollection, no service being provided for most members." The third complaint was "[c]ell [s]ervice and related equipment required for access to the main Seaview entrance. No service being provided for most members." The Complainant summed up the complaints by stating that "[t]he board has/is billing members for grass cutting of personal property and has not been granted this authority, reference our Articles of Incorporation (attached), By-Laws (Attached) and Declaration of Protective Covenants (attached)."

The Association Responded to the Complaint by noting that legal advice had been previously obtained regarding the issues set forth in the Complaint, and that the advice from the attorney was that the Association "was acting within the purview of its governing documents..." The Association further stated that the attorney that had provided the opinion had declined to provide further representation to the Association. The Association also wrote that it believed the Complaint had merit, but the practice had been in place for a very long time and it would require the input of the entire community to obtain a resolution. While the Association intends to seek such consultation from the members in the future, it did deny the Complaint for the present.

The alleged violations of §55-509.3 are outside the jurisdiction of this office and a Determination cannot be provided. As was noted in the Complaint and in the statute, the language of §55-509.3 is dependent upon what is contained in the declaration of an association. This office has no authority to review any governing documents of an association. So, while the allegations were directly related to a statute contained in the Property Owners' Association Act, the only way to determine if there was a violation of this statute would be to review and interpret the declaration of the association. Unfortunately, that is not something that we can do.


Required Actions

No action is required of the Association.

¹ Except as expressly authorized in this chapter, in the declaration, 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. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55-509.6 or 55-509.7. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator pursuant to § 54.1-2349 or 54.1-2352, as applicable.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Seaview Property Owners Association