



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

November 9, 2018

Brian Ball
Secretary of
Commerce and Trade

Complainant: Larry Robertson
Association: Peachtree Community Association
File Number: 2019-01161

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 August 29, 2018. The Association provided a response to the Complainant dated October 2, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 15, 2018 and received October 22, 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 has alleged that the Association violated §55-513(A), (B), (C), and (D)¹ of the Property Owners' Association Act when it banned him from the common areas of the association. The Complainant rents a home in the association. The Complainant wrote that the Association failed to follow the requirements outlined in §55-513 prior to removing his common area privileges. The Complainant stated that neither he nor the owner of his home received proper notice of the violation that was the basis for the Association's action and neither he nor the owner received notice of a hearing or the results of any hearing.

The Association's response to the Complaint was to make no change to the ban.

There are two key issues to consider in this particular NFAD. The first is that the Complainant has referenced the owner of the home in which he lives and has included her in his complaint. Nowhere in the complaint was there any evidence that the owner wished to be a party to the complaint. If the owner wishes to do so, she can always submit her own complaint through the association complaint procedure. Because the owner did not submit her own complaint through the association complaint procedure, I cannot consider the owner to be a party to this NFAD and will not include her in my determination.

The second issue to consider is that the Complainant is not an owner. §55-513 of the Property Owners' Association Act applies to associations and to members of associations. Barring any language in the governing documents (and this office would not read or interpret such documents) that would suggest otherwise, and none was provided in

¹ A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose shall repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or actual damages, during which the court may award to the prevailing party court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55-510. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § 55-516. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

this instance, a person who rents within an association is not a member of the association, as membership requires ownership in the community. Therefore, the language contained in §55-513 is not applicable and any action the Association might take against such a renter is outside the scope of this office's authority. As such, no determination can be provided.

Required Actions

No action is required of the Association in relation to the allegations in the NFAD. However, I will note that the Association failed to provide the Complainant necessary information in its final decision, namely his right to file a Notice of Final Adverse Decision with this office and the contact information for doing so. The registration number of the Association was also not included in the final decision and is a requirement under the Regulations. These requirements are set forth in 18 VAC 48-50-70 (9) and (10)² of the Common Interest Community Ombudsman Regulations. The Association must ensure that it provides this information in all future final decisions.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Peachtree Community Association

² 9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.