



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

February 22, 2019

Brian Ball
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Donald Sweeney
Association: Lake Caroline Property Owners' Association
File Number: 2019-01875

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 December 18, 2018. The Association provided a response to the Complainant dated December 31, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 22, 2019 and received January 23, 2019.

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 several violations of the Property Owners' Association Act. In addition, the Complainant included a narrative with his NFAD that provided additional information about the situation but had not been submitted to the Association as part of his original complaint. As has always been the policy of this office, only information included as part of the original complaint will be considered when providing a Determination on a NFAD.

The Complainant alleged that the Association violated §55-513(B)¹ of the Property Owners' Association Act when it suspended his access to amenities for 180 days and assessed him \$50.00 based on a violation of the declaration. The Complainant stated that the Association only has the power to make such a suspension for "nonpayment of assessments which are more than 60 days past due..."

The Complainant further alleged that the Association appeared to be denying him the right to obtain his decals and cards when it sent him a letter notifying him that the suspension was complete and he could pick up his decals and cards, but he must be in good standing to do so and he had an outstanding balance on his account. The Complainant believed the Association was implying that it would "extend the suspension of my amenities privileges for failure to pay a balance that is not yet even due, without giving me 'an opportunity to be heard and be represented by counsel before the board of directors or other tribunal specified in the documents.'" The Complainant also protested the wording of a letter that he believed was threatening but alleged no actual violation of common interest community law in relation to that letter.

In its response to the Complaint, the Association noted that the Complainant's privileges should not have been suspended and that the Notice of Hearing he received did not satisfy the requirements of §55-513(C)² of the Property Owners' Association Act. The Association apologized for its error and credited the Complainant's account for a specific time period. The Association acknowledged the controversial language in the Notice of Hearing and stated it will revise the document "as necessary to avoid any confusion over the process in the future."

It does appear that the Association failed to adhere to the Property Owners' Association Act when it suspended the Complainant's amenity privileges. Under §55-513(B), suspension can only occur if a member has failed to pay assessments and those

¹ 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.

² 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.

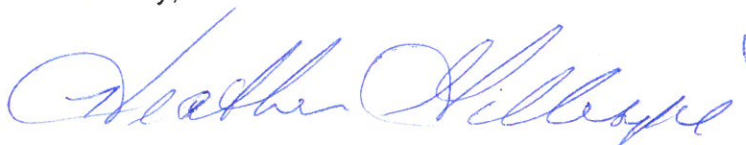
assessment are more than 60 days past due. This was not the case here. Whether the Association continued a violation when it implied that it would not provide decals and cards cannot be determined as it is not clear, from the Complaint, whether those decals and cards were or were not provided. We cannot make a determination on an implication, only on what has actually happened. Finally, no determination can be provided regarding the language in the Notice of Hearing, since the Complainant did not allege a specific violation of common interest community law in relation to that Notice.

Required Actions

Nothing is required of the Association at this time. However, the Association does need to ensure that there are no further violations of §55-513 in the future. The Association also needs to ensure that it adheres to the Common Interest Community Ombudsman Regulations when it responds to complaints. The Regulations require the Association to include its CICB registration number, as well as the Complainant's right to file a Notice of Final Adverse Decision (and the necessary contact information). The specific requirements can be found in 18VAC48-70-50 (9) and (10).

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Lake Caroline Property Owners' Association