



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

Mary Broz-Vaughan
Director

June 16, 2020

Complainant: Greg Hillson
Association: Cameron Station Community Association, Inc.
File Number: 2020-02705

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 February 26, 2020. The Association provided a response to the Complainant dated May 5, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 28, 2020 and received May 30, 2020.

Authority

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 §54.1-2354.4 (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.

Determination

The Complainant has alleged that the Association violated §55-510 of the Property Owners' Association Act (now §55.1-1815¹). This complaint stems from a request, by the Complainant, to examine certain books and records of the Association. The request included the owner's file, all receipts and reimbursements concerning an event held in 2018, and all invoices and billing records for legal services provided in 2019. The request was made February 8, 2020. On February 13, the Complainant said that he was notified by the Association that additional time would be needed to prepare for the Complainant's review of the records. The Association also contacted the Complainant on February 14 and said that it could not meet the five-day deadline, but could make the owner's file available on February 19. The Complainant reviewed his file on February 18 and at that time was told by the Association that he would be notified as soon as the other requested files were located and charges for redacting were determined. According to the submitted Complaint, 12 business days after the request, the Complainant had still not been given the opportunity to examine the party invoices or the legal invoices that he had requested.

The Association's response to the Complaint acknowledged that it took longer to coordinate the review of the Complainant's personal file, and said that the file was provided February 18, 2020. The Association also stated that it had provided copies of invoices and reimbursements related to the party, as requested, on March 2, 2020 and that those comprised all the invoices that Management could locate. As to the third request, for legal invoices, the Association wrote that it provided the Complainant with a schedule of costs associated with the review of the invoices, but as of May 4, 2020 had not received authorization from the Complainant to charge the costs. The Association stated that it "has determined that information requested has been provided and will consider this matter closed."

The Property Owners' Association Act allows a right of record examination to all owners in good standing, with the exception of certain exclusions set forth in §55.1-1815. This right is dependent upon several things, including the fact that the right "may be exercised (i) only during reasonable business hours or at a mutually convenient time and location *and* (ii) upon five business days' written notice for an association managed by a common interest community manager..." It is clear that the five day notice was provided by the Complainant and the Association did not provide the Complainant the right to examine the requested records forthwith. This five day notice must be coupled with a mutually convenient time and location. However, since the Association did not raise the issue of the mutually convenient time and location we can only assume that was not an issue. As such, it appears that the Association failed to meet its statutory obligations under §55.1-1815, and did not provide the right of examination in a timely manner.

Required Actions

The Association does need to determine how it can more rapidly respond to requests to examine its books and records. While the Association did ultimately provide the party invoices and the personal file (the legal invoice request is moot since the Complainant did not approve the costs for redaction) this response was not within the time frame required by the Property Owners' Association Act.

A future violation of §55.1-1815(B)(2) may result in a referral of the matter to the Common Interest Community Board for enforcement if it deems it appropriate.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Heather Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Cameron Station Community Association

ⁱ A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person having standing to bring legal action or the legal counsel of such person;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § [55.1-1819](#);
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § [55.1-1816](#);
8. Documentation, correspondence, or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or
9. Individual lot owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.