



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

March 16, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Richard Johnson
Association: Ruxton Services, Inc.
File Number: 2022-01767

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 16, 2021. The Association provided a response to the association complaint dated January 31, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 14, 2022 and received February 27, 2022.

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 and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

This Determination is final and not subject to further review.

Determination

The Complainant alleged that the Association violated §55.1-1835¹ of the Property Owners’ Association Act when it allowed the Association to be “automatically terminated” as a Virginia corporation for failure to file its 2019 State Corporation Commission Annual Report. The Complainant included numerous other complaints, but because these were not related to common interest community law, they cannot be addressed in this Determination.

The Association responded to the Complaint by stating that the Complainant had misinterpreted the Property Owners’ Association Act, and noted that §55.1-1835 applied to the Common Interest Community Board Annual Report, not the Annual Report required by the Virginia State Corporation Commission. The Association further commented on the time-period the Association was terminated and stated that the Property Owners’ Association Act does not require that associations be incorporated. The Association wrote that the corporate status of the association has been reinstated with no repercussions.

It does appear that the Complainant misunderstood the application of §55.1-1835 of the Property Owners’ Association Act. This provision requires an association to file an Annual Report with the Common Interest Community Board. Filing an Annual Report with the State Corporation Commission is an entirely separate issue that is governed by the Virginia Nonstock Corporation Act, which is not common interest

¹ The association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The annual report shall be accompanied by a fee in an amount established by the Board, which shall be paid into the state treasury and credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

community law and does not fall under our authority. I have confirmed with the Common Interest Community Board office that the Association is current in the filing of its Common Interest Community Board Annual Report (and has been for years). I do not find the Association to be in violation of §55.1-1835 of the Property Owners' Association Act.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Ruxton Services, Inc.