



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation
August 11, 2022

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Complainant: Keith Dugan
Association: Bien Venue Plantation Property Owners' Association, Inc.
File Number: 2023-00231

Demetrios J. Melis
Director

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 an association complaint to the Association dated May 5, 2022. The Association provided a response to the association complaint dated June 30, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 25, 2022 and received July 28, 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 has alleged multiple violations of common interest community law. There was very little documentation or background provided on the individual allegations, so I will simply provide the individual allegations as set forth in the Complaint. I note that the Complainant included a letter further outlining the allegations, but because it was written after the Association considered his complaint and provided a final decision, it will not be used as part of this Determination since the Association was not given the opportunity to review it or respond to it.

The Complainant alleged nine violations of the Property Owners' Association Act. There was almost no evidence provided to support the violations, nor was there any background information provided to fully explain the alleged violations. The violations, with Complainant's descriptions are as follows:

1. §55.1-1816(A)(B), failure to give notice, failing to provide notice of meetings for several years;
2. §55.1-1816(B), no detailed package available for review before or at meetings, may have been on board member's smart phone;
3. §55.1-1826(A), lack of annual budget, no record of board's approval;
4. §55.1-1826(B)(2)(3), no financial report, no review of reserve study, no adjustment to reserve study;
5. §55.1-1826(C) (1)(2)(3), no board statement of reserve funding by means or recommended reserve amounts;
6. §55.1-1828(A), failure to enforce compliance with declaration, at least three directors in violation;
7. §55.1-1815, inconsistencies in records, failure to provide access, requested and received records contained discrepancies, additional request to view records went unanswered;
8. §55.1-1811, unauthorized collection of fees for disclosure packet, association was not registered with the CIC Board from 1/31/20-2/7/22;
9. §55.1-1805, retaining deposit for no apparent reason.

The Association responded in a similar fashion, with minimal explanation and no evidence. Its response to each allegation is as follows:

1. It acknowledged that the board was negligent in providing notice, and said that notices have since been sent out
2. The association stated that there has been an increase in sales and builder activity, which put a burden on the volunteers.
3. The Association stated that the parties acknowledged this problem and have remedied it.
4. A reserve study was done, and it was performed by the Complainant.
5. The parties acknowledged that a study was done.
6. Complainant alleges that there are three members of the board who are in violation. No names provided.
7. This refers to a former request for records already provided.
8. The parties acknowledge that they failed to renew their registration and file an annual report. When it came to their attention, they complied with the Common Interest Community Board. No one requested the fees be returned.
9. The attorney stated that the Complainant was not affected by this, and no other homeowner/lot owner has this concern.

Unfortunately, for the bulk of this NFAD and the complaint that it stems from, I cannot provide a determination since there is not sufficient information to determine if there was a violation of common interest community law. Merely alleging such a violation without any supporting documentation or other form of evidence is not enough, especially when the Association's response denies the allegations.

The only allegation that included documentation to support it was the allegation that the association was in violation of §55.1-1811 when it charged for disclosure packets during a period of time when it had not filed an annual report with the Common Interest Community Board. However, there were no specifics as to the disclosure packets issued during this time. I do find that the Association should not have charged for disclosure packets for any time that it was not current in its registration with the Common Interest Community Board. The Association has updated its registration and is now in compliance. We do not have the authority to require repayment of the disclosure packet fees. Owners may want to seek legal counsel if they wish to determine if they can be reimbursed.

There were several areas of concern related to the Association's response to the Complaint. Specifically, the Association failed to provide necessary information in its final decision. The Common Interest Community Ombudsman Regulations require an association to include its registration number in a final decision, it must also include the name and license number of the common interest community manager, if applicable, and finally it must notify the complainant of his right to file a Notice of Final Adverse Decision with this office and include the necessary contact information. In addition, the complaint procedure submitted with the NFAD appears to be missing provisions required by the Common Interest Community Ombudsman Regulations.

Required Actions

No action is required of the Association as it pertains to allegations contained in the complaint. With a new board in place, however, I would encourage the Association to fully acquaint itself with the Property Owners' Association Act so that it can ensure that it follows it precisely.

As noted above, the Association failed to provide certain required information in its final decision. The Common Interest Community Ombudsman Regulations require an association to include several key items in a final decision:

1. The right of a complainant to submit a Notice of Final Adverse Decision to this office.
2. The contact information for this office.
3. The Common Interest Community Board Registration number of the association
4. The name and license number of the common interest community manager, if applicable.

The Association must ensure that it is familiar with these requirements and include the above information in all future final decisions. In addition, the Association needs to return to the Common Interest Community Ombudsman Regulations and update its complaint procedure to include all necessary requirements contained in those regulations. I ask that the Association provide me a copy of its updated complaint procedure in 21 days, or no later than **September 1, 2022**. The revised complaint procedure can be sent via email or regular mail to my attention.

Finally, it appears the Association may have carried out consideration of the complaint in an executive session. Unless the reason for doing so met one of the acceptable reasons outlined in §55.1-1816(C), consideration should be held in an open meeting with notice provided to owners as required under the same statute.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Bien Venue Plantation Property Owners' Association, Inc.