



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

Kishore S. Thota
Director

G. Bryan Slater
Secretary of Labor

November 30, 2023

Complainant: Norman Dailey
Association: First Owners Association of Forty-Six Hundred Condominium
File Number: 2024-01107

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 18, 2023. The Association provided a response to the association complaint dated November 1, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 6, 2023 and received November 8, 2023.

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.

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

This Determination is final and not subject to further review.

Determination

The Complainant alleged that the Association, in violation of §55-79.83(F) of the Condominium Act (this act was recodified in 2019 and the current reference is §55.1-1964(F)¹), is not properly assessing two commercial units. The Complainant believes that under the Condominium Act, all unit owners should pay assessments as properly computed. According to the Complainant, the commercial unit assessment percentages were set by a court in 2009 but the Complainant believes the Association has not properly assessed the two commercial units since that time, and the Association should notify the auditors to recalculate fees and notify the commercial unit owners that their assessment are being recalculated per the Declaration and Bylaws.

The Association responded to the complaint by noting that the Complainant had asserted the Association was not properly assessing two commercial units and had demanded the Association hire an auditor to review the commercial units' assessments. The Association stated that it disputes the allegations as they relate to its governing documents and that the Complainant failed to allege any violation of the Condominium Act. Therefore, the Association denied that it was in violation of the governing documents or the Condominium Act.

¹ F. Neither a unit owned by the declarant nor any other unit may be exempted from assessments made pursuant to this section by reason of the identity of the unit owner.

Unfortunately, this office cannot provide a determination on this matter. There are several reasons for this. The allegation that the commercial units are not paying their appropriate share of assessments is based on a court case from 2009 where the percentages of the commercial unit assessments were set. This office cannot enforce a court's judgment. Only the court can do that. In addition, the only way to determine if the commercial units should be paying assessments and what amount they should be paying, would be to review the condominium instruments and interpret those documents. This office has no authority to review or interpret governing documents of an association, as noted in the prefatory language of this determination. Finally, the Complainant alleges a violation of what is now §55.1-1964(F) of the Condominium Act. This office has no way to deciding whether a failure to pay assessments or pay the proper amount of assessments for the commercial units is based on the identity of the unit owner. That is a civil law matter and more appropriately addressed by the court.

Required Actions

No action is required of the Association.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
First Owners Association of Forty-Six Hundred Condominium

Danielle Holden