



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

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Secretary of Labor

Brian P. Wolford
Interim Director

November 4, 2024

Complainant: Don Pence
Association: Aldie Estates 1 Homeowners Association
File Number: 2025-00924

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on October 9, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Don Pence ("Complainant"). The Complainant initially submitted complaints to the Aldie Estates 1 Homeowners Association Board of Directors ("Board") on September 8, 2024; and the Board issued a notice of final decision on September 27, 2024. Therefore, the NFAD was timely filed and within the jurisdiction of this Office, which has been designated to review final adverse decisions and determine if the decisions conflict with laws or regulations governing common interest communities.

Issues to be Decided

In the Complaint, the Complainant raises two issues: whether the Board violated the applicable law when it (1) deleted the Complainant's postings on its Association forum; and (2) deactivated the Association forum. As explained below, this Office concludes that the Board's actions did not violate the applicable law.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 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 of the Code of Virginia of 1950, as amended ("Va. Code") 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.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, 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. Further, this Determination is final and not subject to further review or appeal pursuant to Va. Code § 54.1-2354.4(C).

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 Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

As explained more fully below, the Office has determined, upon a review of the materials submitted with the NFAD, that there is insufficient evidence to conclude that the Board’s actions are in conflict with the applicable law. This determination will address the issues raised by the Complainant separately.

1. The deletion of Complainant’s posting on the Association forum.

The Complainant alleges that the Board deleted all his postings except one from the Association forum. The Complainant states that the Board’s action to delete his postings prevented his communication to other homeowners regarding matters relating to the Association. The Complainant asserts that in spite of his requests, the Board refused to restore his communications with his fellow property owners.

In its decision, the Board points out that some of the Complainant’s postings were deleted pursuant to the terms and agreement of the forum which prohibits, amongst other things, inaccurate, false, and misleading communications being posted on the forum. The Board states that it only deleted the Complainant’s postings that contain false and inaccurate statements.

The applicable law states that “The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.” Va. Code §55.1-1817. In this case, the Board did establish a reasonable, effective, and free method for lot owners to communicate among themselves and with the board of directors. There is nothing on the above cited Code that prevents the Board from enforcing the

terms and conditions of the forum. As a result, we cannot conclude that the Board's action to monitor the forum for compliance with the terms and conditions violated the applicable law. The Board states that the postings that were deleted were false and inaccurate. The issue as to whether the postings were actually false and inaccurate¹ is not within the scope of the Office's jurisdiction.

2. The Board deactivated the Association forum.

The Complainant states that the President of the Board unilaterally deactivated the forum for the entire community. The Board, in its response, asserts that the forum was only temporarily deactivated in order to consult with its attorney, and that the forum was reactivated on September 9, 2024. Since the Board has taken the corrective measure of reactivating the forum, we cannot conclude that it violates the applicable law, especially given the fact that the Code does not prohibit the Board from managing the forum.

Conclusion

As to the Complainant's complaints, based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office concludes that the Board acted consistent with the applicable law.

If any party is dissatisfied with this determination, or part thereof, the party could seek remedies in civil court.

Justina Ehiawaguan

Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors

Aldie Estates 1 Homeowners Association

¹ It is worth noting that the Board in its final decision informed the Complainant that he may repost the postings previously deleted, and that the Board reserves the right to post a disclaimer along those postings or any other posting containing false and inaccurate statements.