



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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August 5, 2024

Complainant: Karl N. Golovin
Association: Council of Co-Owners of Alexandria House Condominium
File Number: 2024-02370

DETERMINATION – NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on May 1, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Karl N. Golovin ("Complainant"). The Complainant initially submitted multiple complaints to the Council of Co-Owners of Alexandria House Condominium Board of Directors ("Board") on February 22, 2024, February 23, 2024, March 12, 2024, and March 15, 2024; and the Board issued a notice of final decision on April 2, 2024, and supplemented its response on April 22, 2024, on all the complaints. 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 Complaints, the Complainant raises two major issues: (1) Board failed to timely provide the Association records requested by the Complainant; and (2) Board failed to provide the specific records requested by the Complainant. As explained below, the Office finds that the Board is not in violation of the applicable law with regard to both issues.

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 § 54.1-2354.4I.

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 described more fully below, the Office has determined, after a review of the materials submitted with the NFAD and the applicable laws and regulations, that there is insufficient evidence to conclude that the Board violated the Virginia Condominium Act or related authorities. This determination will address each issue raised by the Complainant separately.

1. Board failed to timely provide requested documents.

The Complainant alleges that the Board failed to timely provide the records he requested. The Complainant asserts that he requested the current mailing addresses for other unit owners on January 10, 2024, but the Board and its management company deliberately delayed providing the requested documents. The Complainant alleges that the Board used dilatory tactics including providing non-responsive and inaccurate records. The Complainant states that as of March 12, 2024, the Board/management company had still not provided the requested records. The Complainant included multiple emails between himself and the Board/management company regarding the requested records. The email communications started on January 10, 2024, with an email request from the Complainant which states: “...please provide copies (or access to examine) within (5) business days: List of current AH unit owners and mailing addresses.” A reply email followed on the same date, stating: “Please state the purpose for your request of current AH unit owners and mailing addresses.” The Complainant provided the reason the following date, January

11, 2024, and on January 12, 2024, an email from the management company states that the requested record was attached. The Complainant replied that the attachment did not contain the requested documents. More emails went back and forth, and a meeting was scheduled for January 16, 2024, between the management company and the Complainant. On January 17, 2024, another email from the management company states: "Please see attached the addresses of record for Alexandria House residents as requested." More emails went back and forth between the parties. In response to the Complaint filed by the Complainant, the Board responded that it has provided the best mailing address records that it had.

The Complainant alleges that the Board violated § 55.1-1945, in failing to promptly provide the requested records. Specifically, Va. Code § 55.1-1945(B) states. Pertinent part, that:

Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. 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 a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

Accordingly, the management company has five (5) business days to respond, meaning that since the Complainant submitted his request in writing during business hours on January 10, 2024, (or January 11, 2024, the day the reason was provided), the management company has until January 18 or 19, 2024, not counting the weekend and January 15, 2024, which was a holiday. The documentation here demonstrates that the management company replied to the email requesting the records, and on January 12, 2024, the management company sent a document that failed to contain the requested information. The parties here then held a meeting on January 16, 2024, and the management company sent another email with an attached record to the Complainant on January 17, 2024. While the Office understands the Complainant's allegation that the attached information was inaccurate and incomplete, this Office has no way to determine whether the Board/management company intentionally sent incorrect information to the Complainant, especially given the fact that the Board states in its response that it provided the best record in its possession. Therefore, this Office is unable to conclude that the Board violated the applicable law.

2. Board failed to provide certain records requested by the Complainant.

The Complainant requested for all original paper ballots submitted by other unit owners in relation to the 2024 annual meeting; the spreadsheet of all data compiled by the vote counting team; and the complete "election buddy" report of all online voting. In its response, the Board stated that it provided the list of who voted, the final tally of the votes, and the vote count in each category. But the Board declined to provide the actual ballots of each individual voter because it considers such record to be the unit owners' private records, not public information for the Association. The Virginia Condominium Act gives a unit owner the right to inspect or obtain all the books, records, and minutes of the association, but some exceptions do exist. Va. Code §§55.1-1939 and 55.1-1945. Under the exceptions, the association is permitted to withhold certain information such as "individual unit owner or member files, ... including any individual unit owners' file kept by or on behalf of the unit owners' association." Va. Code §55.1-1945(C)(9).

In this case, the Board takes the position that it puts the individual unit owner/voter's ballots in the individual unit owner's file which is protected from being inspected or obtained. Va. Code §55.1-1945(C)(9). The Complainant argues that no expectation of confidentiality or privacy on how the unit owners vote in an election of the officers especially given the fact that online voting and absentee ballots were allowed. This argument, though perhaps persuasive, fails for two reasons. First, nowhere in any of the applicable statutes does it state that an individual unit owner's ballot is a record open for inspection or copying. Second, the applicable laws do contain provisions that allow voting by secret ballot and written ballot is permitted for the election of officers. Va. Code §55.1-1949(B)(5). Additionally, the applicable law allows the use of electronic means in voting and mandates that if the vote is required to be obtained by secret ballot, the electronic means must protect the identity of the voter. Va. Code §55.1-1935(D). While the Complainant may have legitimate reasons for asking for individual ballots, this Office cannot conclude that the Board violated the applicable law by designating unit owners' voting ballots as private information not to be divulged.

Notwithstanding, there are areas of concern related to the Board's response to the Complaint. Specifically, the Board's initial final decision dated April 2, 2024, was sent as an email which simply restated the Complainant's complaints and demands and then included its response in a sentence or two below each complaint and/or demands. The Complainant correctly pointed out the deficiencies in the final decision, and the Board issued a supplemental decision dated April 22, 2024, which still did not comply with the applicable Regulations. The Common Interest Community Ombudsman Regulations require an association's final decision to include:

- 1) Date of issuance;
- 2) Specific citations to applicable association governing documents, laws or regulations that led to the final determination;
- 3) The association's registration number;
- 4) The name and license number of the common interest community manager, if applicable;
- 5) The complainant's right to file a Notice of Final Adverse Decision with this Office; and
- 6) The necessary contact information of this Office. Regulations, 18 VAC 48-70-50.

In this case, even after the Complainant explicitly advised the Board of the need to comply with applicable Regulations, the final decision still did not include specific citations to applicable governing documents, laws or regulations that support its final decision. Also, the final decision did not include the name and license number of the manager. Thus, the Board's response is deficient under the Regulations, 18 VAC 48-70-50.

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 cannot conclude that the Board violated the applicable law.

Decision

This Office finds no violation of the applicable laws on the part of the Board, and therefore no action is required of the Board. The Office, however, strongly encourages the Board to fully acquaint itself with the requirements for the form and information that must be contained in its final decisions and then follow such requirements precisely. As noted above, the Board failed to provide a final decision that comports with a formal final decision format or contains the necessary information as required by Common Interest Community Ombudsman Regulations. Therefore, the Board must ensure that it is familiar with those requirements and include the necessary information in all its future final decisions.

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



Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Council of Co-Owners of Alexandria House Condominium