



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Governor

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Secretary of Labor

Brian P. Wolford
Interim Director

September 20, 2024

Complainant: Thomas Oh
Association: Cambria Square Condominium Unit Owners' Association
File Number: 2025-00684

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on September 12, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Thomas Oh ("Complainant"). The Complainant initially submitted a complaint to the Cambria Square Condominium Unit Owners Association Board of Directors ("Board") on May 20, 2024. The Board issued a final decision regarding his complaint on August 17, 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.

Issue to be Decided

The Complainant raised several allegations, most of which do not implicate common interest community ("CIC") law, and as a result, will not be addressed in this determination. The only issue that involved CIC law is whether the Board violated applicable law for the amount of time it took to repair the roof of the Complainant's Unit. As explained below, the Office cannot conclude that the Board violated the CIC law regarding the roof repair.

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 our 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

The Complainant alleged multiple allegations that do not implicate the CIC law, except one. The Complainant’s allegations include:

- (1) The Board failed to repair his roof in a timely fashion, resulting in damages;
- (2) The Board/management company committed gross negligence;
- (3) The Board failed to act in good faith;
- (4) The Board breached its duty of care; and
- (5) The Board breached the duty of quiet enjoyment.

This Office has determined, upon a review of the materials submitted with the NFAD, that the issues or allegations, except the first one, raised are outside of its jurisdiction. This determination will address the one issue below:

The Board failed to repair the Complainant’s roof in a timely manner.

The Complainant alleges that the Board and/or its community manager, Steve Richter, was made aware of the problem of the leaking roof of his unit on January 9, 2024. The Complainant states that he contacted Steve Richter numerous times asking for the problems to be addressed. The Complainant asserts that Steve Richter ignored the Complainant’s request, and instead,

provided false information about the leak. The Complainant further alleges that the repair was not completed until about March 19, 2024. The Complainant states that the delay caused him significant financial losses including rental income.

The Board, in its final decision, stated that it completed the repair within reasonable time because the management company sent a request for a proposal to the roofing company on January 10, 2024, and the proposal was received on January 31, 2024. The Board claims that the management company coordinated with the Association's insurance company and was able to give a notice to proceed with the repair on March 11, 2024, and the repair was completed on March 16, 2024.

The Virginia Condominium Act gives the association the powers and responsibilities to make repair, amongst other things. Va. Code §55.1-1955. It states in pertinent part:

Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements and (ii) to the individual unit owner in the case of any unit or any part of such unit, except to the extent that the need for repairs, renovation, restoration, or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. Va. Code §55.1-1955(A).

As apparent from the Code citation above, there is no time frame requirement to perform maintenance, repair renovation, or restoration of common elements of the condominium. The only part that references time for repair is the part relating to damage inflicted on the unit or common element as a result of granting access. It states: "To the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the damage, shall be liable for the prompt repair of such damage." Va. Code §55.1-1955(A). The Code only requires a prompt repair of damage resulting from access taken. There is no evidence that the leaking roof in this case resulted from damage inflicted due to access taken, and no requirement of promptness in any other repairs. Thus, this Office cannot read into the Code, where there is none, a specified time to make repairs. And assuming, *arguendo*, that the timeframe must be reasonable, this Office would still not be able to conclude that a roof repair completed in less than three months was unreasonable; especially given the fact that the Association appears to have moved to address this issue the day after receiving the complaint from the Complainant.

The Board's Final Decision Failed to Comply with CIC Regulations

There are areas of concern related to the Board's response to the Complaint. Specifically, the Board failed to include the registration number of its Association, the license number of the manager, citation to applicable governing documents, laws or regulations that supports its final determination or the complainant's right to file NFAD with this Office. The Common Interest Community Ombudsman Regulations require an association's final decision to include, amongst other things, specific citations to applicable association governing documents, laws, or regulations that led to the final determination; the registration number of the association; the name and license number of the manager; and the complainant's right to file a Notice of Adverse Decision with the Ombudsman's office as well as the applicable contact information of the Ombudsman's office. 18 VAC 48-70-50. Thus, the Board's response is deficient under the Regulations, 18 VAC 48-70-50.

Conclusion

For the reasons set forth above, the Complainant's allegation regarding roof repair, 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. It does find, however, that the Board's final determination did not comport with regulations setting forth an association's obligations to cite authorities that support its determination. Therefore, this Office encourages the Board to fully acquaint itself with the Virginia Condominium Act's provisions as well as the Common Interest Community Regulations for the contents of its final decisions so that it can ensure that it follows those provisions precisely. By doing so, the Board can ensure that it includes the necessary information in all its future final decisions.

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

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors

Windward Towers Condominium Homeowners' Association