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COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

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Director

January 10, 2025

Complainant: Greg Hillson
Association: Cameron Station Community Association, Inc.
File Number: 2025-01229

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on November 16, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Greg Hillson ("Complainant"). The Complainant initially submitted a complaint to the Cameron Station Community Association, Board of Directors ("Board") on October 1, 2024, and the Board issued a notice of final decision regarding his complaint on November 5, 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 one major issue: Whether the Board's decision to deny the Complainant the right to run for the board of directors violates Va. Code §55.1-1807. As explained below, this Office concludes that the Board's decision, based on the information in the record for this NFAD, is contrary to the Common Interest Community 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 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 described more fully below, the Office has determined, upon a review of the materials submitted with the NFAD, that the Board’s decision to prevent the Complainant from running for office with the Board of Directors is in conflict with the applicable law.

The Complainant alleges that on September 20, 2024, the Association emailed homeowners stating that anyone interested in running as a candidate for the upcoming election of the board of directors should submit a statement of interest. The Complainant states that he duly submitted his statement of interest on September 19, 2024. On September 30, 2024, however, the Board informed him that he was ineligible to run because he does not reside in the association community. The Complainant points out that he is an owner of a lot who is in good standing and that the declaration does not prohibit his candidacy.

The Board in its response states that the allegation that the Board violated the provisions of Va. Code §55.1-1807 is not true. The Board’s notice of final decision states that the Complainant is ineligible to run for the Board of Directors based on the provisions of the Association’s Articles of Incorporation which require board members to reside in the Association. It states that the Board reviewed the Complainant’s complaint and considered his statements, but the Board voted unanimously that it has not violated the Va. Code §55.1-1807.

The Virginia Property Owners Association (POA) Act gives homeowners certain rights, some of which are enumerated in Va. Code §55.1-1807, titled Statements of lot owner rights. It states:

Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § 55.1-1815, including records of all financial transactions;
2. The right to cast a vote on any matter requiring a vote by the association's membership in proportion to the lot owner's ownership interest, unless the declaration provides otherwise;
3. The right to have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting in accordance with the provisions of subsection G of § 55.1-1815 and § 55.1-1816;
4. The right to have (i) notice of any proceeding conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the opportunity to be heard and represented by counsel at such proceeding, as provided in § 55.1-1819, and the right of due process in the conduct of that hearing; and
5. The right to serve on the board of directors if duly elected and a member in good standing of the association, unless the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § 55.1-1828. Va. Code §55.1-1807.

The right that is at issue in this case, is in subsection 5, “right to serve on the board of directors if duly elected and a member in good standing of the association, unless the declaration provides otherwise.” Va. Code §55.1-1807.

Here, there is no information or evidence in the NFAD record submitted to this Office that the Association’s Declaration “provides otherwise.” Specifically, The Board’s final decision did not show any nexus between the Articles of Incorporation and the Declaration.¹ The Board’s adverse

¹ Our office received an NFAD complaint from Mr. Greg Hillson on or about November 19, 2024. We immediately forwarded a copy to the Association Board of Directors asking to let us know if there was any discrepancy between the original complaint and the NFAD. In our letter to you, we specifically stated that apart from any possible discrepancy, no response was necessary. Notwithstanding, on December 4, 2024, we received an email with an attached letter dated November 26, 2024, which provided additional information and arguments that were not provided to Mr. Hillson prior to his filing a complaint with our office. If Mr. Hillson was apprised of the additional information and arguments, he might have not gone through the trouble of filing an NFAD complaint and paying the filing fees.

The Board’s notice of final decision dated November 5, 2024, simply stated that the Association’s Articles of Incorporation render Mr. Hillson ineligible to serve on the Board because he did not reside in the Association. No mention of incorporation by reference or the Association’s Declaration vis a vis “Project Documents” incorporated by reference. Then about a month after the Board’s notice of final decision, a letter arrived at our office with arguments about how the Association’s “Declaration defines ‘Project Documents’ to include ... any other documents

decision did not assert, nor did it establish by attaching the relevant records, that the Declaration expressly incorporated the Board's Articles of Incorporation as asserted. As emphasized above, this Office does not have the authority to consider information or documents that were not part of the NFAD. Therefore, while the Association's Declaration may have expressly and properly incorporated the cited provision of the Articles of Incorporation that a board member must live in a community, there is no such information in this record to reach that conclusion. Therefore, this Determination is based on the information that is properly before the Office at this time.

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

In addition to the above, we note that the Board's final decision is not in conformity with the requirements of the CIC Regulations. The Common Interest Community Ombudsman Regulations require an association's final decision to include:

- 1) Specific citations to applicable association governing documents, laws, or regulations that led to the final determination;
- 2) The association's registration number; and
- 3) The name and license number of the common interest community manager, if applicable.

In this case, the Board's final decision does not contain the Association's registration number, and the name and license number of the common interest community manager, if applicable. Thus, the Board's response is deficient under the Regulations, 18 VAC 48-70-50.

Conclusion

Based upon the information in the record, including the original complaint, its accompanying documents, the NFAD, this Office has determined that, based on this information, the reference to a provision of the Association's Articles of Incorporation without evidence in the record of the provision being included in the Declaration, is insufficient to determine the Complainant is ineligible to be a candidate for the board of directors.

Further, 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 should take steps to ensure that it is familiar with

incorporated therein by reference." It further states that the "Declaration explicitly provides that the provisions of the Article of Incorporation are incorporated within the Declaration."

In a nutshell, none of the information and arguments will be considered in our determination because they were not part of the complaint package, nor are they discrepancies between the complaint and the NFAD. Assuming, *arguendo*, we were inclined otherwise, no copy of the Declaration or the section that purportedly incorporated the articles of incorporation, or even a copy of the articles of incorporation or part thereof were submitted to our office.

those requirements and, in future decisions, includes the necessary information in all its future final decisions.

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



Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Cameron Station Community Association.