



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

G. Bryan Slater  
Secretary of Labor

Brian P. Wolford  
Interim Director

September 17, 2024

Complainant: Andrew Melhuish and Cheryl Kast  
Association: Eclipse on Center Park Condominium Homeowners Association  
File Number: 2024-02145

## **DETERMINATION - NOTICE OF FINAL ADVERSE DECISION**

### **Introduction**

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on March 21, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Andrew Melhuish and Cheryl Kast ("Complainants"). The Complainants initially submitted a complaint to the Eclipse on Center Park Condominium Homeowners Association Board of Directors ("Board") on November 30, 2023. The Board issued a final decision regarding their complaint on March 1, 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**

The Complainants raised numerous allegations, most of which do not implicate the common interest community ("CIC") law, and as a result, will not be addressed in this determination. The only two issues that involved CIC law are that the Board: (1) violated applicable law for failing to provide proper notice of the meeting of August 22, 2023; and (2) violated applicable law for not providing the Complainants certain documents. As explained below, the Office finds that the Board acted consistent with the CIC law regarding 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 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 Complainants alleged multiple allegations, but in most part, did not indicate what part of the CIC law was violated, or what action or inaction of the Board violated the applicable law. The Complainants’ allegations include:

- (1) The Board failed to provide the Complainants proper notice of the meeting held on August 22, 2023;
- (2) The Board violated the applicable law for failing to provide the documents the Complainants request;
- (3) The Board had not updated its complaint form as of October 6, 2023;
- (4) The Board denied the Complainants access to online payment portal;
- (5) The Board blocked the Complainants’ online account making it impossible for them to make payments;
- (6) The Board’s blocking the Complainants’ online accounts contributed to additional fees and late charges;
- (7) The Board prematurely sent the Complainants’ accounts to collection agency;
- (8) The Board failed to notify the Complainants prior to sending their accounts to collection agency;

- (9) The Board ignored the Complainants' letter dated July 24, 2023, with its supporting documents;
- (10) The Board only had a meeting on August 22, 2023, to discuss the incident two months after sending the Complainants' accounts to collections;
- (11) The Board failed to inform the Complainants that the Association counsel was going to be present at the meeting;
- (12) The Association counsel is also a shareholder in the collection agency;
- (13) The Board denied the Complainants the opportunity to have their own legal counsel present at the meeting;
- (14) The Association counsel was present, but did not introduce themselves, and kept silent through the meeting;
- (15) The Complainant were not notified that the meeting was being recorded;
- (16) The Board did not comply with the Association's Article cited in its decision;
- (17) The Association contacted the Complainants' insurance, informing the insurance that the Complainants or their tenants were responsible for the water issue. But the Complainants have evidence contrary to the Association's representation;
- (18) The Association is responsible for the building components that contributed to the water issue; and
- (19) The Board's decision of August 29, 2023, did not comply with regulations.

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

*1. The Board failed to provide proper notice of its August 22, 2023, meeting.*

The Complainants allege that the Board did not provide the Complainants the proper notice for its August 22, 2023, meeting as required by Va. Code §55.1-1959. The Virginia Condominium Act gives an association board the power to establish, adopt, and enforce its rules and regulations. The board's enforcement mechanisms include suspending a unit owner's right to use facilities or services and assessing charges against any unit owner who violates the rules and regulations. Va. Code §55.1-1959(A)(B). The same applicable law that gives the board the power and authority to enforce its rules and regulations, also imposes obligations on the board to afford the erring unit owner the opportunity to correct the violation, and if not corrected, an opportunity to be heard before a proper tribunal prior to any imposition of the consequences of the violation. The applicable law states that:

Before any action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for

notices of meetings pursuant to § 55.1-1949. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive board or such other tribunal as the condominium instruments or its adopted rules and regulations specify.

Notice of such hearing, including the actions that may be taken by the unit owners' association in accordance with this section, shall, at least 14 days in advance, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55.1-1949. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55.1-1949.

Va. Code §55.1-1959(C).

In this case, the Complainants contend that Board failed to provide the requisite 14-day notice, as well as an opportunity to be represented by their own counsel. The Board in its response did not deny the Complainants' allegations but argued that the meeting of August 22, 2023, was not a meeting to impose penalty under Va. Code §55.1-1959; but rather a meeting that was intended to give the Complainants an opportunity to discuss their complaints. There is no question that the Board would have been in violation if the meeting of August 22, 2023, was held for the purpose of enforcement its rules and regulations under Va. Code §55.1-1959(B) against the Complainants. However, based on the information presented, this Office is unable to conclude that the August 22, 2023, meeting falls under the applicable law, especially given the Complainants' assertions that their online payment portal was blocked, and their accounts sent to a collection agency at least a month prior to the August 22, 2023, meeting.<sup>1</sup>

*2. The Board failed to provide the Complainants with certain documents.*

The Complainants state that they requested complete copies of the Association declaration and bylaws to be given to them before the August 22, 2023, meeting, but the Board failed to do so. The Board, in its response, points out that the Complainants did not submit a written request in accordance with the applicable law. It is true that the Virginia Condominium Act gives every unit owner in a good standing the rights of access to all books and records kept by the association on behalf of the unit owners' association subject to some exceptions. *See*, Va. Code §§55.1-1939; 55.1-1945. The same applicable law also mandates that the request must be submitted to the association only during reasonable business hours and the request must be in writing. *See*, Va. Code § 55.1-1945(B). There is insufficient evidence on record to show that the Complainants made a proper request for the records under Va. Code § 55.1-1945. Furthermore, the Complainants should have had copies of the declaration and governing documents when they purchased their

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<sup>1</sup> Please note that the issue of whether the Complainants should have been given an opportunity to correct the violation and/or an opportunity to be heard prior to the Board blocking their online payment portal, and sending their accounts to collection agency is not before this Office, and this determination did not address it.



units; and can still obtain them through the Association website or as public records through the county/court where they should be recorded. Therefore, this Office cannot find that the Board violates the applicable law regarding the requests for copies of declaration and bylaws.

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

This Office noted areas of concern related to the Board's final decision dated March 1, 2024. Specifically, the Board did not include the registration number of its Association or the license number of the manager, if applicable, and in this case it was applicable. 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 office as well as the applicable contact information of the Ombudsman's office. *See*, 18 VAC 48-70-50. Given the aforementioned omissions from its final decision, the Board's response failed to comply with the applicable regulation.

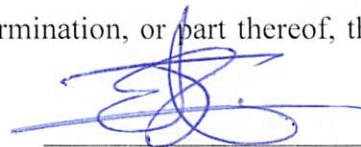
### **Conclusion**

As to the Complainant's allegations, 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. This Office finds, 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.

### **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. Nevertheless, 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 party is dissatisfied with this determination, or part thereof, that party could seek remedies in civil court.



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Justina Ehiawaguan, Esquire  
CIC Ombudsman

cc: Board of Directors

Eclipse on Center Park Condominium Homeowners' Association