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COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

July 12, 2024

Kishore S. Thota
Director

Brian P. Wolford
Chief Deputy Director

Complainant: Peter Moerman
Association: Glenvale Condominium Association
File Number: 2024-02361

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on April 29, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Peter Moerman ("Complainant"). The Complainant initially submitted a complaint to the Glenvale Condominium Association Board of Directors ("Board") on March 21, 2024, and the Board issued a notice of final decision on April 22, 2024, on the complaint. 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 five major issues¹: (1) Failure to carry out responsibilities and/or to act in a timely manner; (2) Willful and blatant violation of the Association's governing documents; (3) Board failed to fill two vacancies on the Board; (4) Putting self-interest ahead of the needs of the Association; and (5) Being reckless with Association finances. As explained below, this Office finds that it lacks the jurisdiction to address the five issues presented.

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 described more fully below, the Office has determined, upon a review of the materials submitted with the NFAD, that the issues or allegations raised are outside of its jurisdiction. This determination will address each separately.

1. Failure to carry out responsibilities and/or act in a timely faction:

The Complainant alleges that the president of the Board, who has authority under the bylaw to sign contracts, refused to sign a contract that was unanimously approved by the members. The Complainant states that contract was for inspection and/or repair critical life safety equipment, and that the president cited personal disagreement as reason for failing to sign the contract. The Complainant asserts that the president has a pattern of refusing to carry out his duties if he does not like the terms. The Complainant concludes that the president’s refusal to sign the contract not only went against the wishes of the Association but also potentially endangered the safety of the members.

Nowhere did the Complainant alleged a violation of the common interest community law, nor does the alleged action or inaction of the Board implicate the Virginia Condominium Act. As a result, the issue does not fall within the purview of this Office.

2. Willful and blatant violation of Association governing documents.

The Complainant alleges that the president parked his vehicle in the fire lane in violation of the Association's bylaw. Again, this Office does not review or investigate an alleged violation of internal governing documents such as bylaws.

3. Board failed to fill two vacancies on the Board:

The Complainant states that the Board was required by its bylaws to fill vacancies on the Board. The Complainant alleges that the president of the Board voted against filling the vacancies without providing legitimate reason for doing so. Once again, this Office does not have the statutory authority to adjudicate an association's compliance with its bylaws.

4. Putting self-interest above the needs of the Association:

The Complainant states that unit owners are in support of installing security cameras in the community, but the president disagreed citing personal reasons why cameras should not be installed. The Complainant states that in addition to killing the vote to install cameras, the president is also delinquent in making changes to the Association's infrastructure as required by the Virginia State Corporation Commission ("SCC"). The Complainant alleges that rather than focusing on how to bring the Association into compliance with SCC requirements, the president is preoccupied with trying to find out how the SCC found out. On this issue, again, no common interest community law is implicated, therefore, it is outside the jurisdiction of this Office to review.

5. Being reckless with Association finances:

The Complainant alleges that during the budgeting process last year (November), the Board was presented with three options, one of which was more likely to reduce the Association's financial deficit, and that it was recommended that the Board either increase the assessments with 5%, 8%, or 10%. The Complainant stated that he recommended 10% increase to help put the Association on track to reduce or eliminate its financial deficit. The Complainant stated that the Board, under the prompting of the president, passed a budget that did not increase fee assessments. Ultimately, however, this issue does not involve an alleged violation of the common interest community law. As a result, the Office does not have the jurisdiction over this issue.

Notwithstanding the above, there are areas of concern related to the Board's response to the Complaint. Specifically, the Board's final decision does not address the issues raised by the Complainant, it does not admit nor deny the Complainant's allegations. Rather it responded only to the Complainant's demands to remove the Board president and change the composition of the Board. Additionally, the Board did not include any citation to applicable governing documents, laws or regulations that supports its final determination. 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. In this case, the Board's final determination failed to address the Complainant's allegations, and it failed to cite to any law that supports its final decision. Thus, the Board's response is deficient under the Regulations, 18 VAC 48-70-50.

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. The Office does, though, find 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

While the Office does not find that the Board violated the Virginia Condominium Act, we nonetheless found that the Board's final determination was deficient. Therefore, the Office encourages the Board to fully acquaint itself with the Virginia Condominium Act's provisions 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 the Complainant is dissatisfied with this determination, or part thereof, the Complainant could seek remedies in civil or criminal court.

A handwritten signature in blue ink, appearing to read 'Justina Ehiawaguan', is written over a horizontal line.

Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Glenvale Condominium Association.

¹ Issues Complainant has against the president of the Board and by extent, the Board.