



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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August 16, 2024

Complainant: Debbie Yates
Association: Madison Plantation Owners' Association
File Number: 2024-02803

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on June 3, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Debbie Yates ("Complainant"). The Complainant initially submitted a complaint to the Madison Plantation Owners Association Board of Directors ("Board") on March 25, 2024, and the Board issued a notice of final decision on May 4, 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 issue: (1) Board failed to allow the Complainant to inspect the books. As explained below, the Office finds that the Board's decision is in conflict with the applicable 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 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 there is sufficient evidence to conclude that the Board’s decision is in conflict with the applicable law. This determination will address the issue raised by the Complainant below.

Board failed to allow the Complainant to inspect the books.

The Complainant requested to review the Association books, specifically, the reserve study, vendor quotes, calculations used by the Board to determine yearly assessments, an annual budget used to determine that annual operating funds for the fiscal year of 2023/2024, and a current disclosure package.

The Board, in an email dated May 4, 2024, simply stated that the Association has “an estimate for road upkeep in 20-25 years. This is our ‘reserve study.’” The Board added that the Association does not have “any ‘books’ to show you. We always provide a report of every check we write.” The President of the Board, Ed Katz, made his frustrations with the Complainant known in the email. Whether the frustrations are justified or not, especially considering the size of the Association as well as the repeated requests by the Complainant, the Board is obligated to provide a response that complies with the applicable law. The Virginia Property Owners’ Association Act gives a homeowner the right to examine or obtain all the books, records and minutes of the association, subject to some exclusions and exceptions. Va. Code §§55.1-1807 and 55.1-1815. Under the applicable law, the association is obligated to keep:

1. All financial books and records in the form of:
 - (a) Detailed records of receipts,
 - (b) Detailed records of expenditures, including maintenance and repair expenses, and
 - (c) Any other expenses incurred by or on behalf of the association.
 2. All books and Records including:
 - (a) Membership list
 - (b) Addresses, and
 - (c) Actual salary of the association employees earning over \$75,000. And
 - (d) Aggregate salary information of the other association employees.
 - 3 Minutes of meetings up to 60 days, and
 - 4 Recorded active liens.
- Va. Code §55.1-1815.

Pursuant to the above statutory provision, the Board is obligated to keep financial books and records. The Board is also obligated to make the books and records available for examination or copying by homeowners in good standing. Thus, the Board only has the option of making the books available to the Complainant, or let the Complainant know that it does not have or keep any of the documents specified in the request. Simply stating that the Association does not have any books is insufficient and conflicts with the applicable law.

Additionally, there are areas of concern related to the Board's response to the Complaint. The Board's response is deficient in its form and substance. The President of the Board merely sent an email venting his frustration and did not provide a cogent response to the complaint. Also, the Board did not include the registration number of its Association, the license number of the manager, if applicable, a citation to applicable governing documents, laws or regulations that supports its final determination, or notice of 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, if applicable; 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 office. *See*, 18 VAC 48-70-50. Thus, the Board's response does not comply with the provisions of this Regulation.

Conclusion

As to the Complainant's complaint, based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office concludes that the Board's decision to not allow the complainant to inspect the identified records is in conflict with the applicable law. Furthermore, this Office finds that the Board's final determination did not contain the information required by regulation (18 VAC 48-70-50) to be in an association's decision issued to a unit owner.

Decision

This Office, therefore, recommends that the Board permit the Complainant to examine the Association's financial books¹ if the Complainant is in good standing. Additionally, this Office finds that the Board's email as its final decision was deficient. Therefore, this Office encourages the Board to fully acquaint itself with the Virginia Property Owners Association 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.



Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Madison Plantation Owners' Association

¹ Note that financial books do not have to be a formal set of accounting records, convoluted, or complicated financial accounting and statements. It could be a simple folder or file containing receipts, expenditures, cancelled checks, etc. It does not have to contain vendor or contractor quotes, calculations, or work order.