



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

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Governor

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Interim Director

November 4, 2024

Complainant: Kenneth O'Brien
Association: Parc Reston Condominium Association
File Number: 2025-00997

DETERMINATION – NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on October 23, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Kenneth O'Brien ("Complainant"). The Complainant initially submitted a complaint to the Parc Reston Condominium Association Board of Directors ("Board") on November 23, 2023; and the Board issued a notice of final decision on September 27, 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 Complaint, the Complainant alleges that the Board: (1) failed to maintain the common areas of the Condominium in accordance with applicable law; and (2) violated part of the Landlord-Tenant law. This Office is unable to conclude that the Board is in violation of the applicable law as to the first issue. As to the second issue, we do not have the authority to address an alleged violation of the Virginia Residential Landlord-Tenant 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 § 54.1-2354.4I.

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, after a review of the materials submitted with the NFAD and the applicable laws and regulations, that the Board did not violate the Virginia Condominium Act (“Act”) as to the first issue. As to the second issue, this Office finds that it lacks the jurisdiction to address Landlord-Tenant law. Before we address the allegation of violation of applicable law, we would briefly address the issue of legal standing.

1. Lack of Standing Under the Act to File a Complaint:

The Complainant filed a Complaint with the Board on November 23, 2023, alleging that the Board failed to maintain the exterior premises and the common areas of the Condominium. Such failure led to animals entering the roof and attic of the property identified as 1782 Jonathan Way, Unit E, Reston, Virginia 20190 (“Unit”). The Complainant indicated that he was filing on behalf of the same property. The Board, in its final decision, argues that the Complainant has no legal standing to file a complaint. The Board points out that the Complainant is not the owner of the aforementioned property, nor was he the owner of record at the time he submitted the

Complaint. The Board states that the property was transferred from a business named Entity Owners¹ to Brett Ronyecs on March 14, 2024.

We agree with the Board that the Complainant should have filed the Complaint on behalf of the Entity Owners as its agent or as its sole managing member. However, if the failure to do so was a bar, the Board should have rejected the Complaint, thereby giving the Complainant the opportunity to take the necessary corrective measure. Additionally, even if the Complainant could not file a complaint as a unit owner, he could still file as a citizen as permitted under the Association Complaint Procedures, Va. Code § 54.1-2354.4, which states in pertinent part that:

The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association *and other citizens*. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. Va. Code § 54.1-2354.4(A) (Emphasis added).

As could be glanced from the above cited Code, there is no qualification as to what the “other citizens” should be complaining about. While we acknowledge that the Complainant’s failure to file the Complaint as an agent or sole managing member of the Entity Owners creates ambiguity, we cannot conclude it creates a bar to his Complaint.

2. Board failed to make repairs and maintenance as obligated under applicable law:

The Complainant alleges that the Board failed to maintain the exterior premises and common areas resulting in animals entering the roof and attic spaces and causing damages to the Unit. The Complainant enumerated the damages to include severed heating and cooling ducts, damaged HVAC system that had to be replaced, disturbing noises affecting living condition in the Unit, and ultimately leading to the loss of tenants. The Complainant states that the issues began in 2018, and despite his repeated requests and appeals to the Board and its management company, the situation was not addressed. The Complainant listed the various expenses incurred from Spring of 2018 through September of 2023. According to Exhibit B of the Complaint, a work order was sent to the Association on January 24, 2023, and on February 6, 2023, the Association sent in an exterminator who treated the attic. Exhibit B also indicated that on March 10, 2023, the Association sealed the animals’ entry points, but the trees were not trimmed. The Complainant asserts that the problems persisted, and that the Unit continued to incur expenses to remedy the situation and to repair damages done by the wildlife in the attic.

The Board, in its response, acknowledges that the Board was responsible to maintain the common areas of the Condominium, and to fulfil its obligation, it hired a pest control company to inspect and address the issues regarding animals in the Unit’s attic. Attached to the Board’s final

¹ Premier Trust Company, a division of Pacific Premier Bank, (FKA) Prensco Trust Company, LLC Custodian FBO Custodian Kenneth L. O’Brien IRA As To An Undivided 80% and OBR, LLC (collectively “Entity Owners”).

decision is a statement, identified as Exhibit 1, from the pest company, Raven Termite & Pest Control, hired by the Board. The pertinent part of Exhibit 1 reads as follow:

Services at Parc Reston Unit F-1782 Johnathan Way

06/14/18 – capture of 5 flying squirrels

05/10/19 – placed rodent station in attic, observed birds flying into vent of unit f

06/14/20 – loud animal noise heard, observed attic insulation not disturbed, used Eviction raccoon repellent. Rodent bait from prior year untouched

09/21/20 – complaint again of in attic, placed Meldase Cellular Motion S900 Trail camera overlooking the unit attic area 09/30/20 no activity removed camera

07/21/22 – complaint of debris coming from vent (possible animal) recommended vent company check vents, birds seen entering vents on front of building

09/26/23 – Complaint of possible animal in attic, insulation undisturbed, placed Meldase Cellular Motion S900 Trail camera overlooking the unit attic area, used Eviction raccoon repellent, baited rodent station. 10/16/23 no activity removed camera.

The applicable law at issue here is Va. Code § 55.1-1955, which states in relevant part as follow:

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. 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).

In this case, the attic is situated within the Unit, however, the problems arose from the need for repairs, renovation, or restoration of conditions originating in or through the common elements or any apparatus located with the common areas. As a result, it is the responsibility of the Association to repair and restore the affected area of

the attic of the Unit. In other words, that the Board has the responsibility to repair and restore the affected common areas as well as the attic of the Unit that was adversely impacted due to the conditions originating from the common areas. The Board, in this case, made efforts to address the wildlife problems in the Unit's attic. As shown on the Board's Exhibit 1, the Board made multiple efforts, from June 14, 2018, through October 16, 2023, to address the problems in the attic of the Unit. The issues of whether those efforts are adequate, timely, and complete, or whether the Board should be held responsible for the monetary damages incurred, are beyond the scope of our jurisdiction. Instead, such issues must be addressed through a civil court action. Thus, based on the Board's efforts, we cannot conclude that the Board violated the mandates of Va. Code § 55.1-1955(A).

Conclusion

As to the Complainant's complaints, 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. If the Complainant is dissatisfied with this determination, or part thereof, the Complainant could seek remedies in civil or criminal court.

Justina Ehiawaguan

Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Parc Reston Condominium Association