



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

Brian P. Wolford
Interim Director

G. Bryan Slater
Secretary of Labor

July 26, 2024

Complainant: Martha Lambert
Association: Sea Oats Condominium Association, Inc
File Number: 2024-01929

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on February 21, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Martha Lambert ("Complainant"). The Complainant initially submitted her complaints to the Sea Oats Condominium Association Board of Directors ("Board") on January 8, 2024; and the Board issued a notice of final decision on both complaints on January 25, 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 Complaints, the Complainant raises two major issues: (1) Discrepancy exists between the flood insurance cost of 2023 and that of 2024; and (2) Board failed to provide the specific records requested by the Complainant. As explained below, the Office finds that the first issue does not fall within its jurisdiction and as to the second issue, the Board is not in violation of 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 insufficient evidence to conclude that the Board violated the applicable law. This determination will address each issue raised by the Complainant separately.

1. Discrepancy between 2023 flood insurance costs and the costs proposed in 2024 budget:

The Complainant alleges that a discrepancy exists between the total annual cost of flood insurance for the year 2023 as shown on the Certificates of Insurance, and the total cost for flood insurance in the income and expense statement and proposed budget for 2024. The Complainant points out that there a difference of over \$8,000.00 between the cost of flood insurance for 2023 and the proposed costs for 2024. In its response, the Board provided a plausible explanation as to the discrepancy: that with multiple flood insurance policies renewing at different times, the income statement may not always reflect the actual costs of the renewed policies. Notwithstanding, the allegation or issue of the flood insurance premium discrepancy is outside the jurisdiction of this Office the Board.

2. Failure to provide specific documents as requested:

The Complainant states that the Board failed to provide the records she requested. The Complainant, on or about August 5, 2023, requested a copy of the assignment of the Association

management contract to Community First Management (CFM); and well as financial statements for the months of June and July 2023. The Complainant states in her request that she would make the August 2023 association dues payment to CFM only after she receives and verifies the Assignment. On August 8, 2023, CFM provided some of the requested documents, informing the Complainant that the submitted documents were the only ones (among the documents requested) it had as of that date. On August 17, 2023, the Complainant acknowledged that she has received most of the documents requested except for the assignment contract. In response to her email, CFM advised the Complainant that no further information will be provided to her since she was no longer in good standing for refusing to pay the required fees. Additionally, the Board, in its response, asserts that the management company provided to the Complainant the requested documents except the management contract with CFM, which was not available at the time, and by the time the contract became available, the Complainant was no longer in good standing and, as a result, not eligible to receive a copy.

It is true that the Virginia Condominium Act gives a unit owner the right to inspect or obtain all of the books, records, and minutes of the association, however, there is a requirement of being in good standing. Va. Code §§55.1-1939; 55.1-1945. Under the applicable law, all association books and records are available for examination and copying by a unit owner “in good standing.” Va. Code §55.1-1945(B). Although being in “good standing” is not clearly defined, the Virginia Condominium Act authorizes the suspension of services for failure to pay assessments. Va. Code §55.1-1949. It states in pertinent part that the association has the power to “suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments that are more than 60 days past due.” Va. Code §55.1-1949(B). Therefore, it is reasonable to find that a unit owner is not “in good standing” when such owner is not current in paying their assessments.

In this case, the Complainant states in her email dated August 5, 2023, that she was withholding the payment of fees until she obtains and verifies the assignment contract; and as of January 25, 2024, it seemed the payment of fees was still being withheld by the Complainant. Thus, the Association has the power to suspend the Complainant's right to services such as providing access to the Association books and records.

Notwithstanding the above, there are areas of concern related to the Board's response to the Complaint. Specifically, the Board did not include the registration number of its Association, the license number of the manager, citation to applicable governing documents, laws or regulations that supports its final determination or 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. 18 VAC 48-70-50. Thus, the Board's response is technically deficient under the Regulations, 18 VAC 48-70-50.

Conclusion

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 did not violate the applicable law. This Office does, however, find that the Board's final determination did not comport with the 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. However, I do recommend that the Board to fully acquaint itself with the Virginia Condominium Act so that it can ensure that it follows it precisely with regard to including the necessary information in its decisions. As noted above, 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 must ensure that it is familiar with those requirements and include 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.



Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Sea Oats Condominium Association, Inc.