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COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

July 8, 2024

Kishore S. Thota
Director

Brian P. Wolford
Chief Deputy Director

Complainant: Destiny Reign LaLonde
Association: Shenandoah Forest Property Owners' Association
File Number: 2024-01493

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on December 29, 2023, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Destiny Reign LaLonde ("Complainant"). The Complainant initially submitted a complaint to the Shenandoah Forest Property Owners Association Board of Directors ("Board") on November 17, 2023; and the Board issued a notice of final decision on December 1, 2023, 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

No discernible common interest community law issues in this case. In the Complaint, the Complainant makes series of allegations and then concludes that some of the Board actions violated the statute in the Property Owners' Association Act ("POAA") that details information that should be available to active members, the way meetings should be held, and notices to be provided. As explained below, the Office is unable to ascertain whether the Board violated the applicable law since the Complainant did not indicate what Board's action or inaction violated what part of the Property Owners' Association Act.

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

The Complainant alleged multiple allegations but did not indicate what part of the common interest community law was violated, or what action or inaction of the Board violated the applicable law. The Complainant made numerous allegations, and at the end, pointed out that the POAA, at Va. Code § 55.1-1815, details all information that should be available to active members, how meetings should be held, notice give and executive meetings. The Complainant added that some of these actions are in direct violation.

The Complainant’s allegations include:

- (1) the Board failed to respond to his/her requests for:
 - (a) a vote for changes to the covenants,
 - (b) FireWise application for the year 2022, and
 - (c) FireWise grant process;
- (2) Lack of transparency as to the process of application and approval of projects;
- (3) The Board created bylaws without the members’ consent;
- (4) The Board denied Complainant access to list of Culverts in need of repair since the Board voted to approve a \$25 special assessment fee to repair the culverts on the list;
- (5) The Board had two roads, owned by the Association, paved without prior discussion and approval in open meetings;

- (6) The Board held executive meetings to discuss topics not discussed or approved in open meetings;
- (7) The Board failed to remove from a meeting a member who was rude and aggressive to the Complainant;
- (8) The Board failed to take any action against two other people who accused the Complainant of wrongdoing;
- (9) The Board purposefully and incorrectly reported an incident in the minutes of a meetings;
- (10) The Board failed to respond to a request for the identity of the person who wrote the minutes of the meeting and the people who voted on it;
- (11) The inflammatory account of the incident by the Board proved the Board's deliberate attempts to intimidate members;
- (12) Half of the Board members do not have access to an email dated August 23, 2023, which allows for text meetings with secret discussions by only half of the Board;
- (13) The Complainant was not permitted to put up signs in the community;
- (14) Three board members have signs in the community in violation of the bylaws; and
- (15) The Board uses favoritism and intimidation tactics.

The Board practically responded with denials or by explaining its action (or inaction) below each allegation on the same Complaint Form. Unfortunately, based on the nature of the NFAD and the complaint that it stems from, this Office cannot determine if there is a violation of the POAA. Merely alleging wrongdoing, bad acts, or inaction without specifying what action/inaction violates what part of the applicable law is not enough, especially when the Board's response denies the allegations. Although the Complainant concluded that some of the Board's actions were in direct violation of Va. Code § 55.1-1815; the Complainant needed to indicate those actions and what parts of the common interest community law those actions violated.¹ As a result, there is no sufficient evidence to conclude that the Board failed to comply with the applicable laws.

Notwithstanding, there are several areas of concern related to the Board's response to the Complaint. Specifically, the Board, rather than provide its final decision in formal separate document, wrote its response below each allegation on the Complaint Form. The Board did to cite to any of its governing documents, law or regulations that supports its decision. Additionally, the Board failed to provide necessary information in its final decision. The Common Interest Community Ombudsman Regulations require an association's final decision to include:

¹ There are 8 subsections, labeled A through H of § 55.1-1815; and subsection B, has two parts, numbered 1 and 2; and subsection C has nine parts numbered 1 through 9. Va. Code § 55.1-1815. It is not the duty of this Office to decipher what action/inaction of the Board is contrary to applicable law.

- 1) Date of issuance;
- 2) Specific citations to applicable association governing documents, laws, or regulations that led to the final determination;
- 3) The association's registration number;
- 4) The name and license number of the common interest community manager, if applicable;
- 5) The complainant's right to file a Notice of Final Adverse Decision with this Office; and
- 6) The necessary contact information of this Office. Regulations, 18 VAC 48-70-50.

In this case, Board's response was written on the same Complaint Form; it did not cite to any specific governing documents, laws, or regulations, it did not include its registration number, nor the name and license number of its manager, if applicable. Thus, the Board's response was deficient under the Regulations, 18 VAC 48-70-50.

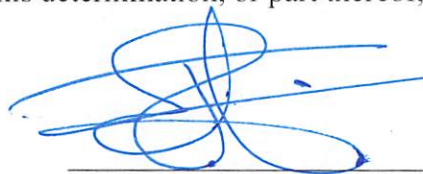
Conclusion

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 violate the applicable law.

Decision

This Office finds no violation of the applicable laws on the part of the Board. However, the Office recommends that the Board fully acquaint itself with the Property Owners' Association Act so that it can ensure that it follows it precisely. 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, in future decisions, 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.



Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Shenandoah Forest Property Owners' Association