



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

Brian P. Wolford
Interim Director

G. Bryan Slater
Secretary of Labor

August 5, 2024

Complainant: Daniel P. McAndrews
Association: Unit Owners' Association of the Odyssey Condominium
File Number: 2024-02188

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on April 5, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Daniel P. McAndrews ("Complainant"). The Complainant initially submitted a complaint to the Unit Owners' Association of the Odyssey Condominium Board of Directors ("Board") on January 27, 2024, and the Board issued a notice of final decision on March 8, 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 two major issues: (1) the Board failed to timely provide the Association records requested by the Complainant; and (2) the Board failed to provide the specific records requested by the Complainant. As explained below, the Office finds that the Board is not in violation of the applicable law as regard to both issues.

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. Board failed to timely provide requested documents.

The Complainant alleges that the Board failed to timely provide the records he requested. The Complainant asserts that he requested for certain reports/documents through email on the morning of January 20, 2024. The Complainant states that as of January 27, the Board had not provided the requested documents. The Board admits in its final determination that the documents in its possession were not delivered to the Complainant until January 30, 2024, due to an illness of a staff member.

The Complainant alleges that the Board violated § 55.1-1945, in failing to promptly provide the requested records. The applicable law states in pertinent part that:

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall

reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested. Virginia Code § 55.1-1904.

Pursuant to the above Code Section, the Complainant submitted the request outside a reasonable business hour because he submitted it on Saturday. There is no evidence that Saturday morning of January 20, 2024, was a mutually convenient time.¹ Nevertheless, assuming the Association keeps business hours on Saturdays, the management company would have had five (5) business days to respond, meaning that since the request was submitted in writing on Saturday, on January 20, 2024, the management company had till January 29, 2024, because the submission day would have been pushed to Monday, January 22, 2024, not counting the submission day and the weekends, five business days would include January 23, 24, 25, 26, and 29.² Either way, the Board failed to provide the documents in a timely manner. However, in light of the fact that the delay was only one day, and no harm was done, coupled with the assertion that the delay was due to the illness of a staff member, this Office cannot conclude that the Board is not in compliance with the applicable laws.

2. Board failed to provide certain records requested by the Complainant.

The Complainant requested a PDF copy of all the work orders with an elevator licensed professional or company logged by the Association of all incidents relating to the common element elevators since December 11, 2020. In the complaint filed on April 5, 2024, with our Office, the Complainant stated that as of January 30, 2024, only one work order for January 16, 2024, regarding an elevator entrapment was delivered to him. The Complainant states that as listed in his request, he was missing work orders from November 29, 2021, September 9, 2022, October 31, 2022, and March 24, 2024. The Complainant adds that the Association is required by the elevator permits issued by Arlington County to keep work orders on file.

The Board, in its letter dated June 26, 2024, states that it provided to the Complainant all the documents in its possession in accordance with the law. The Board argues that it has no obligation to provide records kept by third parties that are not kept on behalf of the association. It is true that the Virginia Condominium Act gives a unit owner the right to inspect or obtain all the books, records, and minutes of the association, subject to some exclusions and exceptions. Va. Code §§55.1-1939; 55.1-1945. In accordance with Va. Code §55.1-1945(A) and (B), 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.

¹ Note if the Association does not have business hours on Saturday, the request will not be valid under the applicable law.

² For guidance, see computation of time at Va. Code §1-210.

2. All books and Records including:
 - (a) Membership list
 - (b) Addresses, and
 - (c) Aggregate salary information of the association employees.
- 3 Minutes of meetings, and
- 4 Recorded active liens.

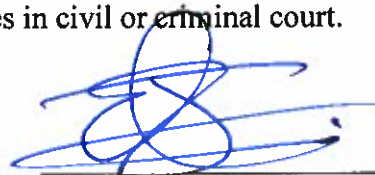
As apparent from the list above “work order” is not listed in any of the categories. While it would be advisable for the Association to request and keep a copy of its elevator work orders, especially given the possibility that the local government might require it, the Virginia Condominium Act does not expressly obligate an association to keep work orders. Further, even if the Association is obligated to maintain such records but has not done so, the response that the Association provided the records it possessed meets the requirements of the applicable POAA statute. The issue of whether the Association may be violating a county ordinance is beyond the jurisdiction of this Office.

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 violate the applicable law.

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. 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
Unit Owners Association of the Odyssey Condominium