



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

Brian P. Wolford  
Interim Director

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Secretary of Labor

July 29, 2024

Complainant: Karl Hubert  
Association: Windward Towers Condominium Homeowners Association  
File Number: 2024-01534

## **DETERMINATION - NOTICE OF FINAL ADVERSE DECISION**

### Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on January 9, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Karl Hubert ("Complainant"). The Complainant initially submitted a complaint to the Windward Towers Condominium Homeowners Association Board of Directors ("Board") on October 12, 2023. The Board issued a final decision regarding his complaint 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

The Complainant raised numerous allegations, most of which do not implicate the common interest community ("CIC") law, and as a result, will not be addressed in this determination. The only two issues that involved CIC law are that: (1) the Board violated applicable law for failing to provide all requested documents; and (2) the Board violated applicable law for redacting the letter from the Association's legal counsel. As explained below, the Office finds that the Board did not violate the CIC law regarding 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 our 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 CIC law was violated, or what action or inaction of the Board violated the applicable law. The Complainant’s allegations include:

- (1) The Board failed to provide all the documents requested;
- (2) The Board violated the applicable law for redacting the letter from the Association’s attorney;
- (3) The Board ignored the Complainant’s letter demanding that no demolition crew should enter his unit without the Board agreeing to reimburse him for the destruction;
- (4) The Board forced and compelled the Complainant to agree to demolition services;
- (5) The Board has a practice of weaponizing the Association’s attorney to file suits;
- (6) The Board owes him \$15,000.00 regarding demolition services that were unnecessary;
- (7) The Board failed to act in good faith to promote the best interest of the Association;

- (8) The Board committed misfeasance in regard to its fiduciary duties in connection with the expenditure of the Association resources;
- (9) The Board engaged in an inappropriate behavior in violation of its Bylaws;
- (10) The Board engaged in misfeasance and negligence by not including all costs regarding restoration contract with Keystone;
- (11) The Board engaged in negligence and misfeasance for failing to act diligently and zealously regarding repairs of common areas or balconies that were unnecessary;
- (12) The Board failed to attach reserve study addressing any future common area repairs in the resale certificate;
- (13) The Board provided a fraudulent certificate of resale to the Complainant;
- (14) The certificate of resale given to the Complainant failed to address any current or future common area, or balcony repairs;
- (15) The Complainant closed on his condominium unit on June 21, 2021; met with the manager on the same date to go over the rules, but at no time did the manager mention any potential future tile demolition;
- (16) The Association manager erroneously mixed up the Complainant's parking space number with his storage unit number;
- (17) There are inaccurate and/or incompetent bookkeeping procedures in place in the Association;
- (18) The Board sent the Complainant a correspondence filed with fraud and misrepresentation regarding financial responsibility for balcony;
- (19) The Complainant found the correspondence suspicious and then requested a complete and unredacted copy of the engineer report;
- (20) The Complainant learnt from the documents provided showed that the engineer never entered his unit to assess whether the tile demolition was necessary;
- (21) The Complainant also learnt that the engineering report found no safety concerns and deemed the place to be in good condition;
- (22) The Board destroyed and demolished the Complainant's unit and balcony without justification;
- (23) The Board falsely justified the destruction of the Complainant's unit and then imposed a charge of \$500 for the demolition;
- (24) The Declaration makes the unit owners responsible for any expenses incurred with the maintenance, repair or replacement of limited common elements;

- (26) The Declaration also requires that any alteration must be approved and in writing prior; and
- (27) The Board did not approve the demolition of the Complainant's unit and the documents he requested to prove this lack of prior approval were not provided by the manager.

This Office has determined, upon a review of the materials submitted with the NFAD, that the issues or allegations, except the first two, raised are outside of its jurisdiction. This determination will address each of those two issues separately below:

*1. The Board failed to provide all request documents.*

The Complainant alleges that he requested a complete and unredacted copy of the engineer report, Keystone report, and SE and VB demolition documents or report prepared in connection with his unit. The Complainant stated that he did not receive the complete reports, and once he complained, the manager asked him to come to the office to review the documents that the manager failed to send to him. The Complainant argues that the manager's statement is an admission of failing to comply with his request, and as a result, a violation of the applicable has occurred. The Board, in its response, indicated that not only were the requested documents provided, but the Complainant was also given the opportunity to come and examine the documents at the office.

The Virginia Condominium Act gives every unit owner in a good standing the rights of access to all books and records kept by the association on behalf of the unit owners' association subject to some exceptions. Va. Code §§55.1-1939; 55.1-1945. In this case, the Complainant exercised his rights of access by requesting certain documents. The Board/manager honored the request and sent some documents to the Complainant which the Complainant claimed were incomplete. The Complainant was then invited to come to the office and examine the needed documents. Based on these set of facts, this Office cannot conclude that the Board violated any of the applicable laws.

*2. Redaction by the Board of the letter from the Association's attorney.*

The Complainant states that he requested a complete and unredacted copy of the Association's attorney's letter which was referred copiously in a correspondence compelling the Complainant to pay a \$500 fee assessment. The Complainant states that the Board heavily redacted the letter and argues that the attorney-client privilege was waived since the letter was used to threaten him to pay the \$500 assessment. In its response, the Board states that the Association attorney's letter is protected under the applicable law and that the attorney-client privilege was not waived. It is a fact that communications with legal counsel in certain matters are protected. Va. Code §55.1-1945(C)(5). The issue of whether the privilege was waived in this case, due to the fact that the Board referred to it in correspondence regarding payment, is beyond the scope of this Office. Therefore, this Office finds that the Board did not violate the applicable law in redacting the letter from its legal counsel.

### **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, 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.



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Justina Ehiawaguan, Esquire  
CIC Ombudsman

cc: Board of Directors

Windward Towers Condominium Homeowners' Association