



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

July 18, 2014

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Carmen Bucci
Association: Fox Hall Homeowners Association, Inc.
File Number: 2014-03790

The Office of the Common Interest Community Ombudsman has been designated to review final adverse decisions and determine if they may be in conflict with laws or regulations governing common interest communities. Such determination is within the sole discretion of the Office of the Common Interest Community Ombudsman and not subject to further review.

Complaint

Complainant submitted a complaint to the Association dated March 20, 2014. The Association provided a Final Determination dated May 23, 2014. The Notice of Final Adverse Decision (NFAD) was received by this Office on June 23, 2014.

Determination

The Complainant submitted a complaint alleging six complaints against the Association.

Complaint 1 alleged that the procedures for the election to the Board of Directors are in violation of the bylaws. This is not a complaint that is appropriate for the association complaint procedure as it is alleging a violation of the governing documents of the association.

Complaint 2 alleged a violation of §55-510 (Code of Virginia), stating that the board and manager denied requests for information. These requests were for copies of applications for rental of facilities, copies of opinions and correspondence from legal counsel, and copies of property inspection reports. As the Association stated in its Final Determination, the documents requested are documents that can be excluded from review under §55-510(C)(5), (7), and (9). In addition, the Association noted in its response that it is the policy of the Association to purge the rental applications once the rental date has passed, therefore after the rental date the applications are not available. The Association is correct that it can withhold documents that are attorney-client privileged, pertain to an executive session or are part of an individual's owner files. I do not find the Final Determination regarding Complaint 2 to be in conflict with the laws or regulations governing common interest communities.

Complaint 3 alleged a violation of the bylaws and like Complaint 1 is not appropriate for submission through the association complaint procedure.

Complaint 4 was withdrawn by the Complainant.

Complaint 5 alleged a violation of the bylaws as well as a violation of §55-513. The allegation is that the board has failed to enforce standards within the association related to boats, mailboxes, and plantings. No determination can be given for the alleged bylaws violation. The Final Determination addressed this portion of the Complaint by noting that while §55-513 does provide the authority to the Association to establish, adopt and enforce rules and regulations, it does not specifically state the method by which the association must carry out its responsibilities. Because §55-513 is specifically about the enforcement of rules, regulations and other governing documents of the Association, this office has no authority provide a determination regarding Complaint 5.

Complaint 6 alleges that the Association has violated §55-510.2 by failing to have a reasonable, effective and free method of communication. This allegation is based on the Association denying the Complainant use of the common area for a meeting. The Association responded that a community bulletin board is available for purposes of satisfying the requirements of §55-510.2. The Association also noted that it publishes a community directory periodically and this directory is provided to owners. The Association further stated that the request to use common areas, in this case the Clubhouse, for a meeting was not denied, but any such meeting would have to be held in accordance with the requirements of the clubhouse usage policy. Based on this information, I do not find the Final Determination regarding Complaint 6 to be in conflict with common interest community laws or regulations.

Several of the allegations contained in the Complaint were not related to common interest community law or regulations. For those allegations, no determination can be provided. I do not find that the Final Determination was in conflict with common interest community law or regulations.

Required Actions

No actions are required.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Fox Hall Homeowners Association