



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

January 7, 2014

Jay W. DeBoer
Director

Complainant: Michael Dandar
Association: The Highland at Gunston Corner
File Number: 2015-01510

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 October 9, 2014. The Association provided a final determination to the Complainant dated November 11, 2014 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 17, 2014 and received November 18, 2014.

Determination

The Common Interest Community Ombudsman (CICO), as designee of the Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18VAC 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 §55-530(F) (Code of Virginia) 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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant alleged that by failing to obtain quorum at the Association's Annual Meetings in 2012 and 2013, the Association violated §55-79.75 of the Condominium Act, Section 2.3 of the By-Laws of the Association, Section 3.4 of the By-Laws of the Association and failed to ratify the action of the Board of Directors. The Complainant also has alleged that the executive organ is not legally constituted, and that the management company is complicit in these violations. The Complainant believes that the actions of the Board of Directors, with the support of the Management Company, rendered all actions and contractual instruments voidable, breached fiduciary duties, corrupted and violated the election process of the unit owners association, and rendered the current Board of Directors and the Management Company unable to call an Annual Meeting and conduct elections for 2014.

In its response, the Association stated that the Association "did notice and call an annual meeting of the membership in December 2012 and 2013. An insufficient number of members participated in the meetings, unfortunately, so the Association did not have quorum at either meeting and could not conduct the business of the Association..." The Association also discussed the applicability of the Virginia Nonstock Corporation Act (§13.1-838(C)) and noted that the validity of corporate action is not affected by the failure to hold an annual meeting.

As previously noted, this office only has jurisdiction over common interest community law and regulations, and association complaints and the association complaint process are intended to address only such violations. Because of this limited jurisdiction, the only allegation that will be addressed in this NFAD is whether the Association violated §55-79.75(A) of the Code of Virginia, which is the only allegation in the Complaint that is directly related to common interest community law or regulations.

The Condominium Act states that "Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year..." (§55-79.75(A)) In addition, this portion of the Act also details the notice requirements of annual meetings. The question at hand is whether the Association violated §55-79.75 by not obtaining quorum at the two annual meetings it attempted to hold in 2012 and 2013. I do not find that there has been a violation of the Condominium Act. The Association carried out its obligation to provide notice of an annual meeting and to hold an annual meeting in 2012 and 2013. A failure to obtain quorum is not a violation of the Condominium Act.

Required Actions

No actions are required by either party.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather S. Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Highland at Gunston Corner