



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

April 9, 2015

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Mark Lepnew  
Association: Bella Vista Condominium Association  
File Number: 2015-02389

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*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.*

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## Complaint

Complainant submitted a complaint to the Association dated January 25, 2015. The Association provided a final decision dated February 20, 2015. The Complainant submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 19, 2015.

## 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 has alleged that the Association violated its own bylaws, and §55-79.48 of the Condominium Act, by failing to advise owners that there were three positions available on the Covenants Committee. The Association provided notice in its newsletter that there was one position available due to a member having recently been elected to the Board of Directors.

As noted above, this office has no authority to provide a determination regarding anything other than a violation of common interest community law or regulations. Therefore no determination will be provided regarding the alleged violation of the Association bylaws. As to the alleged violation of the Condominium Act, I believe the Complainant has misapplied this particular provision to the present complaint, as it has no relationship to the subject matter at hand. As the Association noted in its final decision, §55-79.48 (Execution of Condominium Instruments) "simply provides that the recorded condominium instruments and any amendment made pursuant to §55-79.71 of the Condominium Act, must be executed on behalf of the owners and lessees." This code section is simply not applicable to the complaint filed by the Complainant and for this reason I do not find that there has been a violation of this provision by the Association.

Required Actions

None.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Bella Vista Condominium Association