



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

September 6, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Mark Lepnew
Association: Bella Vista Condominium Unit Owners Association
File Number: 2017-00532

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 July 7, 2016. The Association provided a final determination to the Complainant dated July 26, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 24, 2016 and received the same day.

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 improperly implemented common element alterations/additions by failing to provide transparency at a board meeting. Specifically, the Complainant alleges that the purchase of a new lounge chair for the pool area was a common area addition/alteration and had not been “transparently raised first by a BV (Bella Vista) resident at an open BV HOA meeting before implementation.” The Complainant further alleges that a failure to notify the owners and have a vote by the Board at an open meeting violated the bylaws of the Association and the Condominium Act.

The Complainant states that the “non-transparency of the suggested and implemented patio common element addition/alteration idea (which should not be disingenuously and incorrectly considered “upkeep”) from an unknown BV resident is also in violation of the open meeting requirement of the VA Condo Act, §55-79.75(B)¹.” The Complainant also writes that the Association, by not following its bylaws, is in violation of §55-79.48² of the Condominium Act.

The Complainant also alleges that the replacement of a broken treadmill in the fitness center similarly violated the Condominium Act. The treadmill was replaced as a result of a donation by a resident of the condominium.

The Association responded by stating that the complaint was without merit and that the Association and Board had not violated Virginia laws or regulations. The Association further noted that the Board of Directors had voted at its July 21, 2016 meeting to approve the \$140 lounge chair. As to the treadmill, the Association noted that the Management Company has the authority “to make repairs and replacements costing less than \$1,500 without having to seek prior approval of the Board.”

No evidence has been provided in the complaint that a meeting was held without notice in violation of §55-79.75(B). As has previously been explained to the Complainant

¹ Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

² The declaration and bylaws, and any amendments to either made pursuant to § 55-79.71 shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in § 55-79.63 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale and/or lease of a condominium unit, any lessee whose leasehold interest does not extend to any portion of the common elements, any person whose land is subject to an easement included in the condominium or, in the case of a leasehold condominium subject to any lease or leases executed before July 1, 1962, any lessor of the submitted land who is not a declarant.

in prior Determinations, the application of §55-79.48 is improper and inapplicable to an association's alleged failure to adhere to its bylaws.

Required Actions

Nothing is required of the Association.

Sincerely,

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

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Bella Vista Condominium Unit Owners Association