



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 2, 2016

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Janice McKay
Association: Asbury at Plantation Woods Condominium Association, Inc.
File Number: 2017-01178

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 August 15, 2016. The Association provided a final determination to the Complainant dated October 6, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 29, 2016 and received November 3, 2016.

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's election process was invalid. The Complainant believes that not all homeowners were given the opportunity to vote, that proxy votes were not distributed, that no candidates were submitted by a nominating committee, all of which were alleged to be violations of the bylaws of the Association. Additional concerns were set forth in the NFAD, but nowhere was a violation of common interest community law or regulation alleged.

Because the Complainant provided no information that indicated there had been an "action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations," this office has no jurisdiction over this NFAD and therefore cannot provide a Determination. Violations of the condominium instruments pertain to civil law and cannot be addressed by this office.

Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Asbury at Plantation Woods Condominium Association, Inc.