



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

July 2, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Ileane Kenney
Association: Heatherlea of Arlington, A Condominium
File Number: 2015-03042

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 April 29, 2015. The Complainant received a Final Decision from the Association dated May 28, 2015. A Notice of Final Adverse Decision (NFAD) was filed with this office June 1, 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, in violation of §55-79.80:01 of the Condominium Act, failed to provide notice of a pesticide application that occurred on April 29, 2015. This provision states: "Unit owners' associations shall post notice of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least forty-eight hours prior to the application."

In its Final Decision, the Association advised the Complainant that the landscaping contractor would be obligated to provide appropriate notice in the future. This would be accomplished through an amendment to the existing contract with the landscape contractor. Any violation of this addendum would be considered "a material breach of contract" and would entitle the Association to terminate the contract for cause. A copy of the current treatment calendar was provided to the Complainant (and is also posted on the community common area) and the Complainant was assured that the Complainant's courtyard will remain an area that is not to be treated.

It is clear from this NFAD that pesticides were applied without proper notice and in violation of the Condominium Act. The Complainant has previously submitted a Notice of Final Adverse Decision to this office regarding a nearly identical issue with the same Association. In that NFAD, it was determined that a violation of §55-79.80:01 had occurred. The Required Actions portion of the Determination put the Association on notice "that it must make every effort to ensure that pesticides are only applied in a manner that fully complies with the provisions of the Condominium Act. A failure to do so may result in a referral of the matter to the Common Interest Community Board for whatever action it may deem appropriate."

Required Actions

While the Association has taken an active role in attempting to guarantee that pesticides are not applied without the required notice, the fact that this has happened again cannot be ignored. This office has no choice but to refer this matter to the Common Interest Community Board for whatever action it considers appropriate.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Heatherlea of Arlington, A Condominium