



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

October 7, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Steven M. Spiegel
Association: Fairlington Towne, A Condominium Unit Owners Association
File Number: 2016-00559

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 his complaint to the Association on May 27, 2015. The Association provided a final determination to the Complainant dated July 30, 2015 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 29, 2015 and received on the same date.

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 pesticides had been improperly applied in September 2013, May 2014, September 2014, and May 2015. He stated that appropriate notice of pesticide application was not provided and that federal and state pesticide regulations had also been violated. The Complainant also stated that failing to provide proper notice of pesticide application was a violation of a settlement agreement between the Association and himself. The Complainant offered to assist the Association in its resolution of this issue, by preparing procedures for the association board to ensure compliance and to protect the health and safety of residents.

In its Notice of Final Decision, the Association stated that if it had failed to comply with the applicable law related to pesticide application "such failures were inadvertent." The Association articulated its intent to "to ensure residents of the community receive actual notice of the application of pesticides" and "will engage in a dialogue with the landscaping company...to provide additional information about the pesticide products..." The Association also stated that it will inquire about the placement of redundant notices and will make efforts to provide electronic notices of pesticide application. Finally, the Association stated that upon the expiration of its agreement with the landscaping company, it will "consider practices to reduce the use of pesticides in the community, exploring the use of reduced risk pesticides and reduced risk pest control methods."

The Association briefly mentioned the settlement agreement, stating correctly that such agreement is beyond the scope of the association complaint process.

Under §55-79.80:01 of the Condominium Act; "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." Based on the information provided in the Notice of Final Adverse Decision, it appears that a violation of the Condominium Act may have occurred, and it may have occurred on several occasions.

This office cannot opine as to whether there was a violation of any other state or federal laws. Our jurisdiction lies solely with common interest community law and regulations.

Required Actions

While the Complainant has alleged four separate violations of §55-79.80:01 of the Condominium Act in his Complaint, this is the first time a NFAD has been filed with this office and the first time we will ask that the Association comply with the applicable common interest community law related to the application of pesticides. The Association is now on notice that it must make every effort to ensure that pesticides are only applied in a manner that fully complies with the requirements set forth in §55-79.80:01 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.

I would also call the Association's attention to its Final Decision. The Association's registration number and the license number of the manager were not included on that letter. Both are required by the Regulations and must be included on any future Final Decisions that are part of a NFAD submitted to this office. 18VAC48-70-50(9) "If applicable, the name and license number of the common interest community manager shall also be provided."

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Fairlington Towne, A Condominium Unit Owners Association