



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

November 3, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: John Ward
Association: Captains Cove Golf and Yacht Club
File Number: 2016-00773

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 dated June 22, 2015. The Association provided a final determination dated August 24, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 23, 2015 and received September 22, 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) of the 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 Complaint submitted to the Association by the Complainant alleged that the Association had violated §55-513 of the Property Owners' Association Act by failing to provide a hearing before suspending the Complainant from the club amenities.

In its Notice of Final Determination, the Association stated that they could not grant an action or resolution in response to the Complaint submitted by the Complainant. The Association noted that there are other legal standards to which they must adhere, and that the suspension resulted from an incident in which the Complainant was alleged to have harassed an employee. The Association also noted that they were not the entity responsible for the suspension and that it was the manager of the club amenities that had suspended the Complainant.

The word "suspend" and "suspension" each appear only once in the Property Owners' Association Act under §55-513(B) which states the following,

"[t]he board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, **to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due**, (emphasis added) to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible."

Paragraph (C) of the same section goes on to state,

"[b]efore any action **authorized in this section** (emphasis added) is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55-510. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents."

While I understand the Complainant's belief that the manager of the club amenities did not have the right to suspend him from the club amenities, which are also common areas, without providing due process, I believe that this is not a proper reading of the statute.

The suspension of access to the club amenities, for what was labeled harassment by the Association, is not a suspension that would fall under §55-513 of the Property Owners' Association Act, since it is not suspension for a failure to pay assessments as authorized in §55-513(B). In addition, paragraph C states, "[b]efore any action authorized in this section is taken..." The action taken was not an action authorized in that section, nor was it an action authorized anywhere in the Property Owners' Association Act. Because the action taken is not one that falls under the Property Owners' Association Act or any other common interest community law, this is a civil law issue and therefore I do not find that there has been a violation of §55-513 as alleged in the Complaint.

Required Actions

No action is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Captain's Cove Golf and Yacht Club