



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 15, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: John Niland
Association: Kingsmill Community Services Association
File Number: 2016-01147

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 September 23, 2015. The Association provided a final determination to the Complainant dated October 14, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 27, 2015 and received November 2, 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 violated §55-510 of the Property Owners' Association Act by failing to provide copies of requested records of the Association. The Complainant's request was in writing, it was specific as to the books and records he wished to review, and stated that his purpose for review was "[f]or my own education as a homeowner and a member of the association."

In its written response to the Complaint, the Association wrote that the Complainant had previously been provided a letter from association counsel dated May 20, 2015 in which his request was denied "because the stated purpose is not a proper purpose for the review of records." The Association went on to say that the Complaint submitted by the Complainant failed for the same reason. The Association maintained that the Complainant had "the burden of establishing a proper purpose" and that the Complainant must establish he is "acting to protect" his rights as an association member. In closing, the Association commented that the Complainant was "in litigation against the Association," and asserted that this "suggests that your request is not for a proper purpose."

The Association's attorney sent an additional letter directly to this office to further explain its position on this matter. This letter was not part of the NFAD submitted by the Complainant. While the letter was received and reviewed, it will not be utilized as part of this Determination, since additional information is to be provided to this office only upon request, and no such request was made. I will, however, briefly note that despite the Association's contention in its letter that the written response to the submitted complaint was not a Final Adverse Decision, I do not agree with the Association and consider that letter, dated October 14, 2015, to be the Final Adverse Decision from the Association.

As defined by 18VAC48-70-10 of the Common Interest Community Ombudsman Regulations, a Final Adverse Decision "means the final determination issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant." The response from the Association provided no opportunity for the Complainant to answer the findings of the letter, or to provide additional information, which would indicate the letter was intended to be final, and the outcome was opposite of what the Complainant had requested: it denied access to the requested books and records.

The Complainant's request for copies of the association documents was for the purpose of his education as a homeowner and member of the association. As noted previously, a request from an owner must be "for a proper purpose related to his membership in the association." While there are exclusions in the Property Owners' Association Act that allow an association to deny access to certain documents, and there is also a right to deny access if a member is not in good standing, the Association has not alleged that the Complainant has requested any documents that would fall under those exclusions. The Association did allege that the reason for the request to access the books and records may pertain to ongoing litigation between the parties; however, no proof was provided that the documents were being requested for that reason. Based on his written request to the Association, the Complainant has provided a proper purpose, self-

education, and that education, in his own words, was “for my own education as a homeowner and a member of the association.” Therefore he has met the requirement that his request be for a proper purpose related to his membership in the association.

Required Actions

The Association must provide access to the records requested by the Complainant as outlined in the May 20, 2015 request for access to books and records.

Sincerely,

A handwritten signature in cursive script that reads "Heather Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Kingsmill Community Services Association