



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

May 12, 2022

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Brandon Handy
Association: Piedmont Homeowners Association
File Number: 2022-02248

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

The Complainant submitted a complaint to the Association dated February 26, 2022. The Association provided a response to the association complaint dated April 28, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 28, 2022 and received May 4, 2022.

Authority

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 §54.1-2354.4 (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 and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

This Determination is final and not subject to further review.

Determination

The Complainant has alleged a violation of §55.1-1807(5)¹ of the Property Owners’ Association Act. The basis for this complaint was the rejection of the Complainant’s petition to run for election to the Board of Directors. The Complainant stated that he was told by the Association he was ineligible for election due to a provision contained in the Bylaws of the Association that disqualifies a member if he or she has taken or takes legal action against the Association. The Complaint also wrote that the language on the petition form was not in alignment with the language in the Bylaws, since it required the Complaint to attest that he has “not taken an adverse legal position to the Association...” The Complainant argues that he should have been permitted to run for election and that the Declaration does not provide otherwise.

The Association’s response to the Complaint confirmed its earlier decision to reject the Complainant’s petition to run for the Board of Directors. The Association referenced its Bylaws and the language therein regarding eligibility for election. The Association stated that the Complainant had, among other things, been engaged in a legal dispute with the Association, that letters between counsel demonstrated legal action, that the Association had to pay its attorney to counter the Complainant’s attorney’s adverse positions, and that these and other actions showed there was a legal dispute resulting in legal action against the Association. The Association wrote that this

¹ Every lot owner who is a member in good standing of a property owners’ association shall have the following rights:

5. The right to serve on the board of directors if duly elected and a member in good standing of the association, unless the declaration provides otherwise.

conduct disqualified the Complainant as a candidate for election since the Board of Directors determined he was not a member in good standing.

The Complainant has relied upon a statute (§55.1-1807(5)) that speaks to the right to serve on a board of directors *if* duly elected and a member in good standing. It does not address the right to be elected, only the right to serve after being duly elected. Until a lot owner has been duly elected, this right to serve is not triggered. As to whether the Complainant should have been permitted to run for election in the first place, we would have to rely upon the governing documents to determine if the Complainant was an eligible candidate. As has been stated in prior Notices of Final Adverse Decision and in the preamble to this determination, this office cannot address issues related to the governing documents of an association. Therefore, it cannot determine whether the Complainant was a member in good standing or eligible for election to the Board of Directors.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Piedmont Homeowners Association