



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

October 25, 2022

Demetrios J. Melis
Director

Complainant: John Ward
Association: Captain's Cove Golf & Yacht Club
File Number: 2023-00826

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 June 10, 2022. The Association provided a response to the association complaints dated September 2, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated and received October 1, 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 alleged a violation of §55.1-1817¹ of the Property Owners’ Association Act. He stated in his complaint “POA Act 55.1-1817 ...CCGYC Code of Conduct is censorship.” He further wrote that the Association’s Code of Conduct is a form of censorship. Documents included with the NFAD contained comments from the Complainant that the Board is made up of four developers and they never see or hear them, that they can spend \$50,000 without member consent, and that there is no oversight on spending. The Complainant wrote that the communication with the board is only one way and he referenced the Virginia Declaration of Rights and its language related to proper government.

The Association responded to the Complaint by noting that the Association has multiple methods of communication in the community, including live and virtual member forums at each board meeting, a member forum at each management team meeting, bulletin boards in two locations, and all board member email addresses are posted on the association website. The Association also wrote that annual directory is published where members can include contact information. Because of these options, the Association stated that “the Board of Directors at this hearing voted unanimously that your complaint is not valid...”

The Complainant did provide a copy of the Member Forum Code of Conduct, but as is always the case, this office cannot review or interpret governing documents of an association. There is nothing in the Property Owners’ Association Act that prohibits an association from adopting guidelines for the use of its method of communication, and because the Complainant did not provide any specific instances of what he perceived to

¹ The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.

be censorship based on the application of the Code of Conduct, this office cannot determine if the Association is in violation of the applicable statute. I would note that the association provides methods of communication other than the Member Forums. No information was provided as to whether these other options have their own code of conduct.

The Complainant's statements regarding the developers and the spending of association funds do not pertain to the statute cited in the complaint (§55.1-1817) and no other reference was provided. Neither of these would be a violation of §55.1-1817. Finally, the reference to the Declaration of Rights is moot. This office only has jurisdiction over violations of common interest community law, which in this instance is the Property Owners' Association Act.

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
Captain's Cove Golf & Yacht Club