



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

January 3, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Nathan Schultz
Association: Chimney Hill Community Association, Inc.
File Number: 2023-01238

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 September 1, 2022. The Association provided a response to the association complaints dated October 18, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 15, 2022 and received November 16, 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 that the Association is demanding excessive fees for inspection of its bylaws. The Complainant asked to inspect the bylaws and in return, the association provided a letter stating that the cost for the requested records would be \$175 for materials and labor. According to the cost schedule provided by the Complainant, copies of governing documents cost \$125, and management services/time costs \$50 per hour.

The Association responded by noting that it had provided the Complainant a free copy of the Declaration, Bylaws, and Rules and Regulations on August 4, 2022. The Association also referenced an inspection of the documents on or about July 28, 2022. It is not clear if that inspection was in addition to the documents it gave to the Complainant or if the two were in some way connected. Because the Association provided the documents requested without any charge to the Complainant, it denies the allegations that the costs were excessive.

I am pleased the Association provided the requested documents to the Complainant. And while it may not have charged for them at the time, it did initially notify the Complainant that a copy of the Bylaws would cost \$175. The applicable statute is §55.1-1815(E)¹ of the Property Owners’ Association Act. This statute specifically requires that the costs for providing copies must be reasonable and reflect the actual costs of material and labor. While the Association did not assess these charges in the current

¹ E. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs of such materials and labor. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

situation, it did appear, based on the August 5, 2022 letter the Complainant received from the Association, that it initially intended to do so. I do not find that a violation of the Property Owners' Association Act has occurred, since it appears the Association never charged the Complainant for the copies of the documents that it provided. I would note, however, that based on the Complainant's original request, he was asking to inspect the records and not receive copies. While the outcome appears to be the same, the Association should have honored the request for inspection, since it is an option under the Property Owners' Association Act.

Required Actions

While it does not appear that the Association ended up charging \$175 for the Bylaws, they initially stated that they would. Had they done so, this cost seems extreme and I believe it would be difficult to align it with actual costs of material and labor. Owners in good standing should always have the right to access the books and records of an association and the cost for doing so should not be punitive, and, if charged, should simply cover the costs of materials and labor. Because no violation occurred, this office cannot require the Association to take action regarding its current cost schedule for books and records, however, I would encourage the Association to review its cost schedule and determine if it does, in fact, reflect the reasonable costs of labor and materials.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Chimney Hill Community Association, Inc.