



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

December 28, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Nathan Schultz
Association: Chimney Hill Community Association, Inc.
File Number: 2023-01240

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 July 25, 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 a named individual “is a resident/volunteer and not compensated, providing management services.” The Complainant stated that “[t]his affects business days to inspect records from 5 to 10.” A copy of the Annual Report for the Association was included, and it indicates that the association is self-managed.

The Association responded to the Complainant by writing that the complaint was ambiguous and confusing. It stated that the manager (named individual) is a compensated employee and that the self-managed checkbox was checked in error on the Annual Report. The Association stated that it has since submitted a letter of correction to the Common Interest Community Board to address this error.

Because there was no actual complaint articulated in the complaint submitted to the Association, this office cannot provide a determination. The Complainant did not clarify why he referenced the difference between the five-day or ten-day right to inspect records and provided no background information regarding the statements in his complaint. The Complainant did include supplemental information with his NFAD that may have shed some light on this matter, but it could not be utilized for this determination since it was not included in the original complaint to the Association.

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
Chimney Hill Community Association, Inc.