



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

March 16, 2023

G. Bryan Slater
Secretary of Labor

Complainant: Edward Halstead
Association: Lake of the Woods Association, Inc.
File Number: 2023-01956

Demetrios J. Melis
Director

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 December 6, 2022. The Association provided a response to the association complaints dated January 11, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 7, 2023 and received February 10, 2023.

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 that the Association failed to acknowledge receipt of his April 2022 association complaint, and that the Association was in violation of §55.1-1815¹ of the Property Owners' Association Act by not responding to his request to access certain books and records of the Association, pursuant to a written request dated April 27, 2022.

The Association did not provide a response to the allegation that it had failed to acknowledge an April 2022 complaint. It did, however, respond to the allegation that it had failed to provide the requested access to the books and records of the association. Specifically, the Association wrote that "...the Board continues to conclude that you cannot satisfy the requirement of having a proper purpose, which is a condition predicate to your being able to examine and copy the Association's books and records pursuant to §55.1-1815..." In its response, the Association referenced a prior letter to the Complainant, dated July 1, 2022, that contained a laundry list of the actions and behaviors that lead to the association's conclusion that the Complainant could never provide a proper purpose as part of a request to examine the books and records of the association.

Any request to examine the books and records of an association must adhere to the requirements set forth under §55.1-1815(B). The requesting member must be in good standing, the request must be in writing and specify the books and records requested, and the request must be "...for a proper purpose related to his membership in the

¹ B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

association.” If these statutory requirements are met, the law dictates that an owner be permitted to examine and copy the documents he or she has requested.

In his written request to examine the books and records of the Association, the Complainant provided several different purposes for his request, and some did appear to be related to his membership in the Association. The issue of good standing has not been raised by either party and the Complainant was specific about the documents he wanted to examine.

I do not believe that the Association can apply a blanket denial of all purposes that an owner may provide when requesting access to association records. An owner in good standing has a basic right of access to the books and records of his or her association. Based on the record of this Notice of Final Adverse Decision, the plain language of the statute, and the fact that the Complainant appears to have met the statutory requirements for requesting access to the association books and records, I must ask the Association to be responsive to the Complainant’s requests as outlined in his April 27, 2022 email requesting the right to examine certain books and records of the Association.

This office cannot provide a determination regarding the allegation that the Association failed to respond to an association complaint submitted in April 2022. A copy of the complaint was not included in the Notice of Final Adverse Decision, and therefore this office could not determine whether the complaint was appropriate for the complaint process or if it had been properly submitted. As a result, this office cannot determine if the Complainant should have received an acknowledgement of his complaint from the Association.

Required Actions

The Association does need to respond, in accordance with the Property Owners’ Association Act, to the Complainant’s request to examine and copy books and records as outlined in his April 27, 2022 request.

Please contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Lake of the Woods Association, Inc.