



COMMONWEALTH of VIRGINIA  
Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

March 13, 2023

G. Bryan Slater  
Secretary of Labor

Demetrios J. Melis  
Director

Complainant: James Hayes  
Association: Captain's Cove Golf & Yacht Club  
File Number: 2023-02036

---

*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 5, 2022. The Association provided a response to the association complaints dated February 9, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 13, 2023 and received February 15, 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 was in violation of its own governing documents and §55.1-1819<sup>1</sup> of the Property Owners’ Association Act when it banned the

---

<sup>1</sup> A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. At a special meeting of the association convened in accordance with the provisions of the association’s bylaws, a majority of votes cast at such meeting may repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including application for injunctive relief or actual damages, during which the court shall award to the prevailing party court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant to such declaration expressly so provide, to (i) suspend a member’s right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments that are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant, and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55.1-1815. If the violation remains

Complainant from an amenity where an alleged altercation occurred between the Complainant and an employee. The Complainant said he was not provided a hearing and does not believe that the governing documents of the association provide any language that would support such a ban.

In its response to the complaint, the Association wrote that it had an obligation under federal law to provide a workplace for its employees and vendors that is free from abuse and harassment. According to the Association, the behavior at issue included abusive language directed at an employee. The Association believes its action in banning the Complainant for 60 days was equitable and proportional and consistent with steps an employer would take to protect its employees under federal law. The Association further noted that it was not the Board of Directors that took action against the Complainant, but instead, the property management team.

It appears that the Complainant believes that the incident was not a matter that is addressed under the governing documents of the association, and the Association did not provide any information that would suggest otherwise. Based on his belief that this particular issue is not addressed under the declaration or rules and regulations, the Complainant believes that the Association had no authority to suspend his privileges.

---

uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature, and shall be treated as an assessment against the member's lot for the purposes of § 55.1-1833. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.

F. After the date an action is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, the association shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the lot owner to abate or remedy the violation.

G. In any action filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.

While I understand the Complainant's perspective, I do not agree with his conclusion. §55.1-1819, which is entitled "Adoption and Enforcement of Rules," is only applicable in those situations where an owner has allegedly violated the declaration or the rules and regulations of an association. If such a violation is alleged to have taken place, an association must follow certain requirements to enforce the governing documents that were allegedly violated and the individual that has allegedly carried out such a violation is assured of due process rights.

In this case, there has been no allegation by the Association that the Complainant was in violation of the declaration or rules and regulations, and the Complainant has stated that he does not believe the issue at hand falls under the governing documents of the association. As such, there cannot be a violation of §55.1-1819 of the Property Owners' Association Act since the statute is only applicable in a situation where an association is attempting to enforce its declaration or its rules and regulations. The action taken by the Association in response to the altercation is not addressed by the Property Owners' Association Act and therefore this office cannot find that there has been a violation of that act. Instead, this is a civil law issue outside the scope of authority of this office.

Required Actions

No action is required of the Association.

Please contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Edgemoore Homeowners Association, Inc.