



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

June 21, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: William Gibson
Association: Colonnade Condominium Association
File Number: 2023-02760

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 February 8, 2023. The Association provided a response to the association complaints dated April 20, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 5, 2023 and received May 16, 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 is in violation of the Condominium Act. The only additional information regarding this allegation were several emails where the Complainant wrote to the Association to say that he had reached out to the prior management company to obtain 2018-2022 audits and the prior management company had not responded.

The Association’s response to the complaint was that it could not provide documents it did not have in its possession, and it advised the Complainant to reach out to the prior management company.

There is simply not enough information in this Notice of Final Adverse Decision for me to determine whether there has been a violation of the Condominium Act, which is the applicable law in this situation. I do agree that if the Association does not have the records, it cannot provide them.

I am, however, concerned that the Association does not have copies of audits that had been completed during the prior management company’s tenure. If the Association paid for those audits, they should likely be part of the existing books and records and should have been transferred when the new management company came on board. The Association may want to determine whether it received all the books and records that it should have received when that transition took place.

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
Colonnade Condominium Association