



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

July 5, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Stephen Kim
Association: Clark's Corner Homeowners Association
File Number: 2023-02881

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 March 13, 2023. The Association provided a response to the association complaint dated April 30, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 25, 2023 and received May 30, 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.

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

The Complainant alleged that the Association has not provided the "2023 HOA assessment" and has not provided a payment mailing address since the association's post office box was closed in February 2023. The Complainant stated that the "Clark's Corner HOA board violated the Virginia Property Owners' Association Act, 55.1-1807; 55.1-1815; 55.1-1816; 55.1-1832." The Complainant did not provide any specifics as to how the association violated the statutes he referenced in his complaint. The Complainant did include additional information that was not part of the Complaint submitted to the Association. As is always the policy of this office, such additional information will not be considered here since the Association was not given the opportunity to respond.

The Association responded to the complaint by stating that the Complainant failed to provide evidence of his allegations and that the Association was not in violation of any of the statutes referenced. The Association wrote that it has sent out the assessment and the amount of annual dues along with an updated mailing address. The Association further noted that this had been discussed at the annual meeting on March 13, 2023.

While the Complainant has alleged violations of several different statutes contained in the Property Owners' Association Act, he did not provide any explanatory or specific information as to how the Association violated those statutes. Providing information about the upcoming year's assessment and the proper mailing address for payment is an issue internal to the association and dependent upon its governing documents. None of the statutes referenced address the announcement of

assessments or mailing address of an association. Since there was simply not enough information provided to understand the connection between the allegations and the statutes referenced by the Complainant, this office cannot find that the Association is in violation of referenced statutes.

Required Actions

No action is required of the Association.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Clark's Corner Homeowners Association