



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: Reverend Lynda and Robert Alicudo
Association: Baldwin Grove Condominium Unit Owners Association
File Number: 2023-02925

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 27, 2023. The Association provided a response to the association complaint dated May 3, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 31, 2023 and received June 1, 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 multiple violations of the Condominium Act. Specifically, the Complainant has alleged a violation of §55.1-1914(C), stating that family members are routinely denied the same opportunity to speak as other owners. The Complainant alleges family members are interrupted, muted, or not allowed to speak at all. The Complainant alleges that other owners are permitted to speak uninterrupted, for longer periods of time, and as often as they wish. The Complainant believes that the actions of the Association are discriminatory.

The Complainant alleged a violation of §55.1-1935 and stated that they were muted during an open forum, and that no other owner had ever been denied such access.

The Complainant also alleged a violation of §55.1-1939 of the Condominium Act and wrote that no annual meeting was held in October 2022 or notice was not provided in time for the Complainant to make an adjustment to a new location. As a result, they were not permitted to cast a vote and were not informed of the outcome of any vote. They have not received notice of any executive board meeting, except for one held February 22, 2023.

The Complainant also stated that they were not permitted to make a record of a meeting or participate in accordance with the provisions of §55.1-1949 of the Condominium Act.

The Complainant further alleged that the Association was in violation of §55.1-1945 of the Condominium Act by failing to keep detailed records on the owners' portal.

The Complainant alleged a violation of §55.1-1949, stating that the Association failed to provide proper notice of executive board meetings and does not make agenda

packets available for inspection when they are provided to the board members. The Complainant also wrote that board members do not vote in an open meeting following executive session and that open meetings are not reconvened after executive sessions.

The Complainant also alleged a violation of §55.1-1950, stating that no reasonable, effective, and free method of communication has been established for owners to communicate among themselves.

The Complainant alleged that the Association is in violation of §55.1-1955 by failing to address a sprinkler system break where the contractor allegedly provided substandard work and caused additional damage to property and personal belongings. In addition, the Complainant believes the proposed repair and restoration renders the unit inaccessible for mobility challenges.

Finally, the Complainant alleges a failure to post notice of pesticide application on the common elements at least 48 hours in advance, a violation of §55.1-1957.

The Association responded to the allegations by writing that it did not violate any of the statutes cited in the complaint. In response to the allegation that the Association was in violation of §55.1-1914, the Association wrote that the Complainant did not provide sufficient information to support its allegations and that no facts were alleged or exist to support any allegation that the Association engaged in discriminatory behavior. The Association further noted that owners are provided an opportunity to comment, subject to reasonable rules, in accordance with §55.1-1949(D).

In response to the allegation that the Association failed to provide notice of pesticide application, a violation of §55.1-1957, the Association wrote that no factual allegations were provided, and therefore the Association determined no violation had occurred. The Association also stated that the landscape contractor routinely posts notice of pesticide application in advance and asked the Complainant to contact management if they become aware of a situation where proper notice has not been provided.

The Association combined the remaining allegations and stated that it had determined there were no violations since there were no facts supporting the allegations. The Association did note that it is working on additional methods of making agenda and meeting packets available, and that the concerns regarding the unit repair were outside the scope of the complaint process and will be addressed separately.

Upon review of the NFAD submitted to this office and an email from the Association, it appears that the Complainant provided a substantial amount of new and additional information with the NFAD that was not part of the Complaint submitted to the Association. As noted in the prefatory paragraphs to this determination, this office cannot consider such additional information. Based on the Association's May 3rd response to the original complaint and its later email to this office dated July 3, 2023, the only attachments to the original complaint were labeled 1, 1.5, 2, and 3. In the NFAD received by this office, there were forty pages of additional information that it appears was not part of the original complaint. In addition, the supporting

documentation included with the original complaint was not included in the NFAD filed with this office.

Since we cannot use any of the additional information that was provided by the Complainant and not included in the original complaint to the association, this office is very limited in its ability to provide a determination on the allegations contained in the original complaint.

In relation to their allegation that the Association violated §55.1-1914, the complainant appears to misunderstand §55.1-1914, which is not a statute about the act of discrimination, but instead, prohibits discriminatory conveyance of a property. If the Complainant believes they are being discriminated against, they may wish to consult with the Fair Housing Office (804-367-8530) to obtain guidance and information.

The allegation that the Association was in violation of §55.1-1935 does not explain how the Complainant believes the Association violated that statute in the specific instance provided. The statute does not address muting during meetings, nor does it outline the way in which an open forum should be carried out. §55.1-1949(D) is more likely the applicable statute, but with so little background information provided, this office cannot determine if there was a violation of that statute. The Association does have the right to adopt reasonable rules for these open forum portions of the meeting and can limit the topic in certain situations.

The allegation that the Association violated §55.1-1939 referenced an Attachment #1 which was not included in the NFAD. There was also not enough information to determine if a violation had occurred – the Complainant did not know if the meeting was even held, which makes it impossible for us to determine if there was a violation of the law regarding notice of meetings. The Complainant's allegation that they had not been notified of any meeting of the board except for one held in February is vague and provides no evidence that any other meetings were actually held. Without further information we cannot determine if there was a legal requirement to provide notice of other meetings. The Complainant's allegation that they were denied the right record a meeting provided no evidence that they had attended a meeting, attempted to record it and been denied that right.

The allegation that the Association violated §55.1-1945 failed to provide any specific information or evidence that supported this portion of the complaint. There was no specificity as to what records and documents were requested, when they were requested, how they were requested, and whether they were on the association portal. There is no legal requirement to maintain records on a portal, so a failure to update such records is not necessarily a violation of the statute. The Complainant referenced an Attachment #2, but no such attachment was included in the NFAD.

The Complainant's allegation that the Association was in violation of §55.1-1949 provided no specific evidence or times when the Association may have violated this statute. An Attachment #3 was referenced but not included in the NFAD. No evidence that the Complainant had asked to see a board packet and been denied was provided,

nor was there any specific reference to an executive session where the board failed to return to an open meeting in accordance with the law.

The allegation that the Association has no method communication contained no specific information demonstrating a violation of the applicable statute. There was no evidence that the association had been asked about its method of communication or that the Complainant had attempted to communicate with other owners or the board and either been denied or learned from the Association that there was no method for such communication.

The Complainant's allegation that the Association is in violation of §55.1-1955 is not something that this office can review or provide a determination on. Instead, it is an issue dependent upon the governing documents of the association and potentially civil law if the parties are unable to find a resolution.

Finally, the allegation that the Association violated §55.1-1957 contains no factual information or evidence, indicating specific times or places where this violation may have occurred. Without anything more specific, we cannot determine if there was a violation of the statute.

As noted earlier, this office cannot use any of the additional information included in the NFAD that was not part of the original complaint submitted to the Association. As a result of the lack of factual support of the allegations, no determination can be provided on the allegations contained in the NFAD.

Required Actions

No action is required of the Association.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Baldwin Grove Condominium Unit Owners Association