



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

Maurice Jones  
Secretary of  
Commerce and Trade

December 6, 2013

Complainant: Karl N. Golovin  
Association: Country Club Green Condominium  
File Number: 2014-01422

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*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.*

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## Complaint

Complainant submitted a complaint to the Association dated September 13, 2013. The Association, through its attorney, provided a Notice of Final Decision (NFAD) to the Complainant dated September 24, 2013. The NFAD was received by this Office on October 23, 2013, one day short of the 30 day filing deadline.

## Determination

The Complainant has alleged that the Association failed to provide a fair hearing in relation to a violation. Complainant also alleged that the Association failed to provide copies of association documents that had been previously requested. The Complainant enumerated seven specific actions he requested from the Association:

1. Copies of documents;
2. A rehearing;
3. That a representative of this office attend the rehearing;
4. That any assessments or other actions resulting from the original hearing be null and void;
5. That the board establish a new process for keys and access to units;
6. That all meetings be video or audio recorded and such recordings be made available to all owners online; and
7. That Robert's Rules of Order be followed.

Because the association complaint procedure was only intended to address conflicts with common interest community laws or regulations, the only two issues that will be addressed in this Determination are the two primary components of the complaint: a failure to provide a fair hearing and a failure to provide documents. All other aspects of the complaint and requested actions are not related to possible violations of common interest community laws or regulations, but instead, speak to the governing documents, parliamentary procedure and other subject matter areas that do not fall under the jurisdiction of this office.

A fair hearing is a purely subjective concept and one that cannot be determined long distance. The Condominium Act does not identify what constitutes a fair hearing, nor does it define the manner in which a hearing must be carried out. Instead, the §55-79.80:2 of the Condominium Act merely states that “the unit owner shall be given an opportunity to be heard and to be represented by counsel.” The Complainant was given notice of a hearing, attended the hearing, and chose to cease speaking and leave the hearing when the other attendees spoke over him. While I would in no way advocate for rudeness, if that was the situation at the hearing, it is impossible, without having been present to make any determination as to whether the Complainant’s opportunity to be heard was truly thwarted by the comments of others. In addition, such behavior would not constitute a violation of common interest community law or regulations. The Association subsequently provided a rehearing, with notice, to the Complainant and the Complainant did not attend.

In May 2013, the Complainant requested copies of water usage reports and correspondence between the Association, the management company, and Leesburg. No purpose appeared to be provided for the request. Complainant wrote another letter to the Association dated August 15, 2013 in which he requested copies of documents that appeared to be similar or identical to his May 2013 request, as well as a substantial number of other copies as well as requests to examine certain books and records. In its response to the August request, the Association provided a breakdown of the potential costs associated with providing the Complainant the access and copies he was seeking. In addition the Association explained to the Complainant that certain portions of the August request could not be met since the requested documents and reports were not maintained as part of the Association’s books and records, or were not required to be provided under the Condominium Act (§55-79.74:1).

I do not find that there has been a conflict with, or violation of, common interest community laws or regulations. The Complainant was provided a hearing, and while the conditions for the hearing may or may not have been ideal, it was a hearing nonetheless. In what appears to be an effort to ensure that the Complainant was satisfied with the hearing results, the Association provided a rehearing. While the NFAD does not provide sufficient information for me to determine if the Association responded to the Complainant’s May 2013 request for access to the books and records, the Association has responded to the most recent request and it is the Complainant’s choice as to whether he wishes to continue to pursue his request for access and copies by paying the estimated costs.

Required Actions

No further actions required.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Country Club Green Condominium