



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

October 7, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Kathy Trocchiano
Association: Cedarwood Condominium
File Number: 2016-00635

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

Complainant submitted her complaint to the Association on January 6, 2015. The Association provided a final determination to the Complainant dated August 5, 2015 and the Complainant then submitted her Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 25, 2015 and received September 2, 2015.

Determination

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 §55-530(F) (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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

In the current situation, the Complainant submitted a Complaint in January of 2015, but the Association stated that it had no record of that Complaint, and thus the Complainant had to resubmit the original Complaint in July 2015. In her Complaint, the Complainant alleged that pesticides had been improperly applied in violation of §55-79.80:01 of the Condominium Act. While the original Complaint alleged a violation that took place in December of 2014, the later submitted Complaint included copies of pictures taken during the summer months of 2015 showing what appeared to be an employee of the landscaping company spraying an unknown solution from a backpack sprayer without any signs in the area indicating that pesticides were going to be applied in the next 48 hours. The Complainant also included additional information regarding other violations that had taken place since the date the original Complaint had been submitted to the Association.

In its Final Determination Letter, the Association stated that a special meeting had been held to consider the Complaint. As a result of that meeting, the Association requested that all spraying be stopped until the procedures "were in full compliance with §55-79.80:01." The Association also obtained a legal opinion on the matter and had custom-made pesticide application signs created. In addition, a letter was sent to all owners outlining the notification procedures and the Association discussed the issue with the landscaping company.

Under §55-79.80:01 of the Condominium Act; "Unit owners' associations shall post notice of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least forty-eight hours prior to the application." Based on the information provided in the Notice of Final Adverse Decision, it appears that a violation of this portion of the Condominium Act has occurred, and it may have occurred on several occasions.

Required Actions

The Association is now formally on notice that it must make every effort to ensure that pesticides are only applied in a manner that fully complies with §55-79.80:01 of the Condominium Act. A failure to do so may result in a referral of the matter to the Common Interest Community Board for whatever action it may deem appropriate.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Cedarwood Condominium