



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

November 3, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Mark Lepnew
Association: Bella Vista Condominium Association
File Number: 2016-01064

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 a Complaint to the Association dated July 30, 2015. The Association provided a final determination to the Complainant dated September 21, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 19, 2015 and received October 21, 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) of the 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.

The Complainant has alleged that an owner who is also employed as a "front desk employee" by the Association was found behind the front desk during nonworking hours. The Complainant further alleges that this is a restricted area and that the individual was in violation of the association's rules. The Complainant believes that being an owner and being an employee creates a conflict of interest.

The Association responded to the Complaint by requesting additional information, specifically, which provisions of Virginia laws and regulations had been violated. The Complainant provided the additional information, stating in an emailed response that the complaint he had submitted showed a violation of §55-79.48 of the Condominium Act. §55-79.48 "Execution of the Condominium Instruments" states,

"[t]he declaration and bylaws, and any amendments to either made pursuant to § 55-79.71 shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in § 55-79.63 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale and/or lease of a condominium unit, any lessee whose leasehold interest does not extend to any portion of the common elements, any person whose land is subject to an easement included in the condominium or, in the case of a leasehold condominium subject to any lease or leases executed before July 1, 1962, any lessor of the submitted land who is not a declarant."

There is nothing in this provision that in any way implicates the hiring of an owner, the subsequent entry into a "restricted" area or any other aspect of the Complainant's complaint. As such, there appears to be no violation by the Association of any common interest community law or regulation.

Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Bella Vista Condominium Association