COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

July 26, 2021

Complainant: Constantino Panayides
Association: Lafayette Park Condominium
File Number: 2022-00064

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 May 25, 2021. The Association provided a response to the complaint dated June 16, 2021. The Complainant than submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman which was received on July 12, 2021.

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.

This Determination is final and not subject to further review.

Determination

The Complainant alleges that the Association retaliated against him when he utilized the association complaint procedure. The Complainant cites three separate actions of the Association that he considers to have been retaliatory. The first was a request by the Association that he withdraw a complaint. The second was an email from the Treasurer stating that the Complainant's complaints were baseless and that the board would find options to "put a stop to this madness." The Complainant also wrote that the Treasurer threatened to release attorney-client privileged information (an invoice from association counsel) "'to notify association members of the Association on how their money has been abused on legal fees' by my use of the complaint procedure." The Complainant alleges a third retaliatory action when the President of the Association submitted comments on a listserv maintained by the Treasurer that the Complainant has been "submitting 'ridiculous complaints...which causes the association to pay high legal fees, and the board and staff to waste time.'"

The Complainant acknowledges that the CIC Ombudsman Regulations and Virginia Code Section 54.1-2354.4(A) do not bar retaliatory action from an association, but he believes that if "read in their totality, it becomes very clear that the Association is prohibited from the practice of retaliation." The Complainant reasons that engaging in retaliation, intimidation and fear do not meet the requirement for 'reasonable procedures for the resolution of written complaints.' He also states that the association must follow its own complaint procedure and in this case, the complaint procedure does not provide for these behaviors. The Complainant also argues that any method of discouraging the use of the complaint procedure cannot be a means of 'utilizing' the association complaint procedure.

The Association responded to these allegations by writing that there is nothing in the applicable laws or regulations that would prohibit an association from suggesting that a complainant withdraw his complaint. They further noted that there is nothing that prohibits a Treasurer "from informing a Complainant that Association Complaints can create a significant cost to the Association in legal fees and administrative and volunteer time." The Association also wrote that a Board President is not prohibited from posting an opinion on a listserv regarding the merits of filed association complaints. Finally, the Association stated that it has adhered to each of the requirements of the Common Interest Community Ombudsman Regulations and its own complaint procedure by acknowledging receipt of complaints, providing notices of consideration, considering the complaints and ultimately providing a final determination.

I cannot find that the Association is failing to adhere to the statute and regulations that govern the association complaint procedure. Requesting that an owner withdraw a complaint is merely that – a request. There is nothing in the applicable regulations or law that prohibit an association from requesting the withdrawal of a complaint, in certain instances it may be entirely appropriate for an association to make such a request.

This office cannot determine if sending emails and making posts on a listserv have a chilling effect on the utilization of the association complaint process. That would be a civil law matter outside the scope of this office. Such actions do not appear to have any connection to the laws and regulations that govern the association complaint process.

Required Actions

No action is required of the Association.

Sincerely,

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Lafayette Park Condominium