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**COMMONWEALTH of VIRGINIA**  
Department of Professional and Occupational Regulation

Brian P. Wolford  
Director

January 2, 2025

Complainant: Thomas Oh  
Association: Cambria Square Condominium Unit Owners' Association  
File Number: 2025-01395

**DETERMINATION - NOTICE OF FINAL ADVERSE DECISION**

**Introduction**

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on December 5, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Thomas Oh ("Complainant"). The Complainant initially submitted a complaint to the Cambria Square Condominium Unit Owners Association Board of Directors ("Board") on September 8, 2024. The Board issued a final decision regarding his complaint on November 6, 2024. Therefore, the NFAD was timely filed and within the jurisdiction of this Office, which has been designated to review final adverse decisions and determine if the decisions conflict with laws or regulations governing common interest communities.

**Issue to be Decided**

The Complainant raised several allegations, most of which do not implicate common interest community ("CIC") law, and as a result, will not be addressed in this determination. The only issue that involved CIC law is whether the Board violated applicable law for the amount of time it took to repair/replace the heating, ventilation, and air conditioning (HVAC) system of the Complainant's Unit. As explained below, the Office cannot conclude that the Board violated the CIC law regarding the HVAC repair/replacement.

**Authority**

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 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 of the Code of Virginia of 1950, as amended ("Va. Code") 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 our 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.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, 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. Further, this Determination is final and not subject to further review or appeal pursuant to Va. Code § 54.1-2354.4(C).

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 Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

### **Determination**

The Complainant alleged multiple allegations that do not implicate the CIC law, except one. The Complainant’s allegations include:

- (1) The Board failed to repair/replace his HVAC in a timely fashion, resulting in damages;
- (2) The Board/management company engaged in breach of contract;
- (3) The Board caused the loss of use;
- (4) The Board failed to act in good faith;
- (5) The Board breached its duty of care (negligence); and
- (6) The Board breached the duty of quiet enjoyment.

This Office has determined, upon a review of the materials submitted with the NFAD, that the issues or allegations, except the first one, raised are outside of its jurisdiction. This determination will address the one issue below:

*The Board failed to repair/replace the Complainant's HVAC system in a timely manner.*

The Complainant alleges that the Board failed to timely resolve the HVAC system on his property. The Complainant states that in the summer of 2022, the HVAC system in his property

malfunctioned, and although the Board was promptly and properly notified, the issue was not resolved until late that summer. The Complainant alleges that the delay caused him significant financial losses, including rental income.

The Board, in its final decision, states that the Association Community Manager worked to resolve the issue, and in the process discovered that there was a latent defect on the HVAC system requiring the builder to be contacted and who ultimately resolved the issue.

According to the accompanying documents, the Complainant reported the HVAC issue via email on May 22, 2022. The Association Portfolio Manager, Adrienne Harper, promptly responded on the same date. The documents also show that there were numerous email communications, from May 22, 2022, through August 15, 2022, between the Complainant and several other personnel, including, Pete Vangas, Tyler Scott, Bryant Phillips, the HOA Division Director, and Joseph Cunningham, Division Manager, for the builder company, PulteGroup. Each of the responsive emails tended to provide the Complainant updates as to the resolution process. The HVAC system issue was finally resolved on or before August 15, 2022.

The Virginia Condominium Act gives the association the powers and responsibilities to make repair, amongst other things. Va. Code §55.1-1955. It states in pertinent part:

Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements and (ii) to the individual unit owner in the case of any unit or any part of such unit, except to the extent that the need for repairs, renovation, restoration, or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. Va. Code §55.1-1955(A).

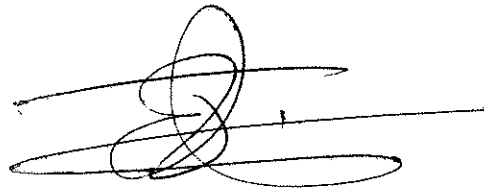
As apparent from the Code citation above, there is no time frame requirement to perform maintenance, repair, renovation, or restoration of common elements of the condominium. The only part that references time for repair is the part relating to damage inflicted on the unit or common element as a result of granting access. It states: "To the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the damage, shall be liable for the prompt repair of such damage." Va. Code §55.1-1955(A). The Code only requires a prompt repair of damage resulting from access taken. There is no evidence that the HVAC issue in this case resulted from damage inflicted due to access taken, and no requirement of promptness in any other repairs. Thus, this Office cannot read into the Code, where there is none, a specified time to make repairs. And

assuming, *arguendo*, that the timeframe must be reasonable, this Office would still not be able to conclude that an HVAC system replacement completed in less than three months was unreasonable; especially given the fact that the Association appears to have moved or attempted to address this issue upon receiving the complaint from the Complainant, and the fact that a third party (the builder) was responsible.<sup>1</sup>

### **Conclusion**

For the reasons set forth above, the Complainant's allegation regarding HVAC system repair/replacement, based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office cannot conclude that the Board violated the applicable law.

If any of the parties is dissatisfied with this determination, or part thereof, the party could seek remedies in civil court.

A handwritten signature in black ink, consisting of several overlapping loops and horizontal strokes, positioned above the printed name.

Justina Ehiawaguan, Esquire  
CIC Ombudsman

cc: Board of Directors  
Cambria Square Condominium Association

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<sup>1</sup> Please note that the issues as to whether the delay in resolving the HVAC problem resulted in damages, and whether the Association should be held liable for the resulting damages are not within the jurisdiction of this Office.