



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Brian P. Wolford
Interim Director

October 1, 2024

Complainant: Kalyan Jillumudi
Association: Middleford Homeowners' Association
File Number: 2025-00764

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on September 18, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Kalyan Jillumudi ("Complainant"). The Complainant initially submitted a complaint to the Middleford Homeowners' Association Board of Directors ("Board") on May 15, 2024. The Board issued a final decision regarding his complaint on August 19, 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") laws, and as a result, will not be addressed in this determination. The Complainant did not indicate with specificity the type of common interest community law that was allegedly violated. Nevertheless, we have deciphered that the Complainant raised three issues involving CIC law. Specifically, he alleges that the Board: (1) failed to give the Complainant proper notice of a meeting; (2) provided incomplete and biased minutes of the meeting; and (3) violated applicable law when placing a lien on his property. As explained below, the Office concludes that the Board did not violate the relevant CIC law in any of the three instances.

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"). An 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.

In accordance with Regulation 18 VAC 48-70-90, the only information that will be considered when reviewing a NFAD, is 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 that were not presented or included for the association board’s consideration cannot be reviewed or considered by the Office. 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 in his complaint, and to enumerate these, he alleged that the Board:

- (1) failed to provide notice of meeting;
- (2) provided incomplete and bias minutes of the meeting;
- (3) failed to follow the proper procedure for placing a lien on a property;
- (4) misinterpreted its role and financial statements;
- (5) violated the Fair Debt Collection Practices Act
- (6) violated its Bylaws;
- (7) engaged in predatory collection practices; and
- (8) violated fair housing laws.

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

1. The Board failed to provide notice of meeting.

The Complainant alleges that he did not receive notice of the special meeting where a special assessment was approved and imposed. The Complainant asserts that failure to provide the appropriate notice was a violation of Virginia law. The Board, in its final decision¹, points out that the notice of the meeting where the special assessment was discussed was mailed to the Complainant on October 10, 2022, as well as an email reminder sent to the Complainant on November 10, 2022.

The Virginia Property Homeowners' Association Act mandates that homeowners should be given notices of meetings. Va. Code §55.1-1816. It states in pertinent part:

A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record....

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting. Va. Code §55.1-1816(A)(B).

In this case, the Complainant states that he did not receive the notice of the special meeting. There is no evidence to show whether the notice of the special or annual meeting, was “published where it is reasonably calculated to be available to a majority of the lot owners.” Va. Code §55.1-1816(B). However, the Board, in its final decision, states that the notice was mailed and emailed to the lot owners. The Complainant acknowledges that there had been a widespread mail-delivery issues at the time, meaning if the notice was delayed or lost due to the delivery issues, it would not have been a failure to comply with the applicable law. Thus, there is no evidence to show that the

¹ Although the final decision of the Board dated August 19, 2024, was addressed to the Complainant, the salutation has a different name “Mekonnen.” We presume this is an oversight on the part of the drafter. We encourage the Board to do a closer proofreading of its final decisions in the future.

Board failed to provide appropriate notice of the meeting, especially given the Board's assertion that it also emailed a reminder notice to lot owners.

2. The Board provided an incomplete and bias Minutes of the Meeting:

The Complainant alleges that his inquiries and comments at an annual meeting were omitted from the Minutes of the meeting, while other members' questions and answers were included in the Minutes. The Complainant claims that the omission raises potential bias and inconsistent application of the HOA policies. The Board, in its final decision, states that there is nothing in the applicable law that guides the preparation of Minutes, and that Minutes are not a transcript.

It is not within the Office's jurisdiction to ascertain whether material information was left out of the Minutes, or whether the Minutes were altered. (*See, CIC Ombudsman Authority and Limitations*: 18 VAC 48-70-130; Virginia Code § 54.1-2354). Even if there were, the Office notes that there is no specific requirement as to what Minutes of the Board should contain under the applicable law and regulations. The repealed version of the Property Owners' Association Act ("Act") requires that: "Minutes of the meetings of the board of directors shall be recorded..." Va. Code §55-510.1. But the amended version of that statute in the POAA does not contain that requirement. An informative statute in Virginia regarding the content of Minutes prepared by a board is the Virginia Freedom of Information Act ("VFOIA"), § 2.2-3707. While the VFOIA only applies to public bodies, i.e., state and local government bodies, it is nonetheless a relevant resource on this topic. In pertinent part, the VFOIA advises public bodies that:

Minutes shall be taken at all open meetings.

Minutes shall be in writing and shall include (a) the date, time and location of the meeting; (b) the members of the public body recorded as present and absent; and (c) a summary of the discussion on the matters proposed, deliberated, or decided, and a record of any votes taken. In addition, for electronic communications meetings conducted in accordance with § 2.2-3708.2 or 2.2-37.3, minutes shall include (1) the identity of the members of the public body who participated in the meeting through electronic communication means, (2) the identity of the members of the public body who were physically assembled at one physical location, and (3) the identity of the members of the public body who were not present at the location identified in the clause (2) but who monitored such meeting through electronic communication means. Va. Code § 2.2-3707 H(I).

Thus, even if the above statute were binding, it only requires a summary, not a transcript, of the proceedings. Therefore, the Office determines, consistent with the applicable statutory authority, that there is no requirement that the Minutes should be word-for-word transcription of the proceedings. The Office further posits that if an association was looking for guidance on how to compose meeting minutes, the VFOIA provisions may prove helpful to provide an objective measure of "completeness."

3. The Board failed to follow the proper procedure for placing a lien on a property:

The Complainant asserts that the Board failed to provide him with proper notice and opportunity for a hearing before placing a lien on his property in violation of Va. Code §55.1-1833. The Board points out that it sent a lien warning letter, certified, as well as a regular mail to the Complainant on January 31, 2024.

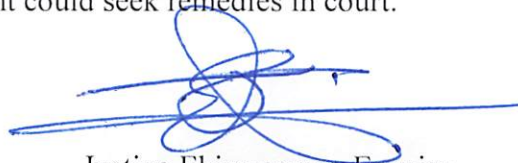
The applicable law states in pertinent part that: "The association shall have a lien, once perfected, on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration." Va. Code §55.1-1833(A). The POAA goes on to state that:

Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable county or city. The notice shall be sent at least 10 days before the actual filing date of the memorandum of lien. Va. Code §55.1-1833(c).

In this case, the Complainant alleges that he was not given a proper notice and opportunity for a hearing before a lien was placed on his property. The Code does not require the Board to provide the Complainant an opportunity for a hearing before placing a lien on his property. It does require, however, that a written notice be given by a certified mail, at least 10 days prior to filing a memorandum of lien. Va. Code §55.1-1833(C). The Board states that it sent the Complainant a notice by both certified mail (tracking number: 7180 7200 6130 0072 2141) and regular mail on January 31, 2024. The Board further noted that the memorandum of lien was filed by the Board on March 7, 2024. In light of the above, this Office is unable to conclude that the Board failed to comply with Va. Code §55.1-1833.

Conclusion

For the reasons set forth above, and based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office concludes that the Board did not violate the applicable common interest community laws as alleged. Therefore, no action is required of the Board. If the Complainant is dissatisfied with this determination, or part thereof, the Complainant could seek remedies in court.

A handwritten signature in blue ink, consisting of a series of loops and a horizontal line extending to the right.

Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors

Windward Towers Condominium Homeowners' Association