

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE: PETITION FOR ARBITRATION

GERFRIED MUELLER,

Petitioner,

v.

Case No. 96-0193

LA RENAISSANCE CONDOMINIUM
ASSOCIATION, INC.,

Respondent.

_____ /

ORDER ON RESPONDENT'S MOTION FOR REHEARING AND
MOTION FOR EXTENSION OF TIME

Upon review of the pleadings, the arbitrator enters the following final order:

On February 23, 1998, the arbitrator entered a final order in this matter. On March 10, 1998, Respondent filed a motion for rehearing and motion for extension of time. On March 23, 1998, Petitioner filed petitioner's response to motion for rehearing and motion for extension of time.

In its motions, Respondent claims that the arbitrator overlooked or misapprehended certain facts and points of law relative to two issues in the case, and requests an extension of time to comply with certain provisions of the final order. First, Respondent believes that the arbitrator overlooked certain facts in his determinations regarding the storm shutters, which were made in Count I and Count III. In Count I, Petitioner claimed that Respondent was liable for repairing damage to his unit that occurred during the balcony restoration project, including the contractor's removal and failure to replace hardware on the balcony for Petitioner's storm shutters. In the adjudication of count I in the final order, the arbitrator ordered Respondent to repair the incidental damage done to Petitioner's unit, including:

(b) The association shall replace the hardware for the storm shutters, *and if it cannot be found along with the storm shutters, or if the shutters and tracks are not in an operable condition, the association shall replace the tracks and storm shutters with new storm shutters and tracks, comparable to those installed by other owners. (emphasis supplied)*

In Count III, Petitioner claimed that it was improper for the association to remove the hardware for his storm shutters during the balcony restoration project, to fail to reinstall the hardware, and to require Petitioner to purchase an accordion type shutter similar to those on most other units. As it was improper for the association to impose a storm shutter rule retroactively against Petitioner, the arbitrator ordered on page 37 of the final order that:

The association shall hire a contractor at its expense within 60 days of this order, which is in the business of reinstalling storm shutters in condominiums, other than Carousel, to replace the petitioner's hardware on his balcony so that he can use his existing storm shutters. The petitioner shall obtain the permit. If new shutters are required in order to be permitted by Palm Beach, Petitioner is responsible for their purchase.

Respondent argues that Petitioner did not offer any evidence that Respondent rendered his storm shutters inoperable or damaged them during the balcony restoration project, and that it is inconsistent for the arbitrator to require Petitioner to purchase new storm shutters in count I, when he does not require it to purchase new shutters in count III. A review of the file and the arbitrator's notes from the final hearing reveals that Petitioner made no claim that his storm shutters were damaged during the balcony restoration project. In addition, no evidence was introduced that Petitioner's storm shutters were damaged during the project. Accordingly, the arbitrator concludes that it is appropriate to modify the adjudication in count I of the final order to limit Respondent's liability to the storm shutter hardware and reinstallation of it on Petitioner's balcony.

Secondly, Respondent claims that the arbitrator overlooked the facts or made an error of law in an issue in count IV and V, whether the association's placement of deck chairs in an upright

manner constituted a nuisance to Petitioner. In the final order the arbitrator found Petitioner's testimony to be credible that Respondents placed the deck chairs in an upright position to obstruct his view of the ocean in order to spite him, and found that the association failed to testify to any particular reason why the deck chairs were positioned as they were. The arbitrator applied the business judgement rule, which gives a presumption of correctness to the board's decisions to maintain the common elements absent wrongdoing, and concluded that the board's decision to store the chairs in an upright fashion was done to spite Petitioner in this particular issue. Accordingly, Respondent was ordered to store the chairs in a downright position.

Respondent argues that Petitioner's claim regarding the deck chairs should be dismissed because Petitioner has no legal right to a view, and thus he has no legal basis for challenging the manner in which the chairs are stored even if they block a portion of his view. As legal support, Respondent cites the arbitrator's ruling on another issue in the case, whether the failure of the association to maintain the former height of a hedge was a nuisance to Petitioner, as it obstructed a portion of his view of the ocean. In that issue, the arbitrator ruled that Petitioner did not have a right to a view and dismissed the claim, citing Lipton v. Martinique Village IIB Condominium Association, Inc., Arb. Case No. 94-0213, Final Order Dismissing Petition (August 29, 1994), and Fountainebleau Hotel Corporation v. Forty-five Twentyfive, Inc., 114 So.2d 357 (Fla. 3rd DCA 1959), cert. denied, 117 So.2d 842 (Fla. 1960). As Petitioner does not have a right to a view, and as Petitioner's claim is predicated upon the placement of the deck chairs obstructing his view, the arbitrator concludes that it is appropriate to modify the final order and dismiss the deck chair claim.

Respondent also requests an additional 90 days to comply with the arbitrator's order to restore the color of the side balcony slabs to white and remove the blue awning at the rear of the building, or ratify the alterations within 60 days. Respondent states that it wishes to avail itself of the opportunity to amend its declaration before spending in excess of \$5,000 to repaint the sides of

the balcony slabs. In addition, since there are an insufficient number of members to establish a quorum for purposes of meeting to amend the declaration, Respondent will need to mail proxies to the membership, which will take longer than the 60 days required by the final order. Based upon the foregoing, the arbitrator concludes that it is appropriate to enlarge the time for Respondent to comply with his ruling on the blue awning and color of balcony slab issues an additional 90 days from the date that the initial 60 day period expires. However, no further extension shall be granted.

It is therefore ORDERED and ADJUDGED that:

For the reasons described above, count I(b) in the adjudication portion of the final order is hereby amended to provide:

(b) The association shall replace the hardware for the storm shutters. The association's liability is limited to the hardware for reinstallation of the shutters on Petitioner's balcony and the installation of the hardware.

For the reasons described above, deck chair issue in count IV and V of the final order is hereby amended so that it is dismissed.

The period of time for Respondent to comply with the blue awning and color of balcony slabs issues is hereby extended an additional 90 days from the expiration of the initial 60 day period required by the final order.

DONE this 31st day of March, 1998, at Tallahassee, Leon County, Florida.

William Oglo, Arbitrator
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, FL 32399-1030

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency and is not appealable to the district courts of appeal.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by U.S. Mail to: David M. Garten, Esq., Law Office of David M. Garten, 11382 Prosperity Farms Rd., Suite 227, Palm Beach Gardens, FL 33410, attorney for Petitioner; and Steven R. Braten, Esq., Becker & Poliakoff, P.A., 500 Australian Ave. S., 9th Floor, West Palm Beach, FL 33401, attorney for Respondent; on this 31st day of March, 1998.

William Oglo, Arbitrator