

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

IN RE: PETITION FOR ARBITRATION

**Water Glades 300 Condominium
Association, Inc.,
Petitioner,**

v.

Case No. 2006-00-1728

**Interco Management Services, Inc.,
Respondent.**

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ORDER ON MOTION FOR RECONSIDERATION

By order dated January 13, 2006, the undersigned directed the association to amend its petition in order to specifically identify and name as respondents the tenants who were maintaining the dog the association is seeking to remove. On February 1, 2006, the association requested an additional twenty days in which to file its amended petition, indicating that it must first provide pre-arbitration notice to the tenants. The order requiring an amended petition provided that it did not alleviate the association's obligation to have provided the new respondents written pre-arbitration notice pursuant to section 718.1255(4)(b), Florida Statutes, and further indicated that if the association had not provided pre-arbitration notice to the tenants, the arbitrator would dismiss the petition with leave to re-file upon providing proper notice to these respondents. Since the association had indicated that it needed to give all the parties pre-arbitration notice, by order dated January 24, 2006, the arbitrator dismissed this case without prejudice.

On February 1, 2006, the association filed a motion for reconsideration of the final order of dismissal. The motion indicates that the arbitrator has misapprehended the association's pleadings, and that in fact the tenants have were provided with pre-arbitration notice as the correspondence attached to the petition was between the association's attorney and the attorney representing the tenants. However, no such notice was provided to the respondent corporation. Therefore, by letter dated January 18, 2006, the association provided notice of the dispute to the corporate respondent. The association requests that the arbitrator reconsider his of dismissal this case and abate the matter to permit the tenants to be joined as respondents.

As the respondents were provided pre-arbitration notice, there would be no bar to permitting the association to amend the petition to also name them as respondents. However, the association has not provided the respondent corporation with proper pre-arbitration notice. Pre-arbitration notice must be provided prior to the filing of a petition as its purpose is to provide the respondent an opportunity to provide the requested relief without the necessity of a formal legal proceeding. Thus, where a petitioner fails to provide the respondent with pre-arbitration notice prior to the filing of the petition, the petition must be dismissed in accordance with section 718.1255(4)(b), Florida Statutes. *See Ibarra v. The Deauville Hotel Condo. Ass'n., Inc.*, Arb. Case No. 2005-03-6532, Final Order Dismissing Petition Without Prejudice (August 4, 2005)(An arbitration proceeding will not be stayed while the petitioner makes the appropriated pre-arbitration demands on the respondent, with the understanding that the petitioner would dismiss the arbitration action if the respondent complied with the demands), *also see Gulf Island Beach and Tennis Club Condo. Ass'n v. Gold*, Arb. Case No. 00-1367, Order Denying

Motion for Rehearing or Reconsideration (September, 7, 2000)(Lack of pre-arbitration notice or failure to provide adequate notice cannot be cured by simply holding up service of the petition/order requiring answer while the petitioner hastily dispatches notice). Thus, the fact that the association failed to provide the corporation with adequate notice prior to filing the petition in this matter is adequate cause to dismiss the petition.

Based upon the foregoing it is ORDERED:

The association's motion for reconsideration is hereby denied.

DONE AND ORDERED this 13th day of April, 2006, at Tallahassee, Leon County, Florida.

James W. Earl, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing order was sent by U.S. mail this 13th day of April 2006, to:

Jay Steven Levine, Esq.
Levine and Burr, Attorneys
2500 N. Military Trail
Suite 490
Boca Raton, Florida 33431

James W. Earl