

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

IN RE: PETITION FOR ARBITRATION

Avant Garde Condominium Association, Inc.,  
Petitioner,

v.

Case No. 2005-02-4091

Andreea Prichici and Pavel Prichici,  
Respondents.

\_\_\_\_\_ /

**ORDER ON MOTIONS TO DISMISS AND FINAL ORDER OF DISMISSAL**

On April 25, 2005, Avant Garde Condominium Association, Inc. (association) filed a petition for mandatory arbitration, originally naming Andreea Prichici as the respondent. In its petition, the association alleges that the respondent is maintaining a commercial vehicle on the condominium property, in violation of the association's governing documents. On June 27, 2005, subsequent to an order of abatement entered by the undersigned, counsel for the respondent filed a motion to dismiss, arguing that the Division lacks jurisdiction over the dispute because the vehicle at issue belongs to Pavel Prichici, husband of Andreea Prichici, who is not a owner of a unit at the condominium property, citing Ruffin v. Kingswood E. Condominium Association, Inc., 719 So. 2d 951 (Fla. 4th DCA 1998), as authority. It appeared that the respondent was simply arguing that because Mr. Prichici, as the owner of the alleged illegal vehicle, was an indispensable party to this matter, he was not eligible as a party in an arbitration proceeding based on his non-unit owner status. By order dated June 29, 2005, the

arbitrator denied the respondent's motion ruling that statutory authority permits unit owners and tenants/occupants to be eligible parties in an arbitration proceeding. The arbitrator's order provided the following:

"Tenant" has been broadly defined to include family members, friends and other guests whose occupancy rights are not necessarily formalized by a lease. See e.g. Hillcrest East No. 27, Inc. v. Rodriguez, et al., Arb. Case No. 98-3384, Final Order Dismissing Amended Petition for Arbitration (May 27, 1998)(petition dismissed as primarily involving eviction of respondents' underage children, a claim that is outside the arbitrator's jurisdiction); Indian Pines Village Condominium Association, Inc. v. Innocent, Arb. Case No. 98-3485, Final Order Dismissing Petition for Arbitration (May 1, 1998)(the term "tenant" is broadly defined to include unit owners' child or other occupant even where it is not alleged that a formal lease agreement exists or that consideration is being paid for the use of the unit). In these cases the petitions were ultimately dismissed because the Division lacks jurisdiction over cases that involve the eviction or removal of a tenant or other occupant of the condominium unit, not for lack of jurisdiction over the involved parties. When eviction or removal is not included in the relief requested, the Division routinely accepts those cases where a unit owner and tenants or other occupants are named in the proceeding. See Sarasota Village Gardens Condominium Association, Inc. v. Guastavino, et al., Arb. Case No. 97-1869, Final Order (May 8, 1998)(case naming the unit owners and occupant living in the unit as the respondents and alleging nuisance behavior between the owners and the occupant was accepted for jurisdiction); Cordova Greens III Condominium Association, Inc. v. McGowan, et al., Arb. Case No. 97-2453, Summary Final Order (May 20, 1999)(case accepted where the named respondents are the unit owner and the tenants alleging nuisance behavior on behalf of the tenants). Therefore, the Division has jurisdiction to entertain a claim involving a non-owner spouse/occupant whose actions are the cause of the alleged violation.

The arbitrator further abated the proceeding and ordered the association to provide Mr. Prichici with a proper pre-arbitration notice letter as he had not been formally included in

the letters previously delivered to his wife. If the matter was not settled after Mr. Prichici was served with the pre-arbitration notice letter, the parties were advised that the proceeding would be re-activated and the association would be permitted to file an amended petition adding Mr. Prichici as a party respondent. Upon receipt of the association's amended petition indicating that the matter had not been settled, the arbitrator issued an order directing Mr. and Mrs. Prichici, as respondents, to file an answer to the petition submitted by the association.

On September 19, 2005, counsel for the respondents filed additional motions to dismiss for respondent Andreea Prichici and for respondent Pavel Prichici arguing, in more detail, that based upon Mr. Pavel's status as a non-unit owner and based upon relevant court rulings issued from the Fourth DCA, where the condominium in this matter is located, the Division lacks jurisdiction to entertain this case. The association submitted its response to the respondents' motions on September 22, 2005, opposing the motions. Notwithstanding the association's opposition, based on the additional details and legal arguments provided in the respondents' motions to dismiss, the motions are hereby granted. In order for the arbitrator to take jurisdiction over this proceeding, a final order awarding relief would be directed, partially, towards Mr. Prichici as a non-owner residing in the unit in question and as the owner of the alleged illegal vehicle. In Ruffin v. Kingswood E. Condominium Association, Inc., 719 So 2d. 951 (Fla. 4th DCA 1998), the Fourth District Court of Appeals held that the arbitrator lacked statutory power to enter an order directly addressed to a third party, where the intention of the legislature was to provide a forum for disputes between unit owners and associations. Consequently, as the condominium in this proceeding is located within

Broward County, Florida, which is part of the geographical confines of the Fourth DCA, this case is not appropriate for arbitration before the Division.<sup>1</sup> See Bayview Condominium Association, Inc. v. Helmstetter and Degiacomo, Arb. Case No. 98-4354, Final Order on Request for Attorney's Fees (December 3, 1998); Hypoluxo's Mariner's Cay Condominium Association, Inc. v. Bruens, et al., Arb. Case No. 2004-05-8210, Final Order of Dismissal (December 8, 2004); Pompano Beach Club North Association, Inc. v. Volosin, et al., Arb. Case No. 2004-02-3402, Final Order of Dismissal (April 21, 2004). Accordingly, the petition for arbitration referenced herein is not within the jurisdiction of the Division and may be filed in court, as appropriate.

It is therefore ORDERED: Arbitration case number 2005-02-4091 is dismissed for lack of jurisdiction. The case may be re-filed in a court of competent jurisdiction.

DONE AND ORDERED this 3<sup>rd</sup> day of October 2005, at Tallahassee, Leon County, Florida.

---

Melissa Mnookin, Arbitrator  
Department of Business and  
Professional Regulation  
Arbitration Section  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029

#### Certificate of Service

---

<sup>1</sup> It is noted that the Division is continuing to handle tenant cases with otherwise appropriate arbitration disputes for condominiums located outside the 4<sup>th</sup> DCA.

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail and by facsimile to the following persons on this 3<sup>rd</sup> day of October 2005:

Steven A. Fein, Esq.  
Fein and Meloni  
900 S.W. 40<sup>th</sup> Avenue  
Plantation, Florida 33317

Charles F. Otto, Esq.  
Straley & Otto, P.A.  
3990 Sheridan Street  
Suite 109  
Hollywood, Florida 33021

---

Melissa Mnookin, Arbitrator

#### Right to Appeal

As provided by section 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

#### Attorney's Fees

As provided by s. 718.1255, F.S., the prevailing party in this proceeding is entitled to have the other party pay its reasonable costs and attorney's fees. Rule 61B-45.048, F.A.C. requires that a party seeking an award of costs and attorney's fees must file a motion seeking the award not later than 45 days after rendition of this final order. The motion must be actually received by the Division within this 45 day period and must conform to the requirements of rule 61B-45.048, F.A.C. The filing of an appeal by trial de novo of this final order tolls the time for the filing of a motion seeking prevailing party costs and attorney's fees until 45 days following the conclusion of the de novo appeal proceeding and any subsequent appeal.