

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

Filed with
Arbitration Section

IN RE: PETITION FOR ARBITRATION

CORNELL CALINESCU,

DEC 20 2013

Petitioner,
v.

Div. of FL Condos, Timeshares & MH
Dept. of Business & Professional Reg **Case No. 2013-02-4262**

**HALLANDALE BEACH PRIVATE RESIDENCE
CONDOMINIUM ASSOCIATION INC.,**

Respondents.

SUMMARY FINAL ORDER

On June 6, 2013, Cornell Calinescu (Petitioner) filed a petition for mandatory non-binding arbitration naming Hallandale Beach Private Residence Condominium Association, Inc. (the Association) as the respondent. On July 2, 2013, the Association filed an answer to the petition. Because there are no disputed issues of material fact, this order is entered pursuant to Rule 61B-45.030, Florida Administrative Code.

Findings of Fact

1. Petitioner is the record owner of Unit 207 at the Hallandale Beach Private Residence Condominium (the Condominium).
2. The Association is the corporate entity responsible for the operation of Hallandale Beach Private Residence, A Condominium (the Condominium).
3. Section 12.2 of the Declaration of Condominium of Hallandale Residence, A Condominium (the Declaration) provides:

RULES AND REGULATIONS -- The rules and regulations attached hereto as Exhibit "D" and made a part hereof by reference concerning the use of the Condominium Property including the units may be amended from time

to time by the Board of Directors. Copies of the regulations and amendments shall be furnished by the Association to all Unit Owners. No new or amended regulation may be enforced prior to distribution to the owners. Changes in the rules and regulations must be recorded in the public records.

Pool Restriction

4. On September 28, 2011, the Association caused to be recorded Supplemental Rules and Regulations entitled Pool and Pool Deck Rules stating, in pertinent part, "The Pool is for Residents only."

5. Section 12.3 of the Declaration provides:

USE AND OCCUPANCY OF THE UNITS is restricted to one family and their guests per unit. Occupancy by guests in the absence of the Unit Owner is limited to two times per calendar year for maximum periods of 14 days. These use restrictions shall not be construed in such a manner as to prohibit a Unit Owner from maintaining a personal professional library, keeping personal business or professional records or accounts, or handling personal, business, or professional telephone calls or correspondence in and from owner's unit. Such uses are expressly declared customarily incident to the principal residential use. All guests must be registered with the Association on arrival and unregistered guests may be denied use of recreational facilities and amenities.

Dog Restriction

6. Section 12.8 of the Declaration provides:

PETS – TENANTS AND GUESTS – Pets shall be as allowed and regulated in the rules and regulations (Exhibit "D"). However, tenants and guests shall not be permitted to have pets.

7. On November 2, 2011, the Association's Board of Directors amended section 6 of its Rules and Regulations to prohibit all dogs in the future on the condominium property.

8. The rule was recorded in the public record after the commencement of this action.

Parking Dispute

9. Section A.1. of the Association's Rules and Regulations (the Parking Rule) states, in pertinent part,

Under building parking spaces are assigned, and no unit owner or occupants may park more than two vehicles on the Association's or Condominium Property (hereinafter in these rules and regulations these two terms shall be collectively referred to as "Property") unless additional spaces have been assigned to the unit.

10. The language of Section A.1. has remained unchanged since the Association's Rules and Regulations were originally recorded as an attachment to the Declaration in March 2004.

11. Section 12.5. of the Declaration provides:

PARKING -- Each Unit shall always have the exclusive use of one allocated parking space on the Condominium Property, as set forth in Exhibit G. The Developer shall have the authority to amend Exhibit G and change parking space designations until control of the Association is transferred to the Unit Owners.

12. Exhibit G to the Declaration indicates that each of the Condominium's 44 units had one parking space apiece assigned as a limited common element.

13. There are 86 parking spaces on the property.

14. Four (4) unassigned parking spaces have been designated for handicapped parking.

15. Thirty-eight (38) parking spaces remain unassigned and available for general parking.

16. Petitioner submitted a vehicle registration form dated January 16, 2010, to the Association describing two vehicles, a 2008 BMW and a 2006 Lotus.

17. By letter dated October 18, 2010, the Association provided its members notice regarding the commencement of the use of parking stickers. The notice states, in pertinent part, as follows:

Dear Owners /Residents

In an effort to add to the security of our property and ensure parking is available for our guests/visitors, we will begin to use parking stickers effective November 15, 2010 (similar to the system used by many other Associations).

- Each unit can receive up to **two** parking stickers per unit (if you have more than two vehicles, please make other parking arrangements).The parking sticker will be registered to the resident's car only. If you change your car you would have to notify the management to re-register the parking sticker.
- If you are renting a unit, you must be on the lease to receive a parking sticker.
- If you have guests that will stay in your unit for over 2 nights, you will have to obtain temporary guest parking permit from the Association (you can contact the Association via email hbcy201@gmail.com or leave a note in the office mailbox with your contact info and guest info). There will be a \$30 deposit fee for guest parking permit, which will be given back once you return the parking permit. All guests must be registered with the Association on arrival and unregistered guests may be denied use of recreational facilities and amenities,

• The parking stickers will be given out on November 8th, 2010 and November 9th, 2010 between hours 6pm-- 8pm. Please bring with you:

1. Car registration (registered to the resident's name)
2. ID
3. If you are renting a copy of the current lease

If you cannot make it on the dates above you can contact the association at hbcy201@gmail.com for other arrangements.

Parking stickers will be given free of charge, if you lose it you would have to purchase from the Association for \$10 each.

Please keep in mind that parking lot will be monitored and parking stickers have to match the registered car. The Association / Management reserve the right to tow-away cars that are parked without parking stickers at owners' expense. Any car that is parked in the guest parking without a parking sticker for over 2 nights, that car will be towed away at owners' expense.

18. At the time the letter was issued, Petitioner was maintaining two vehicles on the property. Petitioner started parking a third vehicle on the property in December of 2012.

19. By letters dated January 14, February 18, and March 14, 2013, addressed to Christain Calinescu (Petitioner's wife) the Association provided notice that parking three cars is a violation of the Association's rules.

20. By letter dated April 10, 2013, Petitioner responded to the Association's letters. In his letter, Petitioner indicates that he had parked three vehicles on the property until he sold one of the vehicles two years ago. He further states that in December he purchased a third vehicle, a specialized Jeep, because he is an emergency room physician and needs a vehicle that can deliver him to the hospital during foul weather and disasters.

21. The Association currently permits the owner of Unit 307 to park three vehicles on the property: two private vehicles and an unmarked law enforcement vehicle.

Conclusions Of Law

Pool Restriction

The petition challenges the validity of the Association's Supplemental Rules and Regulations regarding Pool and Pool Deck Rules prohibiting guests from using the condominium's swimming pool. The Association admits that it adopted and recorded a rule regulating use of the pool by guests that states in pertinent part, "The Pool is for Residents only."

Section 718.123(1), Florida Statutes, provides:

All common elements, common areas, and recreational facilities serving any condominium shall be available to unit owners in the condominium or condominiums served thereby and their invited guests for the use intended for such common elements, common areas, and recreational facilities, subject to the provisions of s. 718.106(4).¹ The entity or entities

¹ Section 718.106(4), Florida Statutes, provides:

When a unit is leased, a tenant shall have all use rights in the association property and those common elements otherwise readily available for use generally by unit owners and the

responsible for the operation of the common elements, common areas, and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common elements, common areas, and recreational facilities. No entity or entities shall unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common elements, common areas, and recreational facilities.

Guests of unit owners have the right to use the common elements for the purposes intended. Additionally, although Section 12.3 of the Declaration provides that unregistered guests may be denied use of the recreational facilities, it does not prohibit guests in general from using the facilities. Therefore, the rule prohibiting guests from the using the swimming pool conflicts with the statute and declaration and is void and unenforceable.²

Dog Restriction

Petitioner challenges the validity of an amendment to the Association's Rules and Regulations, which prohibits dogs on the condominium property. The petition alleges that the amendment is not enforceable because it was never recorded in the public record as required by the Condominium's Declaration. The petition also contends that the Board lacks authority to prohibit dogs.

During a case management conference, the parties agreed that the Association recorded the dog restriction amendment after commencement of this action. Therefore, the dispute regarding failure to record the amendment is moot. Petitioner's claim that the Board lacks authority to prohibit dogs remains actionable.

unit owner shall not have such rights except as a guest, unless such rights are waived in writing by the tenant. Nothing in this subsection shall interfere with the access rights of the unit owner as a landlord pursuant to chapter 83. The association shall have the right to adopt rules to prohibit dual usage by a unit owner and a tenant of association property and common elements otherwise readily available for use generally by unit owners.

² It is not disputed that the swimming pool is a common element.

Pursuant to Section 12.12 of the Declaration, the Association's Rules and Regulations may be amended by the Association's board of directors. Additionally, Section 12.8 of the Declaration provides that pets shall be as allowed in the Rules and Regulations. Therefore, the Association's Board of Directors has the authority to amend the Association's Rules and Regulations as to the type of pets that are allowed.

Section 12.8 of the Declaration does not provide a unit owner with the right to have a dog. To the contrary it permits the Association's Board of Directors to determine what pets are permissible via amendment of the Rules and Regulations.³

Where a use restriction is not mandated in the declaration of condominium *per se*, but is instead created by the board of directors of the condominium association, the rule of reasonableness is applicable in determining whether the restriction is valid. *Hidden Harbour Estate v. Basso*, 393 So. 2d 637 (Fla. 4th Dist Ct. App. 1981). In such a case the board must allow the use unless the use is demonstrably antagonistic to the legitimate objectives of the condominium association, i. e., the health, happiness and peace of mind of the individual unit owners. *Id.* It is not necessary that conduct be so offensive as to constitute a nuisance in order to justify regulation thereof. *Beachwood Villas Condo. v. Poor*, 448 So. 2d 1143 (Fla. 4th Dist Ct. App. 1984).

Prior arbitration cases have found rules that prohibit pets to be reasonable, even where the declaration does not expressly prohibit or permit pets and delegates general authority to the board of directors to promulgate rules concerning the use of the condominium property. See *Bay Pointe Waterfront Condo. Ass'n, Inc. v. Peavy*, Arb. Case No. 02-5765, Summary Final Order (January 21, 2003); see also *The Lakes of*

³ This is further evidenced by the original Rules and Regulations that were recorded with the Declaration that regulate the types of pets permitted at the Condominium.

Inverrary Condo. Ass'n, Inc. v. Goldberg, Arb. Case No. 93-0125, Final Order (October 5, 1993).

The Declaration authorizes the Association's Board to pass Rules and Regulations regarding the allowing of pets. Prohibiting dogs is reasonably related to the legitimate objectives of a condominium association. Therefore, the Association's amendment to its Rules and Regulations prohibiting future dogs is valid.

Parking Dispute

Petitioner alleges that the Association is improperly preventing him from utilizing a third parking space in the Condominium's common element parking lot (the Condominium Parking Lot). Petitioner claims that the Association should be estopped from denying him use of a third parking space because it allows another unit owner to utilize three parking spaces. Additionally, Petitioner claims that he has parked three vehicles in the past. The Association claims Petitioner was parking only two vehicles in the parking lot at the time he was placed on prospective notice that the Association was recommencing enforcement of the two vehicle limitation.

There is an insufficient number of parking spaces for each unit to have two parking spaces. Therefore, a rule regulating the number of vehicles that each unit may park on the condominium property is reasonable.

Prospective Enforcement of Parking Restriction

Where an association has failed to enforce a restriction or requirement of its governing documents, the Association may recommence enforcement prospectively after providing notice to its members. See *Chattel Shipping and Investment, Inc. v.*

Brickell Place Condo. Ass'n, Inc., 481 So. 2d 29 (Fla. 3rd DCA 1985). The Association admits it did not enforce the two vehicle limit until 2010. The Association claims that the letter dated October 18, 2010, it sent to its members regarding the commencement of the use of parking stickers provides sufficient notice of prospective enforcement of the two vehicle parking limitation. Petitioner argues that the letter is insufficient notice.

The letter states that owners will only be allowed to have two parking stickers and if an owner has more than two vehicles, other parking arrangements will need to be made. Additionally, the letter informs owners if a parking sticker does not match the registered vehicle, the vehicle will be towed. A reasonable reading of the letter indicates that the Association is implementing a parking system under which owners will only be permitted to park two vehicles in the Condominium Parking Lot. The letter constitutes sufficient notice of prospective enforcement of the two vehicle rule.

Although Petitioner had previously parked three vehicles in the Condominium Parking Lot, at the time the Association provided notice that it would enforce the two vehicle parking rule, Petitioner was only parking two vehicles on the property. Soon after petitioner recommenced parking three vehicles, the Association sent Petitioner a notice of violation letter. The Association may enforce the two vehicle parking restriction against Petitioner.

Arbitrary Enforcement

Petitioner claims that the Association is arbitrarily enforcing the Parking Rule's two vehicle parking limitation because it permits the owner of unit 307 to park three vehicles while not permitting Petitioner to do the same. An association may not enforce restrictions in a selective or arbitrary manner. *White Egret Condo., Inc. v. Franklin*, 379

So. 2d 346 (Fla. 1979). Therefore, if the facts show that an association is enforcing a restriction against one unit owner while knowingly allowing other unit owners to violate the same restriction, such enforcement will be deemed arbitrary and will not be permitted. However, subject violation must be comparable to the type of violation which the association has failed to enforce. *Scarfone v. Culverhouse*, 443 So. 2d 122 (Fla. 2d DCA 1983); *Schmidt v. Sherrill*, 442 So. 2d 963 (Fla. 4th DCA 1983).

The Association permits the owner of unit 307 to park three vehicles in the Condominium Parking Lot in violation of the Parking Rule and the policy stated in October 18, 2010, regarding the commencement of the use of parking stickers. The Association contends that an exception should be made for unit 307's third vehicle because the owner is law enforcement officer and the third vehicle is the officer's unmarked law enforcement vehicle. In support of its argument, the Association relies upon Florida Attorney General Opinion 05-36, in which the Florida Attorney General opined that a marked law enforcement vehicle is not a commercial vehicle where a homeowner's association prohibited the parking of commercial vehicles in the community. However, the scenario described in the Attorney General Opinion is distinguishable from the instant dispute which involves the number of vehicles that may be parked on condominium property rather than the nature of the vehicles. The Association's parking rule clearly is intended to address the limited number of available parking spaces whereas a commercial vehicle restriction is not. By permitting the unit owner of unit 307 to park three vehicles while denying Petitioner approval to do so, the Association acted arbitrarily.

The Association also argues that it is within its business judgment to allow the owner of unit 307 to park three vehicles. However, in order for the business judgment rule to apply, it would have to be within the Association's discretion to permit an owner to park more than two vehicles. Section A.1. of the Association's Rules and Regulations states that unit owners are only allowed to park two cars.⁴ Therefore, the Association does not have discretion to permit the owner of unit 307 to park more than two vehicles, and while it does so, it shall be estopped from preventing Petitioner from parking three vehicles in the Condominium Lot.⁵

Based upon the foregoing it is ORDERED:

1. The Supplemental Rules and Regulations regarding Pool and Pool Deck Rules recorded on September 28, 2011, providing that the Association's swimming pool is only for residents is invalid and unenforceable. The Association shall allow Petitioner's registered guests to use the swimming pool.

2. The dispute regarding the Association's failure to record the amendment to its Rules and Regulations banning dogs in the future is moot.

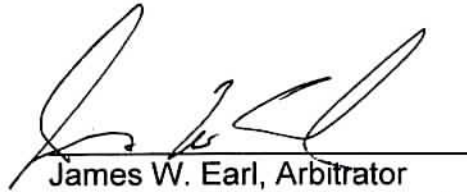
3. The amendment of the Association's Rules and Regulations banning dogs in the future is valid and Petitioner is denied any relief regarding the authority of the Association's Board of Directors to adopt such an amendment.

4. The Association shall not prevent Petitioner from parking three vehicles in the Condominium Parking Lot while it permits any other unit owner to do so.

⁴ The rule does provide an exception where additional spaces have been assigned to a unit. However, there has been no proof that unit 307 has been assigned additional spaces. Section 12.7 of the Declaration provides a procedure for transferring the use rights of a limited common element parking space. Therefore, it would be possible for a unit owner to acquire the rights to use multiple parking spaces.

⁵ This order does not address whether it would be reasonable for the Association's Board of Directors to amend its Parking Rule in order to create an exception for law enforcement vehicles.

DONE AND ORDERED this 20th day of December, 2013, at Tallahassee, Leon
County, Florida.



James W. Earl, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1030
Telephone: (850) 414-6867
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Trial de novo and Attorney's Fees

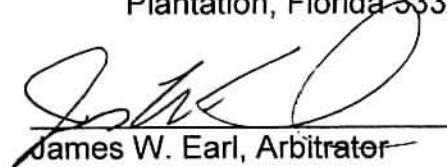
This decision shall be binding on the parties unless a complaint for trial de novo is filed in accordance with section 718.1255, Florida Statutes. As provided by section 718.1255, Florida Statutes., the prevailing party in this proceeding is entitled to have the other party pay reasonable costs and attorney's fees. Any such request must be filed in accordance with Rule 61B-45.048, Florida Administrative Code.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Summary Final Order has been sent by U.S. Mail to the following persons on this 20th day of December 2013:

Eric Glazer, Esquire
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