

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

IN RE: PETITION FOR ARBITRATION

The Four Ambassadors Association, Inc.,

Petitioner,

v.

Case No. 01-3350

Lindsay Properties, Inc.,

Respondent.

_____ /

FINAL ORDER ON MOTION FOR REHEARING

Comes now, the undersigned arbitrator, and enters this final order on motion for rehearing as follows:

The arbitrator entered a final order in this matter on November 22, 2002. Respondent was ordered to remove the washer and dryer from the unit. Respondent filed a motion for rehearing on December 10, 2002, which is beyond the 15 day period allowed for motions for rehearing by the rules of procedure. The arbitrator nonetheless has reviewed the motion for rehearing and enters this order thereon.

The bulk of the motion for rehearing argues that the arbitrator made findings based on lack of testimonial evidence at the final hearing. In essence, the motion argues that either the association presented no evidence to support the findings made, or that the respondent disagrees with the inferences and conclusions drawn from the evidence. The arbitrator made findings of fact based only on the testimony presented by the parties, and the arbitrator finds that the association fulfilled its burden of proof

and presented sufficient evidence to support the findings made in the final order. That the respondent disagrees with the conclusions drawn from duly offered testimonial evidence does not present an appropriate occasion for rehearing. In addition, several of the arguments presented in the motion for rehearing constitute re-argument of prior issues, which is inappropriate. Point #12 to the effect that the board has not exercised its judgment and determined the washer and dryer to constitute a nuisance or impair the enjoyment of the residents is again overruled. By initiating the instant action, the board has exercised its judgment and determined the equipment to fall within this classification, and in any event the declaration in this regard does not impose a mandatory condition precedent to the institution of legal proceedings.

Paragraph #13 appears to argue that the condominium may never change. Certainly this assertion fails to take into account the pronouncement of the Florida Supreme Court that purchasers buy into a condominium with the knowledge that the documents may be amended, except in those areas of fundamental rights, to more closely approximate the will of the majority of the owners as it may be expressed from time to time. See, Woodside Village Condominium Association, Inc. v. Jahren, 803 So. 2d 452 (Fla. 2002). There is no fundamental right implicated in this proceeding.

For the foregoing reasons, the motion for rehearing is denied.

DONE AND ORDERED this 19th day of December, 2002, at Tallahassee, Leon County, Florida.

Karl M. Scheuerman, Arbitrator
Department of Business and

Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029
Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 19th day of December, 2002 to the following persons:

Laura M. Manning, Esquire
Siegfried, Rivera, et al, P.A.
201 Alhambra Circle, Ste. 1102
Coral Gables, Florida 33134

MaryAnne Lukacs, Esquire
Lukacs & Lukacs, P.A.
1825 Coral Way
Miami, Florida 33145

Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a petition 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 order. This order does not constitute final agency action and is not appealable to the district courts of appeal.

Attorney's Fees

As provided by s. 718.1255, F.S., the prevailing party in an arbitration proceeding is entitled to have the other side pay its reasonable costs and attorney's fees. As provided by rule 61B-45.048, F.A.C., a motion seeking an award of attorney's fees and costs, which motion must conform to the requirements of the administrative rule, must be filed with the Division within 45 days of the date of the entry and mailing of this final order.