

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

IN RE: PETITION FOR ARBITRATION

**BAYFRONT TOWER
CONDOMINIUM ASSOCIATION
RESIDENTIAL, INC.,
Petitioner,**

v.

Case No. 2006-06-6721

**ROBERT B. REBMANN AND
KAREN BELKE-REBMANN,
Respondents.**

FINAL ORDER

On November 20, 2006, Bayfront Tower Condominium Association Residential Inc. (the Association) filed a petition for mandatory non-binding arbitration naming Robert B. Rebmann and Karen Belke-Rebmann as the Respondents. On January 8, 2007, Respondents filed an answer denying most of the material facts alleged by the Association. Therefore, pursuant to notice, the undersigned arbitrator of the Division of Florida Land Sales, Condominiums, and Mobile Homes convened a formal hearing in this case on June 15, 2007. During the hearing, the parties presented the testimony of witnesses, tendered documents into evidence and cross-examined witnesses. The parties have filed recommended orders. This order is entered after consideration of the complete record in this matter.

APPEARANCES

For Petitioner:	Astrid Guardado, Esq. Becker & Poliakoff, P.A. 2401 West Bay Drive, Suite 414 Largo, Florida 33770
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For Respondent: James D. Eckert, Esq.
447 Third Avenue N.
Suite St. Petersburg, Florida 33701

Statement of the Issues

1. Whether Respondents have violated section C of article XV of the declaration of condominium and the Association's rules and regulations by keeping more than one dog in their unit?
2. Whether Respondents have violated section C of article XV of the declaration by allowing one of their dogs to bite another unit owner's dog as well as other unit owners?

Findings of Fact

1. Bayfront Tower Condominium Association Residential Inc., is the legal entity responsible for the operation of the Bayfront Tower Condominium (the Condominium).
2. Respondents own a unit in the condominium located at One Beach Drive, #1405, St. Petersburg, Florida (the unit).
3. Respondents' have lived at the condominium since March 2004.
4. Initially, Respondents kept a large black Portuguese Water Spaniel named Ozzie at their unit. Later, Respondents obtained a miniature black poodle named Joey.
5. Respondents' claim that they have sold Joey to another unit owner, William Mills. However, Joey lives in Respondent's unit and Ozzie and Joey are only seen in the custody of Respondents.
6. Mr. Mills testified that he owns one pet, a cat.

7. Ozzie has acted aggressively toward other resident's dogs. On two occasions in October 2005 and October 2006 Ozzie lunged at Charles Larson's miniature greyhound, Sammy. Mr. Larson actively avoids Ozzie when walking his dog.

8. Another resident, Michael Starr has had at least two encounters with Ozzie. About 1 ½ years prior to the final hearing, while Mr. Starr was walking his miniature Schnauzer, they were charged by Ozzie, who had apparently slipped his owner's grasp. Mr. Starr and his dog were both injured in the encounter.

9. In the week prior to the final hearing, Mr. Starr was walking his dog through the condominium's lobby while Ozzie and Mr. Rebmann exited the elevator. When Ozzie spotted the schnauzer, he aggressively lunged at the dog growling and barking and had to be restrained by Mr. Rebmann.

10. In August 2006, Ozzie attacked Judith Stuart's dog, Echo, in the condominium elevator. The incident required Echo to be treated by veterinarian for a puncture wound to the head and a scratched eye.

11. Section C of Article XV of the Declaration provides, in pertinent part, as follows:

Each unit owner may keep one dog or one cat in the Owner's Unit, under the Rules and Regulations adopted by the Board; provided that they are not kept, bred, or maintained for any commercial purpose; and further, provided that such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property subject to these restrictions, upon three (3) days' written notice from the Board.

12. Paragraph 1 of the pet provisions of the Association's rules and regulations restricts each unit to one pet.

Conclusions of Law

Bayfront Tower Condominium is a condominium within the meaning of section 718.103, Florida Statutes. The undersigned has jurisdiction over the parties and subject matter of this dispute pursuant to section 718.1255, Florida Statutes. Respondents, by their ownership of a unit at the condominium, are required to comply with all governing condominium documents.

Respondents are maintaining two dogs in their unit. Section C of Article XV of the Declaration and Paragraph 1 of the pet provisions of the Association's rules and regulations permit unit owners to keep only one dog or cat. Respondents have attempted to avoid the application of these provisions by purportedly transferring ownership of one of their dogs to another unit owner. However, both dogs remain in Respondent's unit, in their custody and under their control. The above provisions prohibit the keeping of more than one dog; therefore, ownership is irrelevant. Thus, by keeping two dogs in their unit Respondents have violated Section C of Article XV of the Declaration and Paragraph 1 of the pet provisions of the Association's rules and regulations.

Respondent contends that the Association should be barred from enforcing the one dog or cat provisions because it is selectively enforcing the requirement. However, Respondent did not assert the defense of selective enforcement in a motion in opposition to the petition or the answer, only attempting to raise the defense at the final hearing. Pursuant to rule 61B-45.019(3), Fla. Admin. Code, every defense, except for lack of subject matter jurisdiction, not asserted in the answer is deemed waived. Therefore, Respondent's assertion of the defense of selective enforcement is untimely

and will not be considered.

In their recommended order, Respondents' attorney asserts that he has serious concerns that Mrs. Rebmann could encounter serious psychological problems if she is forced to give up one of her pets. In addition to affirming that Respondents have more than one pet, Respondents are attempting to assert a medical necessity defense. This defense was not raised at anytime prior to the recommended order and, therefore, as it is untimely it will not be considered by the undersigned.

On August 13, 2007, Respondents filed a copy of a letter from William H. Mills to various other unit owners and the Association's property manager dated August 2, 2007, alleging that the Association's by-laws have not been properly adopted by the Association's membership. This filing is struck as untimely. Additionally, any defense based upon the invalidity of the by-laws is rejected as untimely.

The Association alleges that Respondents have violated section C of article XV of the declaration by allowing one of the dogs to bite another unit owner's dog as well as other unit owners. Article XV prohibits pets from causing or creating a nuisance or unreasonable disturbance. It has been established above that Respondent's dog Ozzie has attacked or acted aggressively towards three other dogs. It has not been established that Ozzie has bit any person.

Where a condominium permits the keeping of dogs, one must expect the occasional indicia of dogs such as barking. However, Ozzie's aggressive behavior towards other dogs violates the above provision and must be remedied. Where a lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. *The Atrium On Bayshore Ass'n. Inc. v. Garcia*, Arb. Case No. 02-4682, Final

Order (August 1, 2002) citing *Knecht v. Katz*, 785 So.2d 754 (Fla. 5th DCA 2002). Therefore, the undersigned does not find it necessary to order the removal of Ozzie, rather, Ozzie should be required to be securely leashed and muzzled at all times he is outside Respondent's unit on the common elements or condominium property.

Based upon the foregoing, it is ORDERED:

1. Within thirty days of the date this order, Respondents shall permanently cease keeping more than one dog at their unit.
2. Effective immediately, if Respondents keep Ozzie, they shall securely leash and muzzle him at all times he is outside their unit on the common elements or condominium property.

DONE AND ORDERED this 13th day of September 2007, 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

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, F.A.C.

Copies furnished to:

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