

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

IN RE: PETITION FOR ARBITRATION

Alphonse J. Vacca,

Petitioner,

v.

Case No. 2007-01-3975

**Bellevue Biltmore Villas-Oaks-
150 Bellevue Blvd. , Inc.,**

Respondent.

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SUMMARY FINAL ORDER

Petitioner, Alphonse J. Vacca, filed a Petition for Arbitration on March 9, 2007, seeking payment of damages for failure of Respondent, Association, to allow inspection of books and records. On April 9, 2007, Respondent filed an Answer and Affirmative Defense that the records had been produce.

Findings of Fact

1. Respondent is the condominium association for Bellevue Biltmore Villas-Oaks-150 Bellevue Blvd.
2. Respondent is the owner of Unit 106, of the Condominium.
3. On June 12, 2006, Petitioner sent a letter to Progressive Management, Inc., the management company for Respondent¹, requesting to review the contract for repair work done to the balconies of the Oak's building. In addition, the letter requested to review, "any documents and correspondence relating to the Restoration Project that may not be

¹ Because Respondent admits Progressive Management, Inc. provides condominium association management for Respondent, the term Respondent includes Progressive Management, Inc. for the

included in the contract package.”

4. On June 14, 2006, Respondent acknowledged receipt of the records request, and offered to make the records available at the association office on June 17, 2006, at 10:00 a.m.

5. The requested records were not provided when Petitioner went to the meeting on June 17, 2007.

6. Although a second meeting took place on June 26, it is uncontested that access to all the requested records was not made available until July 1, 2006.

Conclusions of Law

1. The Division has jurisdiction over this matter pursuant to section 718.1255, Florida Statutes.

2. Rule 61B-45.030(3), Florida Administrative Code provides:

At any time after the filing of the answer, and if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief if the arbitrator finds that no meritorious defense exists, and that the petition is otherwise appropriate for relief.

3. Based on the pleadings subsequent to the Order to Show cause, no disputed issue of material fact exists.

4. Section 718.111(12)(b), Florida Statutes provides:

The official records of the association shall be maintained within the state. The records of the association shall be made available to a unit owner within 5 working days after receipt of a written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property.

5. Section 718.111(12)(c), Florida Statutes provides, in pertinent part:

The official records of the association are open to inspection by any association member or authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any of the association member. The association may make reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide records within 10 working days after receipt of a written request shall create a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this paragraph. The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th working day after receipt of the written request.

6. Respondent's Answer and Affirmative Defense do not rebut the presumption that failure to make the records available within the time required was willful. Therefore, Petitioner is entitled to statutory minimum damages.

7. Petitioner became entitled to \$50.00 per day for June 28, 29 and 30, 2006, but not including July 1, 2007, the day on which the records were made available.

Based on the foregoing, it is ORDERED:

1. Respondent shall, within 30 days of the date of this Order, pay the sum of \$150 to Petitioner.

DONE AND ORDERED this 13th day of April, 2007, at Tallahassee, Leon County, Florida.

Bruce A. Campbell, 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.

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 13th day of April, 2007:

Alphonse J. Vacca
150 Belleview Blvd.
Unit 106
Belleair, FL 33756

Gary M. Schaaf, Esq.
Becker & Poliakoff
2401 West Bay Drive, Suite 414
Largo, FL 33770

Bruce A. Campbell, Arbitrator