

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

IN RE: PETITION FOR ARBITRATION

Stephen B. McWilliam,

Petitioner,

v.

Case No. 2005-03-4074

**Maya Marca Condominium
Apartments, Inc.,**

Respondent.

_____ /

FINAL ORDER DISMISSING AMENDED PETITION

Comes now, the undersigned arbitrator, and enters this final order as follows:

Petitioner filed his petition in this matter on June 22, 2005. According to the petition, the board is essentially enforcing an unwritten rule to prohibit the rental of units within the first 3 years of ownership of the unit. As the petition did not recite that the association had threatened to enforce the rule against the petitioner, the association on July 18, 2005, filed its motion to dismiss arguing that the petitioner lacks standing to challenge the rule and alleging the lack of an actual dispute between the parties. The arbitrator, noting the lack of allegations demonstrating that the petitioner had a present need or intention to lease his unit, on July 20, 2005, ordered the petitioner to respond to the motion or to file an amended petition, at petitioner's option. Petitioner filed a response to the motion to dismiss on July 27, 2005, and simultaneously filed a motion for leave to amend petition along with an amended petition. The arbitrator allowed the amendment and reinstated the order requiring answer. The association filed its answer

and affirmative defenses on August 16, 2005, and once again argued that the association had not enforced the rental rule against the petitioner. The petitioner, while arguing that the amended petition presented a live dispute between the parties, on August 22, 2005, filed a motion for leave to file amended petition. The amended petition adds an additional owner to the list of petitioners, and alleges that the president offered or threatened to enforce the unwritten and unadopted rule against the new purchasers/petitioners. The association replied that it is inappropriate to add a new petitioner to resurrect a failing petition and an errant amended petition, that the newly named petitioner must file a separate petition, and that the arbitrator should have, upon the motion of the association, initially dismissed the original and second petitions thereby obviating the need for further action by the association.

Notwithstanding the plaintive remonstrations of the association contained in its burgeoning objection to the newest motion to amend, the arbitrator in effect dismissed the original petition where petitioner filed an amended petition in response to the invitation of the arbitrator. The efficacy of the amended petition was never ruled on before petitioner filed his motion for leave to amend the amended petition. The arbitrator, working backward, finds that it is inappropriate to add a separate petitioner at this juncture of the proceeding. No allegations regarding the new unrelated petitioners Kenneth and Linda Garofola can confer standing on the original petitioner, Mr. McWilliam, to challenge the unwritten rule. Mr. McWilliam must sink or swim on his own merits. Accordingly, the most recent motion to amend is denied.

Returning to the pending amended petition filed on July 27, 2005, the petition recites that the president unilaterally decided to enforce the rental rule by placing a

notice in the lobby stating that the newly purchased unit #702 could not be rented for a period of 3 years. Petitioner does not own unit #702, but instead owns unit #1401. Next, the petition alleges that in May, 2005, he was negotiating for the sale of his unit. A prospective purchaser inquired of the petitioner about rental restrictions, whereupon petitioner disclosed his belief that the board would not permit renting within 3 years, whereupon the prospect abandoned the venture.

The arbitrator does not believe that a present conflict has been stated in the amended petition. The dispute concerning unit #702 does not confer standing on the owner of unit #1401. The petition does not allege that the association has threatened to enforce or actually enforced the rule against the petitioner. Instead, taking the allegations of the petition as true, the association threatened to enforce the rule against a different owner, on the one hand, and petitioner himself without the assistance of the association discouraged a prospective purchaser. It cannot be said that a conflict exists at this point between the association and the petitioner, and the amended petition must be dismissed.

Accordingly, based on the foregoing, petitioner's motion to amend petition is denied, and the amended petition is hereby dismissed with prejudice.

DONE AND ORDERED this 8th day of September, 2005, at Tallahassee, Leon County, Florida.

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street

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 8th day of September, 2005:

Stephen B. McWilliam
3000 Holiday Drive
Apt. 1401
Ft. Lauderdale, Florida 33316

J. Steven Hudson, Esquire
Randall K. Roger & Associates, P.A.
621 NW 53rd Street, Suite 300
Boca Raton, Florida 33487

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.