

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

IN RE: PETITION FOR ARBITRATION

High Point of Delray West
Condominium Association Section III, Inc.,
Petitioner,

v.

Case No. 2003-06-2857

Rosalind Sharwell,
Respondent.

_____ /

SUMMARY FINAL ORDER

This order is entered pursuant to Rule 61B-45.030, Florida Administrative Code, which permits the arbitrator to enter a summary final order where there are no disputed issues of material fact.

On May 16, 2003, High Point of Delray West Condominium Association Section III, Inc. (petitioner/association) filed a petition for mandatory non-binding arbitration, naming Rosalind Sharwell as respondent/unit owner. The petition alleges that the respondent has altered the association's common elements without the association's approval by installing telephone wires outside the building which extend across the condominium walls and roof, in violation of Article XVI.A, paragraphs 2 and 3, of the declaration of condominium. On June 3, 2003, respondent filed an answer, accompanied by a qualified representative application requesting the approval of Jack A. Sharwell as qualified representative for the respondent, pursuant to Rule 61B-45.004, Florida Administrative Code.

Pursuant to Article XVI.A, paragraph 2 of the declaration of condominium:

No Unit Owner shall make any alteration in or on any portion of the Buildings or the Common Elements which are to be maintained by the Association, or remove any portion thereof or make any additions thereto or do anything which shall or may jeopardize or impair the safety or soundness of the Buildings or the Common Elements or which, in the sole opinion of the Board, would detrimentally affect the architectural design of the Buildings without obtaining the prior written consent of the Board.

Article XVI.A, paragraph 3 of the declaration of condominium provides:

No Unit Owners shall paint, refurbish, alter, decorate, repair, replace or change Common Elements of any outside or exterior portion of the Buildings maintained by the Association including porches, doors, windows, etc., or install any exterior lighting fixture, mailboxes, screen doors, awnings, storm shutters, hardware, or similar items, not consistent with the general architecture of the Buildings maintained by the Association without first obtaining specific written approval of the Board. The Board shall not give such approval if in its opinion its effect any of the items mentioned herein will be unsightly as to the exterior or the interior of the Buildings maintained by the Association...

While the respondent cites numerous defenses in her answer, she does not deny that the telephone wires in question were installed at her request or that the installation of the wires fails to conform to the declaration provisions set forth above. Rather, the respondent denies responsibility for the installation and alleges that because the local telephone company actually installed the wires, the association must seek redress from the telephone company, not the respondent. The respondent also alleges that she cannot be ordered to comply with the relevant condominium documents because she had no knowledge of the restrictions as the

association never provided her with the documents.

Under the provisions set forth above, a unit owner is prohibited from altering or changing the common elements or any portion of the condominium buildings without prior board approval. In addressing this issue, the court in Sterling Village Condominium, Inc. v. Breitenbach, 251 So 2d 685, 687 (Fla. 4th DCA 1971), defined material alterations to buildings as:

...We hold that as applied to buildings, the term "material alteration or addition" means to palpably or perceptively vary or change the form, shape, elements or specifications of a building from its original design or plan, or existing condition, in such a manner as to appreciably affect or influence its function, use, or appearance.

In Stoner v. 440 West, Inc., Arb. Case No. 93-0139, Final Order (December 1, 1995), the arbitrator ruled that the installation of a radio antenna on top of the condominium building was a material alteration to the common elements. In Village Oaks Condominium Association, Inc. v. Smith, Arb. Case No. 97-0198, Final Order (February 3, 1998), the arbitrator required an owner to remove a gas fireplace situated within a unit and small gas line which ran through the common elements and supplied fuel to the unit. Clearly, the installation of telephone wires outside the condominium building, as alleged in this proceeding, constitutes an alteration of the common elements, requiring prior approval pursuant to Article XVI.A, paragraphs 2 and 3, of the declaration of condominium. In the instant case, the respondent, as the unit owner, is the party who requested the installation of the telephone line and therefore had the duty to instruct the telephone company to properly install the wires in accordance with the condominium documents, or in the alternative, obtain

prior approval for the installation. Secondly, when the respondent purchased her condominium unit, she obligated herself to comply with all condominium provisions and rules and regulations. It is the unit owner's responsibility to obtain these documents, become familiar with them, and act in compliance with them. All persons are charged with knowledge of matters properly of record. See Engle v. Acopian, 432 So.2d 113 (Fla. 5th DCA 1983). Had the unit owner read the above-referenced provisions, she would have been aware of the proper manner in which to have telephone wires installed. Accordingly, these defenses are rejected. The remaining defenses raised by the respondent lack legal merit and are similarly rejected.

In sum, the respondent has installed telephone wires outside her unit without prior authorization from the association, thereby altering the common elements. For such unauthorized alterations, the respondent is found to be in violation of Article XVI.A, paragraphs 2 and 3, of the declaration of condominium.

It is therefore ORDERED:

The respondent, Rosalind Sharwell shall, within thirty (30) days of the date of entry of this order, arrange to have the telephone wires outside her unit removed from the building walls and roof and shall repair all damage caused to the common elements by such installation. In the future, the respondent shall fully comply with Article XVI.A, paragraphs 2 and 3, of the declaration of condominium.

DONE AND ORDERED this 5th day of August 2003, at Tallahassee, Leon County, Florida.

Melissa Mnookin, 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 summary final order has been sent by U.S. Mail to the following persons on this 5th day of August 2003:

Keith F. Backer, Esq.
Backer Law Firm, P.A.
136 East Boca Raton Road
Boca Raton, Florida 33432

Rosalind Sharwell
14150 Nesting Way
No. C
Delray Beach, Florida 33484-8690

Melissa Mnookin, Arbitrator

Right to Appeal

As provided by section 718.1255, F.S., a party which is adversely affected by this final order may appeal 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 final 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 section 718.1255, F.S., the prevailing party in this proceeding is entitled to have the other party pay its reasonable costs and attorney's fees. Rule 61B-45.048, F.A.C., requires that a party seeking an award

of costs and attorney's fees must file a motion seeking the award not later than 45 days after rendition of this final order. The motion must be *actually received* by the Division within this 45-day period and must conform to the requirements of rule 61B-45.048, F.A.C. The filing of an appeal of this order does not toll the time for the filing of a motion seeking prevailing party costs and attorney's fees.