

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

**IN RE: PETITION FOR ARBITRATION**

**The Waverly at South Beach  
Condominium Association, Inc.,**

**Petitioner,**

**v.**

**Case No. 2005-06-2473  
Rel Case No. 2005-04-7258**

**Michael K. McCarthy and  
Jacob Serure,**

**Respondents.**

---

**FINAL ORDER ON MOTION FOR ATTORNEY'S FEES AND COSTS**

On November 30, 2005, The Waverly at South Beach Condominium Association, Inc. (association or petitioner) moved for an award of \$945.00 in attorney's fees and \$50.00 in costs, totaling \$995.00. By order dated January 12, 2006, the undersigned permitted the respondent twenty days to respond to the association's motion. As of the date of this order, the respondent has failed to file a response.

This fees case arises from the underlying arbitration, case number 2005-04-7258. In the underlying case the association alleged that the respondent was violating the condominium documents by maintaining a dog on the association premises. On November 18, 2005, a final order dismissing the case as moot was entered, as the respondent and his dog had moved out of the condominium.

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party"

if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See *Moritz v. Hoyt Enterprises, Inc.*, 604 So. 2d 807, 809 (Fla. 1992)(citing *Hensley v. Eckerhart*, 461 U.S. 424 , 433 (1983)). In the underlying case, the benefit sought by the association occurred after the filing of the petition for arbitration. The petitioner argues that the motivating factor for the departure of the respondent was the filing of the petition for arbitration, which demanded the removal of the respondent's dog. As the respondent has failed to demonstrate that his departure was wholly unrelated to the arbitration proceeding (or respond whatsoever in this case), the association is deemed the prevailing party and is entitled to an award of reasonable attorney's fees and costs. See *Jamestown Condo. Assn., Inc. v. Brackett*, Arb. Case No. 2004-04-1994, Final Order on Motion for Attorney's Fees and Costs (September 13, 2004).

In determining the reasonableness of the attorney's fees and costs claimed by the association, the arbitrator applies the federal lodestar approach. In *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a "lodestar figure" by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney. *Fashion Tile & Marble v. Alpha One Construction*, 532 So. 2d 1306 (Fla. 2d DCA 1988). In undertaking this analysis, the reasonableness of the hourly rate and the number of hours reasonably expended must be separately considered. See *Rowe*, 472 So. 2d at 1150-51.

### I. Reasonableness of Hourly Rate

The association seeks compensation for the legal services of David H. Rogel, Esquire, at the rate of \$225.00 per hour. Mr. Rogel has been a member of the Florida bar for over twenty-four years and has extensive experience in representing condominium associations. After considering the factors contained in rule 61B-45.0048(7), Florida Administrative Code, the undersigned finds the requested hourly rate to be reasonable.

### II. Reasonableness of Hours Expended

The association seeks compensation for 4.2 hours of services by Mr. Rogel. This amount of time is reasonable in a pet removal case where the case is rendered moot. Therefore, the total attorney's fees award shall be 4.2 hours at the rate of \$225.00 per hour, totaling \$945.00.

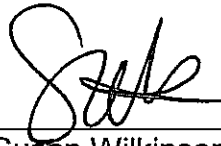
The association also seeks reimbursement of \$50.00 for the arbitration petition filing fee. This is a necessary cost and, therefore, the association shall be awarded this \$50.00 cost.

It is therefore

#### **ORDERED:**

1. The petitioner's motion for attorney's fees and costs is GRANTED.
2. The respondent shall pay to the association the sum of \$995.00 within thirty (30) days of the date of this order.

DONE AND ORDERED this 18th day of April, 2006, at Tallahassee, Leon County, Florida.



---

Susan Wilkinson Harnden  
Arbitrator  
Division of Florida Land Sales, Condominiums,  
& Mobile Homes – Arbitration Section  
Dept. of Business & Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029

**RIGHT TO TRIAL DE NOVO**

Pursuant to section 718.1255, Florida Statutes, this decision shall be binding on the parties unless a complaint for a *trial de novo* is filed by an adversely affected party in a court of competent jurisdiction in the circuit court in which the condominium is located within 30 days of the date of mailing of this order. This final order does not constitute final agency action and is not appealable to the district courts of appeal.

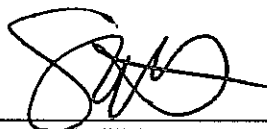
**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing final order was sent by U.S. Mail, this 18<sup>th</sup> day of April, 2006, to:

David H. Rogel, Esquire  
121 Alhambra Plaza, 10<sup>th</sup> Floor  
Coral Gables, FL 33134

Michael Ehrenstein, Esquire  
201 S. Biscayne Blvd., Suite 1970  
Miami, FL 33131

Jacob Serure  
1125 West Avenue, Unit 4  
Miami Beach, FL 33139



---

Susan Wilkinson Harnden, Arbitrator