

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

IN RE: PETITION FOR ARBITRATION

**Dalton Place Condominium
Association, Inc.,**

Petitioner,

v.

Case No. 2007-06-4615

Michelle Lewis,

Respondent.

_____ /

FINAL ORDER

On November 27, 2007, Dalton Place Condominium Association, Inc. (the association) filed a petition for arbitration naming Michelle Lewis as the respondent. The petition alleged that the respondent had violated section I of article XIII of the declaration of condominium by failing to furnish the association with a set of keys to each entry door of the respondent's unit. On December 7, 2007, an order requiring answer was issued.

Because the order requiring answer, petition and other enclosures were not successfully served on the respondent by certified mail, by order dated January 22, 2008, the association was directed to serve the materials on the respondent. On February 25, 2008, the association filed an affidavit of service stating that the respondent had been served on February 9, 2008.

Since the respondent had not filed an answer or other communication with the arbitrator, a default was entered against Respondent on March 13, 2008. On March 27, 2008, the respondent filed a response stating that she thought this matter was resolved.

On April 18, 2008, a case management conference was held in this matter. The respondent was directed, by April 30, 2008, to file a motion to vacate the entry of default accompanied by an answer asserting a meritorious defense.

On April 30, 2008, the respondent filed a motion to vacate. Since the motion also responded to the petition and raised defenses, it was treated as the respondent's answer. By order dated July 16, 2008, the default was vacated.

A telephonic final hearing was held in this matter on August 28, 2008, during which 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.

For the Association: Laurel R. Wiley, Esq.
Becker & Poliakoff, P.A.
625 North Flagler Drive
Seventh Floor
West Palm Beach, FL 33401

For Respondent: Michelle Lewis, *pro se*
4748 S. Ocean Blvd.
Apt. 205
Highland Beach, FL 33487

Findings of Fact

1. Dalton Place Condominium Association, Inc. is the legal entity responsible for the operation of the Dalton Place Condominium.
2. The respondent owns unit 205 at the condominium which she purchased in 2001.
3. Linda Leopard is the association's manager. Her office is located at the condominium.

4. On August 21, 2007, the respondent came to the condominium's office and stated that she had locked herself out of her unit and needed Ms. Leopard to give her a spare key to the unit. Ms. Leopard offered to escort Ms. Lewis to her unit with the key as that was the association's policy. In response, the respondent indicated that in reality she had not locked herself out, but was trying to take her key back.

5. Later that same day, a locksmith sought entry into the building stating that he was installing new locks on the respondent's unit, and the respondent informed Ms. Leopard that the old keys to her unit would not work. The respondent did not provide a new key. The respondent told Ms. Leopard that if access to her unit was needed, the association was to call her on her cell phone. If the respondent determined that there was an emergency and she was not available, she would dispatch her father from Stuart, Florida, with the key.

6. On August 22, 2007, the respondent provided Ms. Leopard a new key. However, the key would not open the lock on the entry door to the respondent's unit.

7. From August 21 through October 4, 2007, the association requested a key to the respondent's unit during at least six conversations involving Ms. Leopard or other board members and by two letters. The respondent refused the requests.

8. Since the initiation of this case, the respondent has installed a security system. In her Motion to Vacate Default filed on April 30, 2008, the respondent stated that she had recently installed a wireless security system with motion detector in her unit, and unless the secret password is entered, the police automatically will be contacted. However, during the final hearing, the respondent testified the security

system no longer automatically contacts the police; however, a loud siren will sound for about one minute.

9. As of the date of the final hearing, the association did not have a working key to the respondent's unit or the code to respondent's security system.

10. The new locks installed on the respondent's unit were MEDCO locks. The respondent signed a form authorizing the locksmith company to provide one key to Ms. Leopard.

11. Ms. Leopard was not aware of this authorization or related form until the day of the hearing when the form was offered as an exhibit by the respondent.

12. The respondent testified that Ms. Leopard must sign the form in order to receive a key. The respondent also stated that she could have had the locksmith deliver the key to Ms. Leopard.

13. The respondent travels frequently and is away from her unit for extended periods. When traveling, her mail accumulates at her unit.

14. Subsection I of article XIII of the declaration of condominium provides:

Each apartment Owner shall furnish the Association with a set of keys to each and any locks(s) of the entry door to such Owner's Apartment in order that the Association, through its officers, directors, agents, employees and contractors, may have access to the Apartment in the event of an emergency, and for such other purposes as may be permitted under Chapter 718, Florida Statutes, as amended or renumbered from time to time. Entry into an Apartment under such circumstances shall in no event be regarded as a trespass or any other type of unlawful or illegal entry.

Conclusions of Law

Dalton Place 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. The respondent, by her ownership of a unit at the condominium, is required to comply with all governing condominium documents.

Subsection I of article XIII of the declaration of condominium clearly requires the respondent to provide the association a key to her unit's entry door. The respondent has failed to do so.

The respondent claims that she informed Ms. Leopard that she had placed a key in a box in her storage closet at the condominium and informed Ms. Leopard of the combination to the lock on the storage closet. Ms. Leopard claimed that she was not informed of this arrangement. Even assuming Ms. Leopard had been informed of the key's location, placement of the key in the storage closet does not comply with the governing document's requirement that a unit owner furnish a key to the association. Moreover, the undersigned finds no reason to doubt Ms. Leopard's claim that she was not aware that the key had been placed in the in the storage closet.

Considering that the locksmith company that installed the locks had a procedure for providing copies of keys, if the respondent had truly intended at some time to provide a key to the association, she could have simply directed her locksmith to deliver the key to Ms. Leopard. Instead, the respondent chose to make it more difficult for the association to access her unit by installing a security system while not providing the association with the access code.

The respondent argues that when she bought her unit in 2001, the declaration did not contain the requirement that a unit owner provide the association a key. The requirement was added by an amendment adopted on April 30, 2004, and recorded on

May 13, 2004. However, owners are charged with constructive knowledge that the declaration may be amended in the manner set forth in the declaration. *Woodside Village Condo. Ass'n, Inc. v. Jehren*, 806 So. 2d 452 (Fla. 2002). There has been no allegation or indication that amendment was improperly adopted. Therefore, the respondent is subject its requirements.

The respondent indicates that she is reluctant to provide the association with a key because she does not trust the association. Pursuant to section 718.111(5), Florida Statutes, an association has the irrevocable right of access to a unit when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association or to prevent damage to the common elements or to a unit or units. In light of the irrevocable nature of this right, numerous defenses have been considered and rejected. The defense that the owner does not trust persons connected with the association has been repeatedly rejected. See, *Valencia Condominium Residences Association, Inc. v. Banoub*, Arb. Case No. 99-2302, Summary Final Order (April 17, 2000), see also *Park Lake Towers Condominium Association, Inc. v. Palfrey*, Arb. Case No. 00-1521, Summary Final Order (November 13, 2000); *Helen Mar Condominium Association, Inc. v. Marshall*, Arb. Case No. 98-4465, Final Order (September 22, 1998); *Swisher v. Building Three of Country Club Apartments at Bonaventure 32 Condominium Association, Inc.*, Arb. Case No. 99-1466, Final Order (August 31, 1999). Also insufficient is the defense that property was stolen, damaged, used or disarranged by persons gaining entry with the key provided. See, *Valencia, Park Lake, supra*. Even the claim that the owner keeps national defense secrets unsecured in his unit was rejected in *Emerald Seas Condominium Association*,

Inc. v. Harvan, Arb. Case No. 97-0057, Summary Final Order (July 31, 1997).

Therefore, the respondent's defense of mistrust is rejected.

The respondent has failed to provide the association with a key to open the entry door to her unit. Therefore, the respondent has violated Subsection I of article XIII of the declaration of condominium.

Based upon the foregoing, it is ORDERED:

Within ten days of the date this order, the respondent shall provide the association a functional key that unlocks the entry door or doors to her unit. Additionally, the respondent shall provide the association the access code to her unit's security system.

DONE AND ORDERED this 11th day of November, 2008, 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.

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 11th day of November, 2008:

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