

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

IN RE: PETITION FOR ARBITRATION

**4000 Island Boulevard
Condominium Association, Inc.,**

Petitioners,

v.

Case No. 2008-00-0871

**Bernard Weisman and
Roberta Weisman,**

Respondents.

_____ /

SUMMARY FINAL ORDER

Statement of Issue

The issue presented by the Petition for Arbitration is whether Respondents are in violation of the Amendment to the Declaration of Condominium, which requires unit owners to install hurricane shutters or impact resistant glass windows, on all windows or sliding glass doors servicing their units.

Procedural History

Petitioner 4000 Island Boulevard Condominium Association, Inc. filed a petition for arbitration on January 4, 2008. Respondents filed an Answer and Affirmative Defenses on March 17, 2008. On March 26, 2008, the arbitrator entered a notice of intent to issue a summary final order, which allowed the parties to submit memoranda addressing the application of section 718.113(5) to the governing documents. The memoranda have been received and this Order is based on all pleadings and documents in the file.

Findings of Fact

1. Petitioner is the condominium association responsible for the operation of 4000 Island Boulevard Condominium. Respondents are members of the Association by virtue of ownership of Unit 306 (WS-6) of the condominium.

2. The Petition is brought to enforce an Amendment to the Declaration of Condominium, adopted at a members meeting on June 5, 2006, that requires unit owners to install hurricane shutters or impact resistant glass designed to function as hurricane protection on all windows and sliding glass doors servicing their units before May 1, 2007.

3. The condominium building is in excess of 30 stories (300 feet) high.

4. Respondents installed shutters over all openings except one "fixed" window.

5. The exterior of the fixed window is not accessible to a unit owner, and the Declaration provides that the exterior surfaces of such windows shall be washed by the Association.

6. The Association has performed maintenance on some fixed windows, including repairs of leaks.

7. Section 3.2 of the Declaration of Condominium defines the Unit boundaries. Subsection 3.2(c) provides:

Apertures. In cases in which there are apertures in a boundary (including, but not limited to, windows, doors, conversation pits and skylights) the Unit's boundaries shall be extended so that the interior unfinished surfaces of such apertures (including all frameworks thereof) and the exterior surfaces of such apertures that are made of glass or other transparent material (including all framings and casings thereof) are within the boundaries of the Unit.

8. Section 7.1 of the Declaration provides, in pertinent part:

Units and Appurtenances. All maintenance of any Unit, whether ordinary or extraordinary (including, without limitation, maintenance of screens, windows (both sides, provided that the exterior surfaces of windows which are not accessible to Unit owners shall be washed by the Association and the cost thereof shall be a Common Expense), ... shall be performed by the Owner of such Unit at that Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

Conclusions of Law

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

Section 718.113, Florida Statutes, provides in pertinent part:

1) Maintenance of the common elements is the responsibility of the association. The declaration may provide that certain limited common elements shall be maintained by those entitled to use the limited common elements or that the association shall provide the maintenance, either as a common expense or with the cost shared only by those entitled to use the limited common elements. If the maintenance is to be by the association at the expense of only those entitled to use the limited common elements, the declaration shall describe in detail the method of apportioning such costs among those entitled to use the limited common elements, and the association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners entitled to use the limited common elements.

.
. .
.

(5) Each board of administration shall adopt hurricane shutter specifications for each building within each condominium operated by the association which shall include color, style, and other factors deemed relevant by the board. All specifications adopted by the board shall comply with the applicable building code. Notwithstanding any provision to the contrary in the condominium documents, if approval is required by the documents, a board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the board. The board may, subject to

the provisions of s. 718.3026, and the approval of a majority of voting interests of the condominium, install hurricane shutters and may maintain, repair, or replace such approved hurricane shutters, whether on or within common elements, limited common elements, units, or association property. However, where laminated glass or window film architecturally designed to function as hurricane protection which complies with the applicable building code has been installed, the board may not install hurricane shutters. The board may operate shutters installed pursuant to this subsection without permission of the unit owners only where such operation is necessary to preserve and protect the condominium property and association property. The installation, replacement, operation, repair, and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed a material alteration to the common elements or association property within the meaning of this section.

Respondents assert three facts to support their argument that the Association should install and maintain shutter for the fixed windows. First, the Declaration requires the Association to wash the outside of fixed windows. Second, the Association has, in fact, performed repairs and maintenance to fixed windows of some units. Third, because of the height of the building, it is not economical for individual owners to pay a contractor to scaffold up or be suspended down to work on a single fixed window.

Despite the undeniable truth of the facts supporting Respondent's position, this case must be resolved in favor of Petitioner because of the provisions of the Declaration and section 718.113, F.S. The Declaration provisions are distinctive, if not unique, in extending the Unit boundaries to exclude the exteriors of doors and windows. The further listing of skylights, and the description as "made of glass or other transparent material", make it clear that apertures, other than windows that can be opened, are included in the extended boundaries.

The maintenance provision of the Declaration, which provides a specific exception for the Association to wash windows not accessible to Unit owners, reinforces the conclusion that the exterior of a fixed window is within the boundaries of the Unit. Particularly with respect to exceptions, expressing only one excludes the possibility of others. That conclusion, then, means that section 718.113(1), F.S. does not require other maintenance by the Association.

The fact the Association may have performed some maintenance and repairs on fixed windows for the benefit of certain units does not change the plain meaning of the governing documents.

Finally, section 718.113(5), F.S. authorizes the Association to require a unit owner to install hurricane protection. *Seascope Club Condominium Association, inc. v. Frankel* and *Seascope Club Condominium Association, Inc. v. Trammell*, Arb. Case Nos. 98-3541 and 98-3543, Summary Final Order (February 7, 1999).

Accordingly it is ORDERED that Respondents Bernard Weissman and Roberta Weissman shall within thirty days of this Order file with the Association a binding contract for installation, within a time certain, of hurricane protection for the fixed window of their unit.

DONE AND ORDERED this 21st day of April, 2008, at Tallahassee, Leon County, Florida.

Bruce A. Campbell Arbitrator
Dept. of Bus. & Prof. Reg.
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 on default has been sent by U.S. Mail to the following persons on this 21st day of April, 2008:

Laura M. Manning, Esq.
Siegfried Rivera Lerner
515 North Flagler Street, Suite 701
West Palm Beach, FL 33401

Lisa K. Hermann, Esq.
Saavedra Pelosi
312 Southeast 17th Street
Ft. Lauderdale, FL 33316

Bruce A. Campbell, Arbitrator