

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

IN RE: PETITION FOR ARBITRATION

SHORELINE TOWERS PHASE I
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v.

Case No. 01-3857

STAR PROPERTY, INC., an Alabama corporation,
DON M. MARTIN and RITA C. MARTIN,

Respondents.

_____ /

PARTIAL SUMMARY FINAL ORDER AND ELECTION ORDER

On October 19, 2001, Shoreline Towers Phase I Condominium Association, Inc. (association or petitioner) filed a petition for arbitration naming Star Property, Inc., Don M. Martin and Rita C. Martin as respondents. The petition alleges that the respondents are keeping a dog on the condominium property in unit 2041, in violation of the rules and regulations. As relief, the petitioner seeks an order requiring the respondents to remove Respondent Don M. Martin's dog from the unit.

On November 27, 2001, the respondents filed an answer in which they challenge the validity of the no-pet rule and assert, *inter alia*, that the dog is a service animal.

The material facts are not in dispute with regard to whether the "Pets" rule of the rules and regulations is valid. Accordingly, this issue is appropriate for

summary disposition. In Beachwood Villas Condominium, Inc. v. Poor, 448 So.2d 1143 (Fla. 4th DCA 1984), the court formulated a test for determining the validity of rules adopted by the board of directors of an association. The court wrote “provided that a board-enacted rule does not contravene either an express provision of the declaration or a right reasonably inferable therefrom, it will be found to be valid, within the scope of the board’s authority.” In this case, Article XIII.4 of the declaration of condominium provides in relevant part:

4. An Apartment Owner shall not keep any pet in his Apartment except under the regulations promulgated by the Association from time to time, nor keep any other animals, livestock or poultry, nor may any of the same be raised, bred or kept upon any portion of the Condominium Property.

The Pets section of the rules and regulations provides: “Pets: Absolutely no pets allowed on Shoreline property.” The language of the declaration in the present case provides that unit owners “shall not keep any pet” except under the regulations promulgated by the association. The declaration is devoid of any language that states a unit owner has a right to keep a pet; accordingly, the no-pet rule does not contravene an express provision of the declaration.

The next question is whether the no-pet rule contravenes a right reasonably inferable from the declaration. There is no indication from the language of the declaration that the intent of the declaration provision was to allow pets but to permit the association to promulgate rules with regard to these pets.¹ The

¹ In effect the declaration appears to grant the authority to the board to allow or not to allow pets. There is no prohibition against such a delegation in the law.

declaration does not contain any guidelines for pet ownership, such as, breed, weight-limits or number of pets permitted. Instead, the clear and unambiguous language of Article XIII.4 provides that an apartment owner shall not keep any pet except under the regulations promulgated by the association.

Compare the facts of the present case to Kamhi v. Pine Island Ridge Condominium Association, Inc., Arb. Case No. 98-4155, Summary Final Order (December 4, 1998). In Kamhi v. Pine Island Ridge the declaration provided that an apartment owner “may keep a pet in his apartment” but only under the regulations promulgated by the association from time to time. The association promulgated a rule that prohibited pets unless they were “expressly permitted in writing by the association.” The arbitrator found that the declaration in that case gave a unit owner the right to keep a pet, so long as the regulations regarding the housing of pets are met. The present dispute is distinguishable from Kamhi v. Pine Island Ridge in that the declaration in the present dispute does not provide explicitly or implicitly that a unit owner has a right to keep a pet. Based on the foregoing, the pet rule does not contravene either an express or implied provision of the declaration and is, therefore, valid.

In their answer to the petition, the respondents deny that the dog is subject to the declaration of condominium’s no-pet provision. In support therefor, they contend that the dog is a service animal and is permissible. The respondents are notified that the Florida Commission on Human Relations (FCHR) enforces the

Florida Fair Housing Act (Part II, Chapter 760, Florida Statutes), and that the respondents may elect to have their fair housing claim considered by that agency.

If the respondents elect to pursue the fair housing issue by filing a complaint with the FCHR at this time, and requests that the arbitration proceeding be halted or abated, the arbitration will be abated until the FCHR determines whether it has jurisdiction and completes any applicable investigation or proceeding. Further, the respondents are hereby notified that if they choose not to file a complaint with the FCHR at this time, the passage of time may preclude a later assertion of her claim. See Part II, Chapter 760, Florida Statutes. If the respondents do not elect to file with the FCHR, the arbitration will continue and all of the respondents' defenses, including the fair housing defense, will be considered and ruled upon by the arbitrator.

Accordingly, it is ORDERED:

1. The pet rule of the rules and regulations is valid.
2. Within 21 days of the date of this order, the respondents shall complete and file the attached form indicating whether they elect to file a complaint with the FCHR. The form may be faxed to 850-487-0870. If the respondents do not file the election form it will be assumed that they have decided not to pursue the fair housing claim with the FCHR. If they elect to file a complaint with the FCHR, and provide documentation within 30 days of the date of this order that they have diligently complied with the requirements for filing a complaint with the FCHR, the arbitration proceeding will be abated.

DONE AND ORDERED this 21st day of December 2001, at Tallahassee, Leon
County, Florida.

Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
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ELECTION FORM

CHECK ONLY ONE BOX BELOW, SIGN, AND RETURN THIS FORM

_____ The party signing below elects to pursue the fair housing issue raised in this case by filing a complaint of discrimination with the Florida Commission on Human Relations.

OR

_____ The party signing below elects to continue with the arbitration proceeding.

Party's name (printed)

Signature of Party or representative

Arbitration Case No. 01-3857