DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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Condominiums and Mobile Homes
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REGULAR FINAL ORDER INDEX SUPPLEMENT

December 2005

Note: This interim supplement contains summaries of final orders entered by division arbitrators in the arbitration program described by Section 718.1255, Florida Statutes, from July 1, 2005 through December 31, 2005. The final order summaries are organized by subject matter. Indexes of earlier final orders are available online at the above web address.

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Case No. 2004-05-8895 (Earl / Final Order / August 22, 2005)

- The association attempted to avoid the defense of selective enforcement by claiming that the unit owner failed to demonstrate that the similar violations were not built by the developer. However, the party pleading avoidance bears the burden of affirmatively establishing the facts alleged in the avoidance which the association failed to do.

Carrollwood Village Chase Condo. Ass'n, Inc. v. Novak,
Case No. 2005-00-5838 (Bembry / Final Order / November 9, 2005)

- Where the unit owner obtained the association's pre-construction approval for her unit's patio enclosure by submitting an appropriate application and construction specifications, the association was estopped from requiring the unit owner to modify the structure, once constructed, because it previously had an opportunity to review and reject the plans and failed to do so.

- The unit owner successfully established the defense of selective enforcement by demonstrating that the association had not maintained a uniform standard as to the placement of the patio enclosures doors on the condominium property. As the exterior appearance of the patio enclosures of the property varied greatly, the association was precluded from requiring the unit owner from modifying the placement of her patio enclosure door.

Coastal Garden Condo., Inc. v. Winfrey,
Case No. 2005-00-7953 (Earl / Final Order / September 13, 2005)

- The unit owners' contention that they should not be held responsible for modifications made to their unit by a prior owner was rejected since a unit owner is liable for modifications made to the unit by a prior owner that violate the condominium documents.

- Although the association was prohibited from demanding removal of the washer/dryer because the unit owners had established the affirmative defenses of selective enforcement and laches, such defenses do not permit the unit owners to maintain a continuing safety hazard. Therefore, the unit owners must bring the

washer/dryer installation into compliance with all applicable building/technical codes or remove the same.

Crescent Beach Club Condo. Ass'n, Inc. v. Krueger,
Case No. 2005-00-9695 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / December 23, 2005)

- Pre-arbitration demand letter sent one day prior to the filing of the petition for arbitration did not provide adequate notice to the respondent and was not valid notice under s. 718.1255, F.S.

High Point of Delray West Condo. Ass'n Section, Inc. v. Sturge,
Case No. 2005-03-1704 (Grubbs / Summary Final Order / October 7, 2005)

- When the respondents asserted that the tenant had a disability authorizing the presence of the dog under the Fair Housing Act, the respondents were provided with time to amend their answer to allege facts establishing that the tenant had a disability and that the dog was a reasonable accommodation necessary to afford the tenant an equal opportunity to use and enjoy the unit or to file documentation or a statement establishing that the respondents had filed a fair housing complaint with an appropriate agency. After the respondents had been provided with several chances to either amend their answer or file a fair housing complaint but failed to do so, a summary final order was entered requiring removal of the dog.

Ibarra v. The Deauville Hotel Condo. Assn., Inc.
Case No. 2005-03-6532 (Grubbs / Final Order Dismissing Petition Without Prejudice / August 4, 2005)

- The "Concerned Unit Owners of the Deauvile Hotel" did not have standing to bring the arbitration action when the association did not provide records to them. Section 718.111(12) provides that records are to be made availabe to a unit owner. Where the pre-arbitration notice indicated that the "Concerned Unit Owners" requested the records, the case brought by the unit owner, individually, would have to be dismissed for lack of pre-arbitration notice.

- An arbitration action brought by a unit owner would not be stayed while the unit owner makes the appropriate pre-arbitration demands on the association, with the understanding that the unit owner would dismiss the arbitration action if the association complied with his demands. Section 718.1255(4)(b), F.S., clearly requires that the petition for arbitration be dismissed if it does not include the appropriate allegations or proof of compliance with the notice requirements mandated by statute.

Oceania II Condo. Assn., Inc. v. Fernandez,
Case No. 2005-03-6528 (Grubbs / Final Order Dismissing Petition / July 29, 2005)

- A certified letter that has been returned to the law firm that sent it cannot constitute the notice required by Section 718.1255(4)(b), Florida Statutes. The fact that another party was hosted by respondent after he was sent the certified letter telling him that he could no longer have late-night parties, which letter he never received, did not justify filing a petition for arbitration because the respondent had not been put on notice that he needed to change his behavior. A letter sent to respondent three days before the petition for arbitration was filed, telling the respondent that a petition for arbitration was being filed because he ignored the letter he never got, does not constitute notice pursuant to Section 718.1255(4)(b), F.S., for the current petition for arbitration. However, should the respondent again allow his unit to be used for late-night parties, the last letter, which had a copy of the earlier letter enclosed, would serve as appropriate advance notice.

Radcliffe v. 5200 Club Ass'n, Inc.,
Case No. 2005-06-4680 (Grubbs / Final Order Dismissing Petition / December 29, 2005)

- Where the pre-arbitration notice stated that the unit owners had previously requested records and the requests had been ignored, and demanded that the association provide copies of the minutes requested within 72 hours, the petition was dismissed for lack of sufficient pre-arbitration notice pursuant to section 718.1255(4)(b), Florida Statutes.

Sunrise Landing Condo. Ass'n of Brevard, Inc. v. Wilson,
Case No. 2005-03-4083 (Grubbs / Summary Final Order / October 6, 2005)

- When, during a conference call, the respondents asserted that that one respondent had hearing and psychological disabilities requiring the keeping of the over-the-weight-limit dog, respondents were provided time to amended their answer to allege facts establishing a "fair housing" defense, which would include allegations establishing that she had a disability and allegations establishing that the dog was a reasonable accomodation necessary to afford her an equal opportunity to use and enjoy her unit. The failure of the respondents to amend the answer to include specific factual allegations precluded consideration of the "fair housing" defense.

Tequesta Hills Condo. Assn., Inc. v. Cavalieri,
Case No. 2005-01-8418 (Grubbs / Final Order on Motion for Attorney's Fees and Costs / August 11, 2005)

- Attorney's fees should not be used as liquidated damages for past violations. Before a petition is filed seeking injunctive relief, the petitioner has an obligation to determine whether the relief it seeks in the petition has already been provided. A petition should not be filed when there is no longer a current dispute. The petitioner will not be found to be the prevailing party when the relief was provided prior to the petition being filed.

Town Park Plaza North Condo., Inc. v. Unit Owners Voting for Recall,

Case No. 2005-03-4119 (Grubbs / Summary Final Order on Petition for Recall Arbitration / July 25, 2005)

- The petitioner's apparent excuse for filing the recall petition a day late was that petitioner was trying to comply with the pre-arbitration notice requirement of Section 718.1255(4)(b), F.S., which requires that notice be given prior to filing a petition for arbitration. Section 718.1255(4)(b), F.S., does not apply in a recall case. In a recall case, "advance written notice of the nature of the dispute" is not necessary. Further, there is nothing in Section 718.1255(4)(b), F.S., that would exempt petitioner from the time requirements of Section 718.112(2)(j), F.S., even if it did apply.

Evidence

Hoyos v. Fern Isle Garden Condo. Assn., Inc.,
Case No. 2005-01-0805 (Earl / Final Order of Dismissal / August 4, 2005)

- The petitioning unit owner alleged that the association had failed to repair a leaking water pipe causing his water utility bill to increase. If the leak occurred in the common element plumbing, it was clearly the association's responsibility to repair it. However, the respondent merely speculated that the leak originated in the common element plumbing. The unit owner was directed to have his unit inspected by a licensed plumber in order to determine the origin of the leak which the owner failed to do. Therefore, the case was dismissed since he could not prove his case without establishing the origin of the leak.

Generally

2080 Ocean Drive Condo. Ass'n, Inc. v. Goldstein,
Case No. 2005-04-1980 (Grubbs / Order Denying Motion for Appointment and Order to Show Cause / August 30, 2005)

- The association did not cite to any rule or statute granting an arbitrator the authority to appoint either an attorney ad litem or a guardian ad litem to represent the respondent who may have had a diminished capacity. Obviously, the arbitrator could and would recognize a guardian or attorney designated or appointed to handle the respondent's affairs or legal matters; however, the power to appoint a guardian does not fall within the scope of the arbitrator's authority. Neither does the appointment of an attorney ad litem. However, in what might be viewed as a "Catch-22", since the respondent's capacity to represent herself in this matter is questionable, it would not be appropriate to move forward with the arbitration case in the absence of a representative for the respondent.

2080 Ocean Drive Condo. Ass'n, Inc. v. Goldstein,
Case No. 2005-04-1980 (Grubbs / Final Order of Dismissal / November 16, 2005)

- Where the respondent was not mentally capable of representing herself, the arbitration could not go forward without representation for the respondent. However, the arbitrator did not have the jurisdiction or authority to appoint a guardian or attorney

ad litem for the respondent. Because an action involving the same parties was pending in court, and a guardian ad litem had been appointed to represent the respondent in that proceeding, the petitioner was directed to show cause why the arbitration action against the respondent should not be dismissed. Based on the petitioiner's request, the action was formally held in abeyance pending the court's action. When the petitioner failed to timely report on the court action, the arbitration case was dismissed without prejudice.

Bayview Condo. at North Bay Village, Inc. v. Palacios,
Case No. 2005-02-8383 (Grubbs / Final Order of Dismissal / August 12, 2005)

- A member of the Florida Bar's duty of candor requires that counsel notify the arbitrator of any circumstance that might render the case moot. When an attorney for an association receives a correspondence from a pro se unit owner that has not been filed, indicating that the violation has been cured, counsel has a duty to advise the arbitrator of the correspondence. When the correspondence may be the respondent's answer, counsel should provide a copy to the arbitrator. Of course, this does not relieve the respondent of the duty of filing his own answer with the arbitrator.

Ibarra v. The Deauville Hotel Condo. Assn., Inc.
Case No. 2005-03-6532 (Grubbs / Final Order Dismissing Petition Without Prejudice / August 4, 2005)

- An arbitration action brought by a unit owner would not be stayed while the unit owner makes the appropriate pre-arbitration demands on the association, with the understanding that the unit owner would dismiss the arbitration action if the association complied with his demands. Section 718.1255(4)(b), F.S., clearly requires that the petition for arbitration be dismissed if it does not include the appropriate allegations or proof of compliance with the notice requirements mandated by statute.

Sarasota Pines Ass'n, Inc. v. Morrison,
Case No. 2005-03-5613 (Grubbs / Order to Show Cause / August 26, 2005)

- When counsel for the association learned that the screen doors had been removed from respondents' units which was the relief requested by the petitioner, counsel for the petitioner had an obligation to advise the arbitrator that the case was moot. Further, counsel advised the petitioners that they did not have to file an answer, yet failed to advise the arbitrator of that fact or the fact that the case was in the process of being settled.

Seminole on the Green Cavalier Building One Ass'n, Inc. v. Laurenzo,
Case No. 2005-03-4157 (Grubbs / Final Order of Dismissal as Moot / September 22, 2005)

- The association's motion for attorney's fees, filed two days after petitioner's letter stating that respondent had cured the violation but before the case was dismissed as moot, was premature. A motion for attorney's fees should be filed after the final order

has been entered. In an arbitration proceeding, a motion for attorney's fees is treated as a separate and distinct pleading when the underlying case is closed -- a new case file is opened, and the motion is given its own case number. In this case, the motion was held in abeyance until the entry of the final order and treated as if filed after the date of the final order.

Starks v. Town Park Plaza North,
Case No. 2005-02-2081 (Grubbs / Final Order Dismissing Case as Moot / August 19, 2005)

- Where the association scheduled the 2005 election and sent out the first notice of election, the case was moot when the requested relief was for the asssociation to schedule the election. The petitoner's request that the arbitrator enter an order regarding the scheduling of the 2006 election was denied. The 2006 election was not a "dispute." The association had not failed to properly conduct the 2006 election, and the factual allegations were insufficient to establish that, in the absence of an order scheduling the election, the association will fail to properly perform its responsibility.

Timber Lake Estates, Inc. v. Lalka,
Case No. 2005-03-5469 (Grubbs / Final Order / December 20, 2005)

- Where, at 5:45 p.m. on the night before the final hearing, the wife of the respondent telephoned the arbitrator to request a continuance of the hearing due to her husband's absence from the state in connection with Hurricane Katrina, she was allowed to advance the respondent's request the next morning at the hearing even though she was not the respondent's designated representative. However, when it appeared that the respondent had known about his voluntary absence from the state for approximately a week but had made no effort to request a continuance before leaving, the motion for continuance of the hearing was denied. Her husband was not part of a relief organization but was a private contractor.

Jurisdiction (See Dispute)

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Parties (See also Dispute-Standing)

2080 Ocean Drive Condo. Ass'n, Inc. v. Goldstein,
Case No. 2005-04-1980 (Grubbs / Order Denying Motion for Appointment and Order to Show Cause / August 30, 2005)

- The association did not cite to any rule or statute granting an arbitrator the authority to appoint either an attorney ad litem or a guardian ad litem to represent the respondent who may have had a diminished capacity. Obviously, the arbitrator could and would recognize a guardian or attorney designated or appointed to handle the respondent's affairs or legal matters; however, the power to appoint a guardian does not fall within the scope of the arbitrator's authority. Neither does the appointment of an attorney ad

litem. However, in what might be viewed as a "Catch-22", since the respondent's capacity to represent herself in this matter is questionable, it would not be appropriate to move forward with the arbitration case in the absence of a representative for the respondent.

2080 Ocean Drive Condo. Ass'n, Inc. v. Goldstein,
Case No. 2005-04-1980 (Grubbs / Final Order of Dismissal / November 16, 2005)

- Where the respondent was not mentally capable of representing herself, the arbitration could not go forward without representation for the respondent. However, the arbitrator did not have the jurisdiction or authority to appoint a guardian or attorney ad litem for the respondent. Because an action involving the same parties was pending in court, and a guardian ad litem had been appointed to represent the respondent in that proceeding, the petitioner was directed to show cause why the arbitration action against the respondent should not be dismissed. Based on the petitioiner's request, the action was formally held in abeyance pending the court's action. When the petitioner failed to timely report on the court action, the arbitration case was dismissed without prejudice.

High Point of Delray West Condo. Ass'n Section, Inc. v. Sturge,
Case No. 2005-03-1704 (Grubbs / Summary Final Order / October 7, 2005)

- Although a tenant or guest visiting or living in a condominium unit is required to comply with the restrictions imposed by the condominium documents, the unit owner is always responsible for ensuring that his or her unit is in compliance with the restrictions. However, because the unauthorized dog in question belonged to the tenant, the tenant was a proper party to the proceeding because the subject matter of the dispute clearly concerned him.

Ibarra v. The Deauville Hotel Condo. Assn., Inc.
Case No. 2005-03-6532 (Grubbs / Final Order Dismissing Petition Without Prejudice / August 4, 2005)

- The "Concerned Unit Owners of the Deauvile Hotel" did not have standing to bring the arbitration action when the association did not provide records to them. Section 718.111(12) provides that records are to be made availabe to a unit owner. Where the pre-arbitration notice indicated that the "Concerned Unit Owners" requested the records, the case brought by the unit owner, individually, would have to be dismissed for lack of pre-arbitration notice.

McWilliam v. Maya Marca Condo. Apts., Inc.,
Case No. 2005-03-4074 (Scheuerman / Final Order Dismissing Amended Petition / September 5, 2005)

- Where an owner filed a petition seeking to challenge an unwritten rule of the board prohibiting leasing of a unit within the first 3 years of ownership of a unit, the petition was dismissed where the owner had failed to allege that the association had sought to

enforce the rule against him. Taking the allegations of the petition to be true, the association had threatened to enforce the rule against a different owner.

- Where the first petition challenging a rental rule was dismissed without prejudice because it was not shown that the association had sought to enforce the rule against the petitioning unit owner, it was inappropriate for the petitioner in the amended petition to add an additional unit owner as party petitioner. No allegations regarding the unrelated petitioners can confer standing on the original petitioner to challenge the unwritten rule. The original petitioner must sink or swim on his own merits.

Whitsett v. Slack,
Case No. 2005-03-7548 (Mnookin / Final Order Dismissal / July 26, 2005)

- Pursuant to Rule 61B-45.013(2), F.A.C., no controversy shall be accepted for arbitration where the controversy is between or among unit owners, except where the association is a party. Where unit owners filed a petition for arbitration naming as respondent another unit owner, the petition is dismissed based on the dispute occurring between or among unit owners.

Prevailing party (see separate index on attorney's fees cases)

Sanction

Bayview Condo. at North Bay Village, Inc. v. Palacios,
Case No. 2005-02-8383 (Grubbs / Final Order of Dismissal / August 12, 2005)

- A member of the Florida Bar's duty of candor requires that counsel notify the arbitrator of any circumstance that might render the case moot. When an attorney for an association receives a correspondence from a pro se unit owner that has not been filed, indicating that the violation has been cured, counsel has a duty to advise the arbitrator of the correspondence. When the correspondence may be the respondent's answer, counsel should provide a copy to the arbitrator. Of course, this does not relieve the respondent of the duty of filing his own answer with the arbitrator.

Ludwig v. Tudor Cay Condo. Ass'n, Inc.,
Case No. 2004-02-0464 (Scheuerman / Final Order on Motion for Rehearing / September 8, 2005)

- Where the arbitrator had entered an order awarding the prevailing unit owner the sum of $140.00 in costs, and had in the order admonished the parties not to file any motions for rehearing, and where the association promptly filed a seven-page motion for rehearing contesting the $140.00 award, the arbitrator on rehearing denied the motion, and advised that sanctions would be imposed on the association or its attorney if further nonproductive motions are filed in the case.

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Coastal Garden Condo., Inc. v. Winfrey,
Case No. 2005-00-7953 (Earl / Final Order / September 13, 2005)

- Installation of a dryer exhaust vent and plumbing line that required jack or sledgehammering through a common element wall violated the provision of the condominium documents that prohibited modifications that alter or mar the common elements.

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Carrollwood Village Chase Condo. Ass'n, Inc. v. Novak,

Case No. 2005-00-5838 (Bembry / Final Order / November 9, 2005)

- Where the unit owner obtained the association's pre-construction approval for her unit's patio enclosure by submitting an appropriate application and construction specifications, the association was estopped from requiring the unit owner to modify the structure, once constructed, because it previously had an opportunity to review and reject the plans and failed to do so.

- The unit owner successfully established the defense of selective enforcement by demonstrating that the association had not maintained a uniform standard as to the placement of the patio enclosures doors on the condominium property. As the exterior appearance of the patio enclosures of the property varied greatly, the association was precluded from requiring the unit owner from modifying the placement of her patio enclosure door.

Coastal Garden Condo., Inc. v. Winfrey,
Case No. 2005-00-7953 (Earl / Final Order / September 13, 2005)

- Installation of a dryer exhaust vent and plumbing line that required jack or sledgehammering through a common element wall was clearly a material alteration. However, the association failed to establish that the unit owners materially modified the building's electrical and plumbing system by connecting a washer/dryer to the unit's electrical and plumbing systems which in turn connect to the building's systems. The association failed to provide any expert testimony that the systems could not accommodate the connection.

- The unit owners' defense that the modification was not a "structural" change was rejected as the Florida Statutes and condominium documents prohibited material alterations or changes to the common elements. "Material" change is a broader term than "structural" change which may be considered a subset of material changes.

Halley v. Park Lake Condo. Assn., Inc.,
Case No. 2004-03-6716 (Scheuerman / Final Order Dismissing Petition / July 22, 2005)

- Broad open-ended ratification vote of the unit owners whereby the membership retroactively approved all prior material changes undertaken by the association without prior owner approval was deemed valid by the arbitrator and was given effect. The arbitrator will not assume that the membership was ignorant or uninformed concerning a matter that they specifically voted on and approved.

Long v. Ocean Harbour of Islamorada Condo. Assn., Inc.,
Case No. 2004-02-8316 (Mnookin / Partial Summary Final Order / February 1, 2005)

- Where the association's declaration is silent on the vote required to materially change or alter the common elements, Section 718.113, F.S., requires a 75% unit owner approval for such changes or alterations. This is true even if the association's

by-laws provide for a different voting mechanism because the statute clearly provides that if the declaration, not the by-laws, is silent on voting for approval of material changes or alterations to the common elements, the 75% default provision controls.

Long v. Ocean Harbour of Islamorada Condo. Assn., Inc.,
Case No. 2004-02-8316 (Mnookin / Final Order / August 16, 2005)

- Where exercise equipment had occupied the upper level of a condominium clubhouse for years and was removed when the clubhouse was renovated and thereafter replaced, unit owners claimed the replacement of the exercise equipment resulted in a material alteration of the common elements for which a proper vote had not been obtained. Under the circumstances of this case, the arbitrator found that while some of the new exercise equipment differed from the equipment that was previously removed, the new equipment did not substantially affect the use of or function of the clubhouse which would require compliance of Section 718.113, F.S.

Right to use

Boca Club Ass'n, Inc. v. De Lima,
Case No. 2005-04-3401 (Grubbs / Summary Final Order / December 7, 2005)

- When people buy a unit in a condominium, they have chosen to submit themselves to the restrictions that accompany the purchase of any property in a highly regulated residential community. They have the responsibility to read and comply with the restrictions imposed on them by the condominium documents; the association has the right and respnsibility to enforce the restrictions. People have the freedom to choose to live in a highly restricted community, like a condominium, or to live elsewhere. People who choose to buy property in a community that is highly regulated should not be surprised when the are expected to comply with the regulations.

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Coastal Garden Condo., Inc. v. Winfrey,
Case No. 2005-00-7953 (Earl / Final Order / September 13, 2005)

- Installation of a dryer exhaust vent and plumbing line that required jack or sledgehammering through a common element wall violated the provision of the condominium documents that prohibited modifications that alter or mar the common elements.

Jaramillo v. Cypress Club Condo., Inc.,
Case No. 2005-03-7541 (Scheuerman / Summary Final Order / November 1, 2005)

- Where the declaration was amended to provide that no unit owner may lease his unit within 2 years from his initial purchase of the unit, but did not prohibit or otherwise address the sale of a unit under a current lease, the unit owner who leased his unit prior to the effective date of the amendment and who attempted to gain association approval of his purchaser was entitled to such approval notwithstanding the association's argument that approval of the transfer of the unit while under lease would result in a per se violation of the amendment to the declaration prohibiting unit owners to lease within the first two years of their purchase. The objective of the amendment would not be violated where the new purchaser's two year moratorium on leasing commenced upon expiration of the existing lease.

Long v. Ocean Harbour of Islamorada Condo. Assn., Inc.,
Case No. 2004-02-8316 (Mnookin / Partial Summary Final Order / February 1, 2005)

- Where the association's declaration is silent on the vote required to materially change or alter the common elements, Section 718.113, F.S., requires a 75% unit owner approval for such changes or alterations. This is true even if the association's by-laws provide for a different voting mechanism because the statute clearly provides that if the declaration, not the by-laws, is silent on voting for approval of material changes or alterations to the common elements, the 75% default provision controls.

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Harbourtowne at Country Woods Condo. Ass'n, Inc. v. Unit Owners Voting for Recall, Case No. 2005-02-9267 (Scheuerman / Summary Final Order / July 22, 2005 and Final Order on Motion for Rehearing / September 2, 2005)

- A subsequent developer which acquired all or most of the inventory of units from the prior subsequent developer is entitled to recall the representative of the prior subsequent developer regardless of whether the recall or re-appointment was negotiated in an assignment of developer rights. Along with the transfer of the units came the voting rights appurtenant to the units, and the subsequent developer became imbued with the voting (and recall) rights of the prior developer.

Transfer of control (See also Elections/Vacancies)

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Generally

Radcliffe v. 5200 Club Ass'n, Inc.,
Case No. 2005-06-4680 (Grubbs / Final Order Dismissing Petition / December 29, 2005)

- Subsection (a) of section 718.1255(1) specifies those cases that qualify as a "dispute" in which the association's authority to act is being challenged; subsection (b) specifies those cases qualifying as a dispute in which the failure of the association to act is being challenged. When a party alleges that the association failed to take appropriate action, the failure alleged must be that the association failed to properly conduct elections, failed to give proper notice, failed to properly conduct meetings, or failed to allow inspection of the official records for the controversy to be considered a

"dispute" that falls within the arbitrator's jurisdiction. A "dispute" does not include disagreements between unit owners or disagreements with the association for its failure to enforce the restrictions in the condominium documents against other unit owners.

Jurisdiction

2080 Ocean Drive Condo. Ass'n, Inc. v. Goldstein,
Case No. 2005-04-1980 (Grubbs / Final Order of Dismissal / November 16, 2005)

- Where the respondent was not mentally capable of representing herself, the arbitration could not go forward without representation for the respondent. However, the arbitrator did not have the jurisdiction or authority to appoint a guardian or attorney ad litem for the respondent. Because an action involving the same parties was pending in court, and a guardian ad litem had been appointed to represent the respondent in that proceeding, the petitioner was directed to show cause why the arbitration action against the respondent should not be dismissed. Based on the petitioiner's request, the action was formally held in abeyance pending the court's action. When the petitioner failed to timely report on the court action, the arbitration case was dismissed without prejudice.

Castle #8 Condo., Inc. v. Stetson,
Case No. 2005-02-4873 (Bembry / Final Order on Default / October 5, 2005)

- An order administratively closing case was issued after the respondents filed supporting documentation verifying that the respondents were pursuing a fair housing claim based on the association's demands that the respondents permanently remove disputed pet from their unit.

Ibarra v. The Deauville Hotel Condo. Assn., Inc.
Case No. 2005-03-6532 (Grubbs / Final Order Dismissing Petition Without Prejudice / August 4, 2005)

- The "Concerned Unit Owners of the Deauvile Hotel" did not have standing to bring the arbitration action when the association did not provide records to them. Section 718.111(12) provides that records are to be made availabe to a unit owner. Where the pre-arbitration notice indicated that the "Concerned Unit Owners" requested the records, the case brought by the unit owner, individually, would have to be dismissed for lack of pre-arbitration notice.

Radcliffe v. 5200 Club Ass'n, Inc.,
Case No. 2005-06-4680 (Grubbs / Final Order Dismissing Petition / December 29, 2005)

- Subsection (a) of section 718.1255(1) specifies those cases that qualify as a "dispute" in which the association's authority to act is being challenged; subsection (b) specifies those cases qualifying as a dispute in which the failure of the association to act is being challenged. When a party alleges that the association failed to take appropriate action, the failure alleged must be that the association failed to properly

conduct elections, failed to give proper notice, failed to properly conduct meetings, or failed to allow inspection of the official records for the controversy to be considered a "dispute" that falls within the arbitrator's jurisdiction. A "dispute" does not include disagreements between unit owners or disagreements with the association for its failure to enforce the restrictions in the condominium documents against other unit owners.

Moot

Bayview Condo. at North Bay Village, Inc. v. Palacios,
Case No. 2005-02-8383 (Grubbs / Final Order of Dismissal / August 12, 2005)

- A member of the Florida Bar's duty of candor requires that counsel notify the arbitrator of any circumstance that might render the case moot. When an attorney for an association receives a correspondence from a pro se unit owner that has not been filed, indicating that the violation has been cured, counsel has a duty to advise the arbitrator of the correspondence. When the correspondence may be the respondent's answer, counsel should provide a copy to the arbitrator. Of course, this does not relieve the respondent of the duty of filing his own answer with the arbitrator.

The Jupiter Beachcomber Condo. Assn., Inc. v. Colen,
Case No. 2005-01-3745 (Earl / Final Order Dismissing Case as Moot / August 8, 2005)

- Where the respondent indicated that he was willing to permit the association to access his unit in order to inspect the roof so long as he was not charged the costs of the inspection, the petition alleging to denial of access was dismissed.

Sarasota Pines Ass'n, Inc. v. Morrison,
Case No. 2005-03-5613 (Grubbs / Order to Show Cause / August 26, 2005)

- When counsel for the association learned that the screen doors had been removed from respondents' units which was the relief requested by the petitioner, counsel for the petitioner had an obligation to advise the arbitrator that the case was moot. Further, counsel advised the petitioners that they did not have to file an answer, yet failed to advise the arbitrator of that fact or the fact that the case was in the process of being settled.

Starks v. Town Park Plaza North,
Case No. 2005-02-2081 (Grubbs / Final Order Dismissing Case as Moot / August 19, 2005)

- Where the association scheduled the 2005 election and sent out the first notice of election, the case was moot when the requested relief was for the asssociation to schedule the election. The petitoner's request that the arbitrator enter an order regarding the scheduling of the 2006 election was denied. The 2006 election was not a "dispute." The association had not failed to properly conduct the 2006 election, and the factual allegations were insufficient to establish that, in the absence of an order scheduling the election, the association will fail to properly perform its responsibility.

Tequesta Hills Condo. Assn., Inc. v. Cavalieri,
Case No. 2005-01-8418 (Grubbs / Final Order on Motion for Attorney's Fees and Costs / August 11, 2005)

- Attorney's fees should not be used as liquidated damages for past violations. Before a petition is filed seeking injunctive relief, the petitioner has an obligation to determine whether the relief it seeks in the petition has already been provided. A petition should not be filed when there is no longer a current dispute. The petitioner will not be found to be the prevailing party when the relief was provided prior to the petition being filed.

Not considered dispute

900 Meridian Condo. Ass'n, Inc. v. Rodriguez,
Case No. 2005-00-8116 (Earl / Final Order of Dismissal / September 14, 2005)

- Where the respondents sold their unit during arbitration, the dispute is no longer eligible for arbitration and the arbitrator may not retain jurisdiction. Furthermore, the arbitrator could not retain jurisdiction over one of the former unit owners who became a tenant of the new unit owner because the petition essentially sought to evict the respondent.

Avant Garde Condo. Ass'n, Inc. v. Prichici,
Case No. 2005-02-4091 (Mnookin / Order on Motions to Dismiss and Final Order of Dismissal / October 3, 2005)

- Where the petitioning association is located within the 4th DCA and the disputes concern the actions of a tenant/occupant of the unit in that the tenant was maintaining a commercial vehicle on the premises, the Division does not have jurisdiction over the dispute and it must be dismissed.

Halley v. Park Lake Condo. Assn., Inc.,
Case No. 2004-03-6716 (Scheuerman / Final Order Dismissing Petition / July 22, 2005)

- Allegations that the association undertook certain projects without required building permits in violation of local building codes suggests a breach of fiduciary duty over which the arbitrator lacks jurisdiction.

Haroun v. Playa Del Sol Ass'n, Inc.,
Case No. 2005-05-0928 (Grubbs / Final Order Dismissing Petition for Lack of Jurisdiction / October 6, 2005)

- The unit owner petitioners brought this arbitration against their upstairs neighbors for the unauthorized installation of tile in violation of the condominium documents, and their association for failing to enforce the flooring requirements against the upstairs unit owners. The petition was dismissed for lack of jurisdiction since the facts alleged did not constitute a "dispute" as defined in section 718.1255(1), F.S. An arbitrator does not

have jurisdiction over a dispute between two unit owners. Additionally, if a petition alleges that the association failed to properly conduct meetings or elections, failed to giver proper notice, or failed to allow inspection of official records. No other controversies alleging the failure of the association to take appropriate action come within the arbitrator's jurisdiction. Rule 61B-45.013(2) and (6), F.A.C., requires the dismissal of petitins filed by one unit owner against another and petitions alleging the failure of the association to enforce the condominium documents.

Lauderdale West Community Assn. No. 1, Inc. v. Hyatt,
Case No. 2005-03-8055 (Earl / Final Order of Dismissal / July 26, 2005)

- Arbitrator lacked jurisdiction over allegation that a unit had been improperly transferred to the unit owner since the dispute involved a determination of title and would necessarily involve a non-unit owner, the party from whom the unit was transferred.

Levin v. Twin Oaks Villas of Broward County Ass'n, Inc.,
Case No. 2005-02-8363 (Scheuerman / Order on Rehearing / September 28, 2005)

- The final order was vacated where it was learned after issuance of the final order on the merits of the dispute that the association was a mandatory homeowners association. Nonetheless, as the final order was based on principles of community association law and not exclusively condominium law, the holding of the final order, that the association acted without conceivable authority in towing the owner's motorcycle, was not reversed by vacating the final order.

Ocean Place Condo. Ass'n, Inc. v. 226 Ocean Drive, Ltd.,
Case No. 2005-05-2522 (Earl / Final Order of Dismissal / October 13, 2005)

- Where the association sought to compel the developer of the condominium to provide the association an audited turnover financial statement as required the by statute, the dispute was not within the jurisdiction of the arbitrator as the developer was neither alleged to be a unit owner nor an association. Moreover, the generation of turnover audit is not among those issues within the jurisdiction of the arbitrator.

Schwartz v. Opal Towers Condo. Assn., Inc.,
Case No. 2005-02-7683 (Earl / Final Order of Dismissal / August 10, 2005)

- The unit owners challenged the association's removal/reinstallation of shutters as part of a building restoration project, contending that the association should have let them remove/reinstall the shutters themselves since they could have done so for less than the amount the association assessed them. The arbitrator lacked jurisdiction over the dispute since the owners were in effect challenging the amount of the shutter removal/reinstallation assessment and would not have taken any action if they felt it was reasonable.

Sunset Towers Condo. Assn., Inc. v. Garrison,
Case No. 2005-03-6556 (Earl / Order on Request of Expedited Determination of Jurisdiction / July 22, 2005)

- Where a unit owner has taken title to a unit in violation of the declaration, and where the association seeks entry of a final order requiring that owner to divest himself of title, the dispute necessarily involves title to a unit and is excluded from the jurisdiction of the arbitrator under Section 718.1255, F.S.

Venetia Condo. Ass'n, Inc. v. Oceanside Bay Co., Inc.,
Case No. 2005-04-5890 (Earl / Final Order of Dismissal / September 6, 2005)

- Where the association alleged that excessive noise emanating from the respondent owner's commercial unit disturbing residential unit owners, the undersigned lacked jurisdiction over the dispute since unit involved is commercial unit.

Whitsett v. Slack,
Case No. 2005-03-7548 (Mnookin / Final Order Dismissal / July 26, 2005)

- Pursuant to Rule 61B-45.013(2), F.A.C., no controversy shall be accepted for arbitration where the controversy is between or among unit owners, except where the association is a party. Where unit owners filed a petition for arbitration naming as respondent another unit owner, the petition is dismissed based on the dispute occurring between or among unit owners.

Not ripe/bona fide dispute / live controversy

Hurley v. Tiara Towers Condo. Assn., Inc.,
Case No. 2005-02-9290 (Scheuerman / Final Order Dismissing Petition / August 16, 2005)

- Where the association had no plan to move forward with its garage project, no plan had been approved by the county, and the association had retained no experts in connection with the project, the petition for arbitration filed by an owner seeking to challenge the garage project was dismissed for lack of an actual dispute.

Pending court or administrative action / abatement / stay

Relief granted or requested

2080 Ocean Drive Condo. Ass'n, Inc. v. Goldstein,
Case No. 2005-04-1980 (Grubbs / Order Denying Motion for Appointment and Order to Show Cause / August 30, 2005)

- The association did not cite to any rule or statute granting an arbitrator the authority to appoint either an attorney ad litem or a guardian ad litem to represent the respondent who may have had a diminished capacity. Obviously, the arbitrator could and would recognize a guardian or attorney designated or appointed to handle the respondent's

affairs or legal matters; however, the power to appoint a guardian does not fall within the scope of the arbitrator's authority. Neither does the appointment of an attorney ad litem. However, in what might be viewed as a "Catch-22", since the respondent's capacity to represent herself in this matter is questionable, it would not be appropriate to move forward with the arbitration case in the absence of a representative for the respondent.

Coastal Garden Condo., Inc. v. Winfrey,
Case No. 2005-00-7953 (Earl / Final Order / September 13, 2005)

- Although the association was prohibited from demanding removal of the washer/dryer because the unit owners had established the affirmative defenses of selective enforcement and laches, such defenses do not permit the unit owners to maintain a continuing safety hazard. Therefore, the unit owners must bring the washer/dryer installation into compliance with all applicable building/technical codes or remove the same.

Seagate of Highland Condo., Inc. v. Koumas,
Case No. 2005-03-1678 (Earl / Order Administratively Closing File / July 19, 2005)

- Where unit owner filed a lawsuit in federal court prior to the filing of the arbitration petition alleging the action the association was attempting to compel the unit owners to take was violating their rights under both the Federal Fair Housing Act and Florida Fair Housing Act, the case was administratively closed.

Whitehall South Condo. Assn., Inc. v. Mathieson,
Case No. 2004-01-1119 (Mnookin / Final Order / August 10, 2005)

- Where the association was permitted to enter a unit to perform remediation work to remove mold from the unit and requested damages for reimbursement from the owner for such remediation efforts, a hearing was conducted to determine the amount of damages to award to the association. Because the unit owner was informed of the date of the hearing and did not make an appearance and failed to contact the association or the arbitrator regarding the hearing, it was conducted in his absence and a determination on the association's damage award was accomplished.

Standing

Ibarra v. The Deauville Hotel Condo. Assn., Inc.
Case No. 2005-03-6532 (Grubbs / Final Order Dismissing Petition Without Prejudice / August 4, 2005)

- The "Concerned Unit Owners of the Deauvile Hotel" did not have standing to bring the arbitration action when the association did not provide records to them. Section 718.111(12) provides that records are to be made availabe to a unit owner. Where the pre-arbitration notice indicated that the "Concerned Unit Owners" requested the

records, the case brought by the unit owner, individually, would have to be dismissed for lack of pre-arbitration notice.

McWilliam v. Maya Marca Condo. Apts., Inc.,
Case No. 2005-03-4074 (Scheuerman / Final Order Dismissing Amended Petition / September 5, 2005)

- Where an owner filed a petition seeking to challenge an unwritten rule of the board prohibiting leasing of a unit within the first 3 years of ownership of a unit, the petition was dismissed where the owner had failed to allege that the association had sought to enforce the rule against him. Taking the allegations of the petition to be true, the association had threatened to enforce the rule against a different owner.

- Where the first petition challenging a rental rule was dismissed without prejudice because it was not shown that the association had sought to enforce the rule against the petitioning unit owner, it was inappropriate for the petitioner in the amended petition to add an additional unit owner as party petitioner. No allegations regarding the unrelated petitioners can confer standing on the original petitioner to challenge the unwritten rule. The original petitioner must sink or swim on his own merits.

Sorenson v. Bridgeton North, Inc.,
Case No. 2005-03-0747 (Mnookin / Order Denying Motion for Rehearing / September 26, 2005)

- The position of the Division, as reflected in recent case law, indicates that an ousted board member or unit owner may challenge the board's determination to certify a recall attempt pursuant to section 718.1255, F.S.

Easements

Elections/Vacancies

Candidate information sheet

Generally

Harbourtowne at Country Woods Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,
Case No. 2005-02-9267 (Scheuerman / Summary Final Order / July 22, 2005 and Final Order on Motion for Rehearing / September 2, 2005)

- A subsequent developer which acquired all or most of the inventory of units from the prior subsequent developer is entitled to recall the representative of the prior subsequent developer regardless of whether the recall or re-appointment was negotiated in an assignment of developer rights. Along with the transfer of the units came the voting rights appurtenant to the units, and the subsequent developer became imbued with the voting (and recall) rights of the prior developer.

- Where an unrecorded copy of a durable power of attorney was served on the board to in conjunction with a recall ballot, the power of attorney was not invalid because it was not recorded.

- Nothing in the statute or documents prohibited the developer from appointing an individual in his stead to take place on the board, whether through a power of attorney or other written instrument that serves to appoint that individual to that position.

Master association

Notice of election

Sheiner v. 1344 Euclid Avenue Condo. Ass'n, Inc.,
Case No. 2005-04-8770 (Earl / Final Order on Default / December 28, 2005)

- Where the respondent association had failed to provide notice of any of its elections, the association was found to have violated section 718.112(2)(d)(3), Florida Statutes, and rule 61B-23.0021(4), Florida Administrative Code.

Term limitations

Voting certificates

Estoppel (See also Selective Enforcement; Waiver)

Alameda Isles Homeowners Assn., Inc. v. Ager,
Case No. 2004-05-8895 (Earl / Final Order / August 22, 2005)

- The association was estopped from demanding that that the unit owner remove improvements because his application with an attached diagram of the improvement was approved by the association. Furthermore, where the board of director's had delegated authority to approve alterations to a committee and the committee in turn had a member conduct an onsite review and report back to full committee prior to approval, it is reasonable for the unit owner to expect a committee member conducting an onsite review would convey information provided during his onsite review to the full committee and the committee's decision would be based upon the application and onsite review.

Carrollwood Village Chase Condo. Ass'n, Inc. v. Novak,
Case No. 2005-00-5838 (Bembry / Final Order / November 9, 2005)

- Where the unit owner obtained the association's pre-construction approval for her unit's patio enclosure by submitting an appropriate application and construction specifications, the association was estopped from requiring the unit owner to modify the structure, once constructed, because it previously had an opportunity to review and reject the plans and failed to do so.

- The unit owner successfully established the defense of selective enforcement by demonstrating that the association had not maintained a uniform standard as to the

placement of the patio enclosures doors on the condominium property. As the exterior appearance of the patio enclosures of the property varied greatly, the association was precluded from requiring the unit owner from modifying the placement of her patio enclosure door.

Evidence (See Arbitration-Evidence)

Fair Housing Act

Bridgeview Ass'n, Inc. v. Casale,
Case No. 2005-02-2449 (Mnookin / Summary Final Order / October 18, 2005)

- Even where a unit owner qualifies as a disabled individual to which the association is required to provide reasonable accommodations, the owner must demonstrate that maintaining a dog, in violation of the association's declaration of condominium, is a reasonable accommodation to the individual's disability. When it is shown that the owner's dog was not prescribed by any medical personnel so as to assist with the owner's disability, the dog was not trained in any special manner to allievate the symptons of the owner's disability and the dog merely served as a source of contentment to the owner, the dog is not shown to be a reasonable accommodation and the association is not required to permit the owner to maintain the dog in violation of its governing documents. The written statement from her treating physician to the effect that the dog is medically necessary to alleviate the patient's symptoms in the same manner as a prescription, was unavailing as it was not shown that the pet was needed to accommodate the disability.

High Point of Delray West Condo. Ass'n Section, Inc. v. Sturge,
Case No. 2005-03-1704 (Grubbs / Summary Final Order / October 7, 2005)

- When the respondents asserted that the tenant had a disability authorizing the presence of the dog under the Fair Housing Act, the respondents were provided with time to amend their answer to allege facts establishing that the tenant had a disability and that the dog was a reasonable accommodation necessary to afford the tenant an equal opportunity to use and enjoy the unit or to file documentation or a statement establishing that the respondents had filed a fair housing complaint with an appropriate agency. After the respondents had been provided with several chances to either amend their answer or file a fair housing complaint but failed to do so, a summary final order was entered requiring removal of the dog.

Seagate of Highland Condo., Inc. v. Koumas,
Case No. 2005-03-1678 (Earl / Order Administratively Closing File / July 19, 2005)

- Where unit owner filed a lawsuit in federal court prior to the filing of the arbitration petition alleging the action the association was attempting to compel the unit owners to take was violating their rights under both the Federal Fair Housing Act and Florida Fair Housing Act, the case was administratively closed.

Sunrise Landing Condo. Ass'n of Brevard, Inc. v. Wilson,
Case No. 2005-03-4083 (Grubbs / Summary Final Order / October 6, 2005)

- When, during a conference call, the respondents asserted that that one respondent had hearing and psychological disabilities requiring the keeping of the over-the-weight-limit dog, respondents were provided time to amended their answer to allege facts establishing a "fair housing" defense, which would include allegations establishing that she had a disability and allegations establishing that the dog was a reasonable accomodation necessary to afford her an equal opportunity to use and enjoy her unit. The failure of the respondents to amend the answer to include specific factual allegations precluded consideration of the "fair housing" defense.

Family (See also Fair Housing Act; Guest; Tenant)

Levin v. Twin Oaks Villas of Broward County Ass'n, Inc.,
Case No. 2005-02-8363 (Scheuerman / Order on Rehearing / September 28, 2005)

- Where the declaration permitted owners to park a motorcycle on the property where the motorcycle is used as *a regular means of transportation for the family*, the board acted without colorable authority where it towed an owner's motorcycle. The declaration did not require that the owner use the motorcycle as her exclusive means of transportation, and the board could not require the owner to choose between her automobile and her motorcycle where the documents did not restrict owners to a single vehicle or space. Moreover, as the owner was part of her own "family", the declaration is satisfied where she uses the motorcycle for her own transportation regardless of whether she simultaneously transports her children. The board also acted without authority where it threatened to tow the motorcycles of friends of the owner who drove their motorcycles onto the property.

Financial Reports/Financial Statements

Fines

Guest (See also Family; Tenant)

Hurricane Shutters

Injunctive Type Relief (See Dispute-Relief granted)

Insurance

Jurisdiction (See Dispute)

Laches (See also Estoppel; Waiver)

Coastal Garden Condo., Inc. v. Winfrey,
Case No. 2005-00-7953 (Earl / Final Order / September 13, 2005)

- Where the association sought the removal of a washer/dryer installed eleven years ago which required modifications to the outside wall of the unit that were open and notorious and the association new at the time the current unit owner was making major modifications to the unit, the association's action was barred by the doctrine of laches.

Lien

Marina

Meetings

Board meetings

Committee meetings

Emergency

Generally

Notice/agenda

Quorum

Ratification

Recall (See separate index on recall arbitration)

Unit owner meetings

Generally

Sheiner v. 1344 Euclid Avenue Condo. Ass'n, Inc.,
Case No. 2005-04-8770 (Earl / Final Order on Default / December 28, 2005)

- Where the association had failed to notice or hold any annual meetings, the association was found to have violated sections 718.112(2)(d)(1), (2) of the Florida Statutes.

Notice

Quorum

Recall (See separate index on recall arbitration)

Unit Owners Voting for Recall v. Fountainview Assn., Inc. #4,
Case No. 2005-01-8301 (Bembry / Summary Final Order / July 15, 2005)

- Recall effort was certified by the arbitrator where unit owners voting for recall filed petition for arbitration seeking review of written recall effort and the association failed to

demonstrate valid basis for rejecting any of the written recall ballots and did not provide any reason for failing to notice and timely convene required recall board meeting.

Moot

Mortgagee

Nuisance

Royal Bahamian Assn., Inc. v. Angel,
Case No. 2005-00-6666 (Earl / Summary Final Order / August 24, 2005)

- Where the association's documents do not require the tile floors contain soundproofing, the association was not authorized to enter the unit in order to determine if the flooring contains soundproofing material. If based upon the observations of other units, it is determined that the flooring creates excessive noise, then the association may take such legal action as is necessary to abate the nuisance.

Sunrise Landing Condo. Ass'n of Brevard, Inc. v. Wilson,
Case No. 2005-03-4083 (Grubbs / Summary Final Order / October 6, 2005)

- The birds in the unit could not be declared a nuisance based on roaches and other bugs being in the unit. There was no direct relationship shown between the bugs being in the unit and the presence of the birds. The unit can be sprayed for bugs by temporarily moving the birds; bird-safe bug spray can be used; and roach tablets could be effective.

Official Records

Halley v. Park Lake Condo. Assn., Inc.,
Case No. 2005-00-5766 (Scheuerman / Summary Final Order / July 22, 2005)

- Where a request for access to the official records was served on the association's collections attorney, in the absence of any proof that the attorney had been authorized by the association to receive such requests, service on this individual was not authorized service on the association. Since delivery was not effective, the fact that the association did not respond within 10 days is irrelevant.

- An association rule requiring that a unit owner seeking access to the official records direct their requests to the manager, and where the manager is unavailable, to the president, was found to be reasonable. The association has a legitimate interest in ensuring that these requests are directed to certain agents and employees that are charged with responding to them and who are specially trained to process them. A request for access to the official records that was not directed to these designated persons is deemed invalid and a nullity.

Ibarra v. The Deauville Hotel Condo. Assn., Inc.

Case No. 2005-03-6532 (Grubbs / Final Order Dismissing Petition Without Prejudice / August 4, 2005)

- The "Concerned Unit Owners of the Deauvile Hotel" did not have standing to bring the arbitration action when the association did not provide records to them. Section 718.111(12) provides that records are to be made availabe to a unit owner. Where the pre-arbitration notice indicated that the "Concerned Unit Owners" requested the records, the case brought by the unit owner, individually, would have to be dismissed for lack of pre-arbitration notice.

Radcliffe v. 5200 Club Ass'n, Inc.,
Case No. 2005-06-4680 (Grubbs / Final Order Dismissing Petition / December 29, 2005)

- Where the pre-arbitration notice stated that the unit owners had previously requested records and the requests had been ignored, and demanded that the association provide copies of the minutes requested within 72 hours, the petition was dismissed for lack of sufficient pre-arbitration notice pursuant to section 718.1255(4)(b), Florida Statutes.

- The statute allows five days to produce official records upon written request. The association must allow inspection of the records and provide a method whereby the person requesting inspection can make copies; however, the association does not have an obligation to make copies for the unit owner and fax copies to him or deliver them in some other way.

Radojcsics v. Imperial House of Bradenton Beach Condo. Ass'n, Inc.,
Case No. 2005-00-6645 (Mnookin / Summary Final Order / December 23, 2005)

- Where request for copies of the official records was sent just prior to the Christmas holidays and where the unit owner was delinquent in his pre-payment of the estimated costs for the copies, it could not be said that the association willfully failed to offer timely access to the official records.

Rose v. The Village of Kings Creek Condo. Assn., Inc.,
Case No. 2005-01-9934 (Scheuerman / Final Order After Hearing / July 26, 2005)

- Where a unit owner requested access to the telephone numbers and addresses of the other unit owners, and the association produced the roster which contained the addresses but not the telephone numbers which were contained in the individual owner files, the association was required to offer access to the individual unit files. Where there was a conflict in the testimony over whether the association in fact offered access to the files at the time of inspection, but where the owner subsequently wrote again demanding access to the telephone numbers, the failure of the association to offer access based on the second letter constituted a violation of the owner's right of access to the official records of the association.

Parking/Parking Restrictions

Levin v. Twin Oaks Villas of Broward County Ass'n, Inc.,
Case No. 2005-02-8363 (Scheuerman / Order on Rehearing / September 28, 2005)

- Where the declaration permitted owners to park a motorcycle on the property where the motorcycle is used as *a regular means of transportation for the family*, the board acted without colorable authority where it towed an owner's motorcycle. The declaration did not require that the owner use the motorcycle as her exclusive means of transportation, and the board could not require the owner to choose between her automobile and her motorcycle where the documents did not restrict owners to a single vehicle or space. Moreover, as the owner was part of her own "family", the declaration is satisfied where she uses the motorcycle for her own transportation regardless of whether she simultaneously transports her children. The board also acted without authority where it threatened to tow the motorcycles of friends of the owner who drove their motorcycles onto the property.

Parties (See Arbitration-Parties)

Pets

Boca Club Ass'n, Inc. v. De Lima,
Case No. 2005-04-3401 (Grubbs / Summary Final Order / December 7, 2005)

- Where unit owners did not live at the condominium but still brought their pet over to the condominum to visit their relatives who were living in their unit, the unit owners were in violation of the prohibition on pets weighing in excess of 20 pounds, even though the dog no longer lived in the unit. Although a tenant or guest visiting or living in a condominium unit is required to comply with the restrictions imposed by the condominium documents, the unit owner is always responsible for ensuring that his or her unit is in compliance with the restrictions.

Victory Lofts at Channelside Condo. Ass'n, Inc. v. Messano,
Case No. 2005-04-8481 (Grubbs / Final Order on Default / November 28, 2005)

- When the association discovered that the respondent was keeping a German Shepard dog on the condominum property that appeared to weigh over sixty (60) pounds, the association had the authority to ask the respondent to either remove the dog or provide documentation establishing that the dog weighed under sixty pounds.

Prevailing Party (See separate index on attorney's fees cases)

Purchase Contracts

Quorum (See Meetings)

Ratification (See Meetings-Board meetings-Ratification)

Recall of Board Members (See Meetings-Board meetings-Recall) (See separate index on recall arbitration)

Recreation Leases

Relief Requested (See Dispute-Relief granted or requested)

Rental Restrictions/Rental Program (See Tenants-Rental Restrictions/Rental Program)

Reservation Agreements

Reserves

Restraints on Alienation (See Unit-Restraints on alienation)

Sanctions (See Arbitration-Sanctions)

Security Deposits (See Purchase Contracts)

Selective Enforcement (See also Estoppel; Waiver)

Alameda Isles Homeowners Assn., Inc. v. Ager,
Case No. 2004-05-8895 (Earl / Final Order / August 22, 2005)

- Where the association has not taken action against unit owners committing violations similar to those alleged in the petition and of which the association was aware, the association is prohibited from taking such action against the respondent unit owner.

- The association failed to establish that the respondent unit owner's addition to his house was substantially different than other units. The association claimed that other additions "squared off " the units making them substantially different than the respondent's addition which jutted out past the rear line of the structure. This argument was not accepted since both additions equally violate the restriction against enlarging the structure's footprint.

- The association attempted to avoid the defense of selective enforcement by claiming that the unit owner failed to demonstrate that the similar violations were not built by the developer. However, the party pleading avoidance bears the burden of affirmatively establishing the facts alleged in the avoidance which the association failed to do.

Carrollwood Village Chase Condo. Ass'n, Inc. v. Novak,
Case No. 2005-00-5838 (Bembry / Final Order / November 9, 2005)

- Where the unit owner obtained the association's pre-construction approval for her unit's patio enclosure by submitting an appropriate application and construction specifications, the association was estopped from requiring the unit owner to modify the

structure, once constructed, because it previously had an opportunity to review and reject the plans and failed to do so.

- The unit owner successfully established the defense of selective enforcement by demonstrating that the association had not maintained a uniform standard as to the placement of the patio enclosures doors on the condominium property. As the exterior appearance of the patio enclosures of the property varied greatly, the association was precluded from requiring the unit owner from modifying the placement of her patio enclosure door.

Coastal Garden Condo., Inc. v. Winfrey,
Case No. 2005-00-7953 (Earl / Final Order / September 13, 2005)

- The association was found to have selectively enforced the condominium documents where it took no formal action against another unit owner who had similarly violated the document. The association's contention that action against the respondent unit owner was a "test case" was rejected as the association failed to demonstrate sufficient reason for proceeding against the respondent and not the other unit owner.

Standing (See Dispute-Standing)

State Action (See also Constitution)

Tenants

Generally

Nuisance (See also Nuisance)

Rental restriction/rental programs

Unauthorized tenant/association approval

Violation of documents

Boca Club Ass'n, Inc. v. De Lima,
Case No. 2005-04-3401 (Grubbs / Summary Final Order / December 7, 2005)

- Where unit owners did not live at the condominium but still brought their pet over to the condominum to visit their relatives who were living in their unit, the unit owners were in violation of the prohibition on pets weighing in excess of 20 pounds, even though the dog no longer lived in the unit. Although a tenant or guest visiting or living in a condominium unit is required to comply with the restrictions imposed by the condominium documents, the unit owner is always responsible for ensuring that his or her unit is in compliance with the restrictions.

High Point of Delray West Condo. Ass'n Section, Inc. v. Sturge,
Case No. 2005-03-1704 (Grubbs / Summary Final Order / October 7, 2005)

- Although a tenant or guest visiting or living in a condominium unit is required to comply with the restrictions imposed by the condominium documents, the unit owner is always responsible for ensuring that his or her unit is in compliance with the restrictions. However, because the unauthorized dog in question belonged to the tenant, the tenant was a proper party to the proceeding because the subject matter of the dispute clearly concerned him.

Transfer of Control of Association (See Developer; Election/Vacancies)

Transfer Fees

Unit

Access to unit

Pasadena Gardens, Inc. v. Lerit,
Case No. 2005-02-3556 (Bembry / Summary Final Order / October 17, 2005)

- The association's request for an order requiring unit owner to make her unit accessible was granted. The owner did not dispute that she utilized her unit to store excessive amounts of personal property, resulting in the entryway, windows, and ventilation outlets being blocked and prohibiting the association from accessing the unit for maintenance and inspection.

Royal Bahamian Assn., Inc. v. Angel,
Case No. 2005-00-6666 (Earl / Summary Final Order / August 24, 2005)

- Where the association's documents do not require the tile floors contain soundproofing, the association was not authorized to enter the unit in order to determine if the flooring contains soundproofing material. If based upon the observations of other units, it is determined that the flooring creates excessive noise, then the association may take such legal action as is necessary to abate the nuisance.

Alteration to unit (See also Fair Housing Act)

Coastal Garden Condo., Inc. v. Winfrey,
Case No. 2005-00-7953 (Earl / Final Order / September 13, 2005)

- The unit owners were found to have violated the section of the declaration that prohibited a unit owner from making any alteration or doing any work in his unit without board approval. Since the installation of the washer/dryer violated building codes, it was reasonable for the association to deny approval.

Appurtenances; changes to the appurtenances; Section 718.110(4)

Floor coverings

Royal Bahamian Assn., Inc. v. Angel,

Case No. 2005-00-6666 (Earl / Summary Final Order / August 24, 2005)

- Where the association's documents do not require the tile floors contain soundproofing, the association was not authorized to enter the unit in order to determine if the flooring contains soundproofing material. If based upon the observations of other units, it is determined that the flooring creates excessive noise, then the association may take such legal action as is necessary to abate the nuisance.

Generally; definition

Rental (See also Tenants)

Repair

Garnet Condo. Ass'n, Inc. v. Kushner-Hausman,
Case No. 2005-03-5896 (Mnookin / Final Order / December 20, 2005)

- The unit owner was found liable for $5,341 in damages payable to the association where her air conditioner leaked into the common elements below her building, requiring the association to repair the area, and where the owner refused to repair the air conditioning equipment herself.

Venture Out at Cudjoe Cay, Inc. v. Clark,
Case No. 2005-01-9160 (Earl / Final Order / November 14, 2005)

- Where the respondents were found to be maintaining their unit in an unsightly and unacceptable manner in that they were permitting weeds to grow on their lot, had failed to trim their palm tree, were storing various personal items as described above on their lot outside their house, and were parking an inoperable truck in their driveway that encroached into the street, respondents were found to have to have violated the association rule requiring each unit owner to maintain the condition and appearance of his/her unit, dwelling, and any appurtenances to the unit.

Whitehall South Condo. Assn., Inc. v. Mathieson,
Case No. 2004-01-1119 (Mnookin / Final Order / August 10, 2005)

- Where the association alleges that the unit owner has failed to maintain his unit resulting in the infestation of mold throughout the unit and the owner fails to file an answer or any other pleading in response to the association's allegations, an order was entered permitting the association to enter the owner's unit and remove all mold, perform air quality tests and santize the unit. The order further provided that a separate hearing on damages incurred by the association for remediating the owner's unit would be conducted after the unit had been fully remediated and free of mold.

Restraints on alienation

Sale

Use / Restriction (see also, Nuisance; Fair Housing Act)

Boca Club Ass'n, Inc. v. De Lima,
Case No. 2005-04-3401 (Grubbs / Summary Final Order / December 7, 2005)

- When people buy a unit in a condominium, they have chosen to submit themselves to the restrictions that accompany the purchase of any property in a highly regulated residential community. They have the responsibility to read and comply with the restrictions imposed on them by the condominium documents; the association has the right and respnsibility to enforce the restrictions. People have the freedom to choose to live in a highly restricted community, like a condominium, or to live elsewhere. People who choose to buy property in a community that is highly regulated should not be surprised when the are expected to comply with the regulations.

Pompano Beach Club North Ass'n, Inc. v. Arlotta,
Case No. 2005-02-4872 (Mnookin / Final Order / December 23, 2005)

- Unit owner who had installed a washer and dryer before the association banned such equipment in the units was entitled to grandfathering treatment, and if the owner failed to register with the association as required, the owner did not lose her grandfather status but was forced to register albeit late.

- Unit owner with laundry equipment that pre-existed the rule banning laundry equipment in the units would ordinarily be entitled to grandfather status. However, where the equipment was no longer code complaint, equipment must either be brought up to code, if possible, or removed and rendered inoperable.

Unit Owner Meetings (See Meetings)

Voting Rights (See Developer-Transfer of control; Elections)

Waiver (See also Estoppel; Selective Enforcement)