

DATE 3/1/90

DOCKET CLERK C. Blumberg

STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES
725 SOUTH BRONOUGH STREET - JOHNS BUILDING
TALLAHASSEE, FLORIDA 32399-1070

IN RE: Petition For Declaratory Statement
Starlight Tower, Inc.,

CASE NO. DS89503

Petitioner.

DECLARATORY STATEMENT

Petitioner, Jonathan James Damonte, attorney for Starlight Tower, Inc., and Co-Petitioner, Starlight Tower, Inc., seek a declaratory statement regarding the statutory and regulatory requirements for conversion of an existing cooperative to condominium.

Under Rule 7-3.001(2), Florida Administrative Code, it does not appear that Mr. Damonte in his capacity as an attorney for Starlight Tower, Inc. is a person who has standing to petition for a declaratory statement. However, Starlight Tower, Inc. does have standing to petition for a declaratory statement under that rule. Therefore, the Department of Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes, will not decide at this time the issue of whether or not Mr. Damonte has standing to file a petition for a declaratory statement. Starlight Tower, Inc. is recognized as the only party with standing to file this petition and will be henceforth referred to as the Petitioner.

FINDINGS OF FACT

The Department of Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes (hereinafter the Division) makes the following Findings of Fact based on the information submitted by the Petitioner:

1. Petitioner, Starlight Tower, Inc., is a corporation which was organized on July 26, 1958, pursuant to Chapter 607, Florida Statutes. Petitioner is authorized to do business and is doing business in the State of Florida with its principal place of business located in St. Petersburg Beach, Pinellas County, Florida.

2. Petitioner owns and operates Starlight Tower, A Cooperative, consisting of seventy (70) units.

3. On or about October 26, 1989, the Division received a Petition for Declaratory Statement from the Petitioner, Starlight Tower, Inc.

4. The Petitioner did not request that a hearing be held prior to the rendition of the Declaratory Statement.

5. The board of trustees of the Petitioner desires to convert the cooperative to condominium.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes.

2. Rule 7-3.001(3)(b)1.- 3., Florida Administrative Code, requires that the petition contain the following:

1. The specific provision of the statute, rule or order upon which the petitioner seeks a declaratory statement.

2. An allegation or description of petitioner's specific fact situation in relation to the agency's rule, statute or order.

3. A request for a statement by the agency declaring the rights, duties, or obligations of all parties to the petition under the rule, statute, or order in relation to the specific facts as alleged by the petitioner.

3. Paragraph nine (9) of the petition sets out the specific requests for a declaratory statement. The Division rejects requests (1) through (1)(a)(2)(a) of the petition pursuant to Rule 7-3.001(3)(b), Florida Administrative Code. These requests are rejected because they do not contain a specific provision of a statute, rule, or order upon which the Petitioner seeks a declaratory statement, nor do they contain a request for a statement by the agency declaring the rights, duties, or obligations of all parties to the petition under a rule, statute, or order in relation to the specific facts as alleged by the Petitioner.

4. The Petitioner requests a statement specifying the statutory or regulatory procedures which require non-consenting cooperative unit owners to execute the documents necessary to convert their individual cooperative units to condominium

ownership. The Petition contains no allegation that cooperative unit owners exist who do not consent to the conversion of the cooperative to condominium. However, Florida law provides no statutory or regulatory procedures which require non-consenting cooperative unit owners to execute the documents necessary to convert their individual cooperative units to condominium ownership.

5. The Petitioner asks whether there are statutory or regulatory procedures which require non-consenting cooperative unit owners to pay assessments levied by it subsequent to the conversion to condominium. Section 718.116, Florida Statutes, requires all unit owners of a condominium to pay assessments. Section 718.116 would require all unit owners to pay assessments levied by the Petitioner subsequent to the conversion to condominium.

6. The Petitioner asks whether or not it must comply with the provisions of Parts I, II, III, and V of Chapter 718, Florida Statutes, and Chapter 7D, Florida Administrative Code, if it decides to convert the cooperative to condominium. If the Petitioner decides to convert the cooperative to condominium, it must comply with the provisions of Parts I, II, III, and V of Chapter 718, Florida Statutes, and Chapter 7D, Florida Administrative Code, if it is determined to be a "developer" under Section 718.103(14), Florida Statutes, because condominiums are governed by these provisions. The Petitioner must comply with these statutory and regulatory provisions when the cooperative becomes a condominium, if it is determined to be a "developer."

The Petitioner has not alleged sufficient facts to determine whether or not it is a "developer" under the statutory definition.

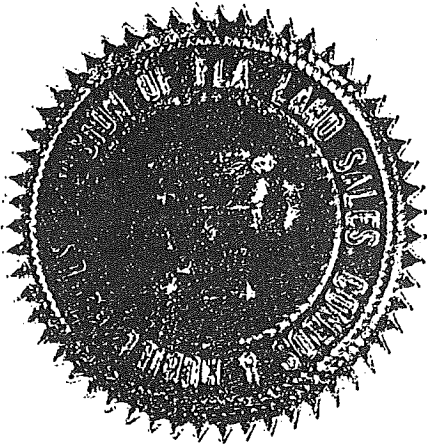
7. The Petitioner concludes that it does not meet the definition of "developer" provided in Section 718.103(14), Florida Statutes. Therefore, the Petitioner asks if it must comply with the provisions of Part VI of Chapter 718, Florida Statutes, and Chapter 7D, Florida Administrative Code. The Petitioner has not alleged sufficient facts to determine whether or not it is a "developer" pursuant to Section 718.103(14), Florida Statutes. The Petitioner would not be required to comply with the provisions of Part VI of Chapter 718, Florida Statutes, and the provisions of Chapter 7D, Florida Administrative Code, which pertain to developers, if it was determined that the Petitioner was not a "developer" under Section 718.103(14), Florida Statutes.

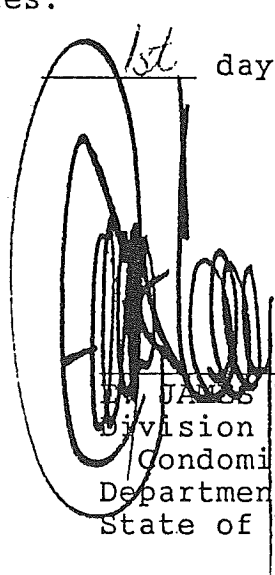
8. The Petitioner requests a statement specifying its statutory and regulatory obligations to a shareholder desiring to retain cooperative ownership upon the conversion to condominium. Petitioner has not alleged that any shareholders exist in the cooperative who desire to retain cooperative ownership instead of converting to condominium. However, Florida law has no statutory or regulatory provisions which address the obligations of the Petitioner to a shareholder who does not consent to the conversion.

9. The Petitioner requests a statement specifying the statutory and regulatory procedures to convert the property from

a cooperative formed prior to the enactment of Chapter 719, Florida Statutes, to a condominium pursuant to Chapter 718, Florida Statutes. Florida law contains no statutory or regulatory provisions which address the procedure to convert property from a cooperative formed prior to the enactment of Chapter 719, Florida Statutes, to condominium pursuant to Chapter 718, Florida Statutes.

DONE AND ORDERED this 1st day of March,
1990.



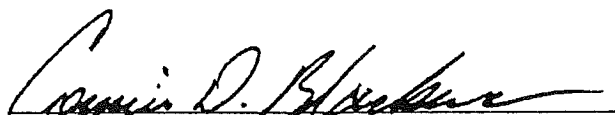

JAMES KEARNEY, Director
Division of Florida Land Sales,
Condominiums and Mobile Homes
Department of Business Regulation
State of Florida

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH CONNIE BLACKMAN, DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES, WITHIN 30 DAYS OF THE RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail to JONATHAN JAMES DAMONTE, Attorney for Petitioner, 7800-113th Street North, Suite 206, Seminole, Florida, 34642, this 1st day of March, 1990.


CONNIE BLACKMAN, Docket Clerk

Copies furnished to:

Alexander M. Knight, Chief
Bureau of Condominiums

Susan C. Marvin
Assistant General Counsel