



DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Land Sales, Condominiums, and Mobile Homes Arbitration Section

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ATTORNEY'S FEES FINAL ORDER INDEX SUPPLEMENT

September 2007

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 January 1, 2006 through September 10, 2007. The final order summaries are organized by subject matter.

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Costs[Boca Country Estates Condo. Ass'n, Inc. v. Juarez,](#)

Case No. 2006-03-4702 (Chavis / Final Order on Motion for Attorney's Fees and Costs / February 9, 2007)

- Undifferentiated costs for deed search, postage, and photocopying are disallowed, as the costs of postage and photocopying are routine office expenses and should not be taxed, unless the costs were incurred pursuant to an order of an arbitrator.

[Boca Country Estates Condo. Ass'n, Inc. v. Lopes,](#)

Case No. 2006-02-1243 (Earl / Final Order on Motion for Attorney's Fees and Costs / June 7, 2006)

- Cost of postage and messenger services are not recoverable as they are normal overhead expenses that should be incorporated into the attorney's hourly rate.
- Pursuant to Statewide Uniform Guidelines for Taxation of Costs, the costs of documents filed with the court, which are reasonably necessary to assist the court in reaching a conclusion, are recoverable. However, the association was denied its request to recover the costs of photocopies since it had failed to describe sufficiently the nature of the copies.

[Seminole-on-the-Green, Cavalier Bldg. One Ass'n, Inc. v. Jackson,](#)

Case No. 2006-05-0344 (Earl / Final Order on Petitioner's Motion for Award of Costs and Attorney's Fees / February 7, 2007)

- Where prevailing party's motion seeking reimbursement of the attorney's fees and costs failed to identify the paralegal or associate attorney in its billing records and provide their qualifications, the arbitrator was unable to determine whether the requested hourly rates associated therewith were reasonable. Accordingly, the associated fees and costs could not be awarded.

[Sunrise Landing Condo. Ass'n of Brevard, Inc. v. Wilson,](#)

Case No. 2005-05-9040 (Grubbs / Final Order on Attorney's Fees and Costs / May 9, 2006)

- The rate of \$75.00 per hour is reasonable for a paralegal doing work such as arranging for telephone conferences, preparing letters to accompany orders being forwarded to the client, preparing copies of documents, and assembling exhibits.

[Sunset Grove Condo. Ass'n, Inc. v. Johnson,](#)

Case No. 2006-00-8419 (Earl / Final Order on Motion to Determine and Tax Attorney's Fees and Costs / June 6, 2006)

- Association's request to recover \$155.00 of a "filing fee" was denied since it was not clear as to what it referred considering the association was also seeking to recover the \$50.00 arbitration filing fee.

Defenses

Failure to time file/request fees

[4100 Condo. Corp. v. Espailat,](#)

Case No. 2005-04-1887 (Grubbs / Final Order on Attorney's Fees and Costs / January 26, 2006)

- The petitioner sought compensation for the services of four attorneys and two legal assistants and submitted eight pages of billing information in a case where the only activities related to the arbitration were the filing of the petition for arbitration (and an amended petition because the initial petition was deficient) and service of the petition. The respondent's answer was not yet due. No effort had been made by the petitioner to sort through the eight pages of billing information and include in the motion for attorney's fees only the entries necessary for the successful prosecution of the arbitration action. A respondent is only responsible for paying the fees incurred by the association in the arbitration proceeding, not the fees generated in other matters that may (or may not) involve the respondent. From the billing sheets, it is apparent that the respondent was involved in the sale of his home. The association is not entitled to be reimbursed in the arbitration case for the attorney's fees involved the sale of the home. Because the eight-page billing statement contained numerous instances of billing for time that were not reasonably or necessarily expended on the arbitration case and the motion for fees does not request any specific amount as reimbursement for time spent on the arbitration action, the arbitrator determined that the reasonable amount of time spent on the arbitration case was six hours.

[Aquanique Ocean Club Condo. Ass'n, Inc. v. Smurlo,](#)

Case No. 2005-06-3649 (Earl / Final Order on Motion for Attorney's Fees and Costs / February 6, 2006)

- The cost of process of service was awarded, as the association was required to serve the respondent.

[Erickson v. Tropical Breeze Estates, Inc.,](#)

Case No. 2007-01-4266 (Chavis / Final Order on Attorney's Fees and Costs / April 12, 2007)

- Respondent's motion for attorney's fees and costs was denied where the respondent failed to request attorney's fees and cost prior to the entry of the final order in the underlying case.

[Timber Lake Estates, Inc. v. Conley,](#)

Case No. 2005-05-1247 (Grubbs / Final Order Denying Attorney's Fees and Costs / January 31, 2006)

- On August 12, 2005, a Final Order on Default was entered against respondent. The petitioner was instructed to hand deliver or leave the final order at the respondent's unit, as it had with previous orders, because the respondent did not have a mailbox and therefore could not receive documents by mail. Although not required to do so, the petitioner filed an affidavit establishing that the final order was delivered to the respondent on August 19, 2005. On September 28, 2005, the petitioner filed its motion for attorney's fees, 46 days after rendition of the final order. The petitioner argued that, in this case, the motion for fees should be considered timely based on the date the respondent was served with the final order. However, it is not the date of service that determines when a motion for attorney's fees (or a complaint for trial de novo) must be filed. It is the date of rendition of the final order--the date the order is filed with the Division--that determines the date by which a motion for attorney's fees must be filed. Numerous case have held that a motion for attorney's fees and costs must be timely filed to be considered. Therefore, the motion for attorney's fees must be denied because it was not timely filed.

[Westwood Condo. Ass'n, Inc. v. DeJohn,](#)

Case No. 2006-00-1720 (Grubbs / Final Order Denying Attorney's Fees and Costs / April 11, 2006)

- Although the petitioner established that he delivered the motion to UPS on the 44th day after entry of the final order for next day delivery, the motion was not delivered the following day. The motion was filed on the 46th day after entry of the final order. The date of rendition of the final order determines the date the motion must be filed. The timely filing of the motion for attorney's fees is jurisdictional. The effect of rule 61B-45.048, F.A.C., is to reserve jurisdiction over a case for a period of 45 days after the rendition of the final order for the sole purpose of allowing the parties to move for an award of attorney's fees. If a motion is not filed with that 45-day period, the jurisdictional window is closed regardless of the equities. Unlike rule 1.090(b)(2), Fla. R. Civ. P., which permits an enlargement of time on the basis of excusable neglect, rule 61B-45.048(3), F.A.C., specifically states that "[t]he failure of a party to timely file a motion complying with this rule or to timely plead for or request attorney's fees shall preclude the party from recovering its costs and attorney's fees."

General defenses

[Jaramillo v. Cypress Club Condo., Inc.,](#)

Case No. 2005-06-2481 (Scheuerman / Final Order on Motion for Attorney's Fees / February 9, 2006)

- While time spent before the drafting of the petition for arbitration is not time spent in the arbitration proceeding for purpose of a fee award, time spent researching and drafting the petition is subject to reimbursement.

[Ringler v. Tower Forty One Ass'n, Inc.,](#)

Case No. 2006-01-0719 (Grubbs / Final Order on Attorney's Fees and Costs / June 20, 2006)

- The arbitrator can only provide reimbursement for fees that were reasonably and necessarily incurred in the arbitration action, and not for time expended on any other matters between the parties.

[Rose v. The Village of Kings Creek Condo. Ass'n, Inc.,](#)

Case No. 2005-04-5947 (Scheuerman / Final Order on Motion for Attorney's Fees / January 9, 2006)

- The time spent drafting a motion to take discovery is not per se objectionable; even though discovery is discouraged, there may be appropriate times when discovery is appropriate. However, in this case, the arbitrator had just issued an order requiring the party to produce much of the same information sought in the discovery motion, and hence the party was not awarded for this task.
- The sum of 7.5 hours spent preparing for a final hearing thought to last a half day was not clearly excessive where more than one witness was involved and where the coordination of multiple exhibits was called for.

[Sunrise Landing Condo. Ass'n of Brevard, Inc. v. Wilson,](#)

Case No. 2005-05-9040 (Grubbs / Final Order on Attorney's Fees and Costs / May 9, 2006)

- Where response to motion for attorney's fees was not filed by either of the respondents, but was filed by a person stating that he was the caregiver for a respondent who had Parkinson's disease, epilepsy, and paranoid schizophrenia, the response could have been stricken because the respondent was not a Qualified Representative. However, the response was considered because the respondent was incapacitated and no other response from the respondents was received.
- The time expended by the attorney to the drafting of the petition for arbitration may have been beneficial to the association, but it was not time expended in the arbitration proceeding, and therefore, cannot be reimbursed. Further, the association would also not be reimbursed for the time expended by the attorney after entry of the final order, except for time spent preparing the motion for attorney's fees.

Excessive / Reasonable[Anchor Condo Ass'n, Inc. v. Diamond,](#)

Case No. 2006-03-5407 (Harnden / Final Order on Attorney's Fees and Costs / September 14, 2006)

- Hourly rate of \$250.00 deemed reasonable for attorney having practiced law for over 25 years.

[Amberwood Lake Condo. Ass'n, Inc. v. Schuster,](#)

Case No. 2005-05-7348 (Earl / Final Order on Motion for Attorney's Fees and Costs / February 22, 2006)

- Requested rates of \$250.00 and \$195.00 for attorneys who have been practicing 21 and four years respectively found to be excessive. Rather \$225.00 and \$185.00 an hour was found to be a reasonable rate.

[Aquanique Ocean Club Condo. Ass'n, Inc. v. Smurlo,](#)

Case No. 2005-06-3649 (Earl / Final Order on Motion for Attorney's Fees and Costs / February 6, 2006)

- Requested rate of \$200.00 and \$225.00 per hour for an attorney with 21 years of experience were found to be reasonable.

[Boca Country Estates Condo. Ass'n, Inc. v. Borraiz,](#)

Case No. 2006-00-8432 (Bembry / Final Order on Motion Seeking an Award of Attorney's Fees and Costs / April 3, 2006)

- Hourly rate of \$225.00 was deemed reasonable fee for the legal services of attorney having 25 years of experience in the practice of law.

[Boca Country Estates Condo. Ass'n, Inc. v. Lopes,](#)

Case No. 2006-02-1243 (Earl / Final Order on Motion for Attorney's Fees and Costs / June 7, 2006)

- Requested hourly rated of \$225.00 per hour for an attorney with 25 years of experience was found to be reasonable.

[Carrollbrook Lakeside Condo. Ass'n, Inc. v. Lane,](#)

Case No. 2005-06-4460 (Harnden / Final Order on Motion for Attorney's Fees and Costs / April 18, 2006)

- One hundred fifty dollars hourly rate is very reasonable for an attorney practicing in the area of condominium law for almost 20 years.

[The Club at Brickell Bay Plaza Condo. Ass'n, Inc. v. Moroni,](#)

Case No. 2005-06-2484 (Harnden / Final Order on Motion for Attorney's Fees and Costs / April 18, 2006)

- Where counsel requests compensation using three different hourly rates, yet fails to specify the reason(s) for chagrining three different rates, only one rate will be awarded. A rate of \$200.00 is reasonable for an attorney in Broward County who has been practicing for over 13 years.

[Hillsboro Landings Condo. Ass'n, Inc. v. Mikirtychev,](#)

Case No. 2005-06-3645 (Bembry / Final Order on Petitioner's Motion for Attorney's Fees and Costs / January 17, 2006)

- Hourly rate of \$175.00 was not considered excessive for an attorney with approximately three years of experience in community association law.

[Jaramillo v. Cypress Club Condo., Inc.,](#)

Case No. 2005-06-2481 (Scheuerman / Final Order on Motion for Attorney's Fees / February 9, 2006)

- The hourly sum of \$175.00 for an attorney who had been a member of the Bar for just under two years was found to be reasonable.

[Number 1 Condo. Ass'n Village Green, Inc. v. Rufeisen,](#)

Case No. 2006-00-6088 (Early / Final Order on Motion for Attorney's Fees / April 24, 2006)

- Requested rate of \$190.00 per hour for an attorney who has been practicing law in Florida for 15 years was found to be reasonable.
- Estimate time of 1.5 hours to finalize the matter was disallowed because it was unclear as to what the time pertains.

[Pompano Beach Club North Ass'n, Inc. v. Arlotta,](#)

Case No. 2006-00-6818 (Bembry / Final Order on Motion for Attorney's Fees and Costs / May 25, 2006)

- Hourly rate of \$250.00 was not deemed reasonable for attorney with 9 years of experience. The sum of \$200 was awarded instead.

[Regal Palms Condo. Ass'n, Inc. v. Pititto,](#)

Case No. 2006-00-8424 (Bembry / Final Order on Motion for Attorney's Fees / June 12, 2006)

- Hourly rate of \$200.00 was considered a reasonable fee for attorney having 34 years experience in practice of law.

[Ringler v. Tower Forty One Ass'n, Inc.,](#)

Case No. 2006-01-0719 (Grubbs / Final Order on Attorney's Fees and Costs / June 20, 2006)

- Not all hours included on the timesheets will be reimbursed where some hours clearly cannot be attributed to the arbitration action; some time entries lump many activities together, most of which would not be compensable as part of the arbitration action; and some entries are unclear as to whether they relate to the arbitration action

or to the court case pending at the same time. Therefore, time awarded would be based on the timesheets and on the “number of hours that would ordinarily have been spend by lawyers in the community to resolve this particular type of dispute,” considering that experienced attorneys should expend less time on an activity than required for the same task by less experienced attorney. *Barratta v. Valley Oak Homeowners’ Ass’n at the Vineyards, Inc.*, ___ So. 2d ___, 31 FLW D1348 (Fla. 2d DCA May 10, 2006).

[Rose v. The Village of Kings Creek Condo. Ass’n, Inc.](#)

Case No. 2005-04-5947 (Scheuerman / Final Order on Motion for Attorney’s Fees / January 9, 2006)

- Attorney who had no particular expertise in condominium law but who had practiced since 1969 was awarded the sum of \$200.00 per hour.

[Rose v. The Village of Kings Creek Condo. Ass’n, Inc.](#)

Case No. 2006-04-7151 (Scheuerman / Final Order on Motion for Attorney’s Fees / September 26, 2006)

- Sum of 7.0 hours drafting a petition that was repetitive and long-winded was excessive; the sum of 2.0 hours awarded instead.
- Sum of .50 hours expended in reviewing standard Order Requiring Answer was excessive where counsel has been previously involved in multiple cases; no time awarded for this expense.

[Seminole-on-the-Green, Cavalier Bldg. One Ass’n, Inc. v. Jackson.](#)

Case No. 2006-05-0344 (Earl / Final Order on Petitioner’s Motion for Award of Costs and Attorney’s Fees / February 7, 2007)

- Where prevailing party’s motion seeking reimbursement of the attorney’s fees and costs failed to identify the paralegal or associate attorney in its billing records and provide their qualifications, the arbitrator was unable to determine whether the requested hourly rates associated therewith were reasonable. Accordingly, the associated fees and costs could not be awarded.

[Sunrise Landing Condo. Ass’n of Brevard, Inc. v. Wilson.](#)

Case No. 2005-05-9040 (Grubbs / Final Order on Attorney’s Fees and Costs / May 9, 2006)

- The rate of \$150.00 per hour is quite reasonable for an attorney who has been practicing law for 19 years and has concentrated on condominium law for the last nine years.

- The rate of \$75.00 per hour is reasonable for a paralegal doing work such as arranging for telephone conferences, preparing letters to accompany orders being forwarded to the client, preparing copies of documents, and assembling exhibits.
- The time expended by the attorney to the drafting of the petition for arbitration may have been beneficial to the association, but it was not time expended in the arbitration proceeding, and therefore, cannot be reimbursed. Further, the association would also not be reimbursed for the time expended by the attorney after entry of the final order, except for time spent preparing the motion for attorney's fees.

[Sunset Grove Condo. Ass'n, Inc. v. Johnson,](#)

Case No. 2006-00-8419 (Earl / Final Order on Motion to Determine and Tax Attorney's Fees and Costs / June 6, 2006)

- Requested hourly rate of \$200.00 per hour for an attorney with over four years of experience was found to be reasonable.

[Timber Lake Estates, Inc. v. Lalka,](#)

Case No. 2006-00-4405 (Grubbs / Final Order on Attorney's Fees and Costs / March 31, 2006)

- The time expended by the association's attorney on the case, 12.5 hours, was quite reasonable considering that the attorney had to prepare for and successfully prosecute the case at a final evidentiary hearing that took several hours. The fees of \$175, \$185, and \$195 per hour, depending on the task, are reasonable hourly charges for an attorney with over 25 years of experience.

[Victoria Lakes Condo. Ass'n, Inc. v. Monico,](#)

Case No. 2006-00-2689 (Harnden / Final order on Motion for Attorney's Fees and Costs / April 19, 2006)

- Three hundred dollars hourly rate unreasonable. Where party fails to provide supporting affidavit stating a reason(s) why two attorneys were utilized with two separate billing rates and also fails to attest to one of the attorney's length of time in practice, no rate shall be awarded for the nonattesting attorney.

[The Waverly at South Beach Condo. Ass'n, Inc. v. McCarthy,](#)

Case No. 2005-06-2473 (Harnden / Final Order on Motion for Attorney's Fees and Costs / April 18, 2006)

- Hourly rate of \$225.00 is a reasonable hourly rate for an attorney who has been practicing in the area of condominium law for over 24 years.

[Woodside Village Condo. Ass'n, Inc. v. Schroeder,](#)

Case No. 2005-06-5868 (Earl / Final Order on Motion for Attorney's Fees and Costs / February 20, 2006)

- Requested rate of \$190.00 per hour for an attorney with 21 years of experience found to be reasonable.

[Zuch v. Lake Place Condo. Ass'n, Inc.,](#)

Case No. 2006-06-4338 (Earl / Order on Motion for Attorney's Fees / February 9, 2007)

- After considering the novelty and substantial complexity of the issues presented in the underlying arbitration proceeding, and the fact the respondent did not contest the petitioner's motion for fees and costs, the arbitrator awarded petitioner a total sum of \$8,612.50, although duplicative efforts and paralegal time were excluded from the fees award.

Generally

[Amberwood Lake Condo. Ass'n, Inc. v. Schuster,](#)

Case No. 2005-05-7348 (Earl / Final Order on Motion for Attorney's Fees and Costs / February 22, 2006)

- Except for the drafting of the statutorily mandated pre-arbitration notice, the prevailing party may not be awarded fees for efforts prior to arbitration.

[Huffman v. Emmy-Lou, Inc. of Naples,](#)

Case No. 2005-03-6527 (Campbell / Final Order on Motion for Attorney's Fees and Cost / September 10, 2007)

- Arbitrator is without authority to award fees to an individual who is not a member of the Florida Bar. Fees denied to pro se unit owner and is attorney in another state, but is not licensed in Florida.

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[International Village Ass'n, Inc. v. Cardona,](#)

Case No. 2005-06-5816 (Bembry / Final Order Denying Motion for Attorney's Fees and Costs / January 17, 2006)

- Attorney's fees would not be awarded where the petitioner filed its petition for arbitration and immediately sought and obtained a stay of the arbitration proceeding to permit it to seek injunctive relief in circuit court and the responding parties were never served or otherwise made parties to the arbitration proceeding.

[International Village Ass'n, Inc. v. D'Orsay,](#)

Case No. 2005-06-5818 (Bembry / Final Order Denying Motion for Attorney's Fees and Costs / January 17, 2006)

- Attorney's fees would not be awarded where the association filed its petition for arbitration and immediately sought and obtained an order staying the arbitration proceeding to permit it to seek injunctive relief in circuit court and the responding parties

were never served with the petition for arbitration before the dispute was rendered moot by virtue of the injunctive relief ordered in the circuit court proceeding.

[Ringler v. Tower Forty One Ass'n, Inc.,](#)

Case No. 2006-01-0719 (Grubbs / Final Order on Attorney's Fees and Costs / June 20, 2006)

- The arbitrator can only provide reimbursement for fees that were reasonably and necessarily incurred in the arbitration action, and not for time expended on any other matters between the parties.

[Rose v. The Village of Kings Creek Condo. Ass'n, Inc.,](#)

Case No. 2005-04-5947 (Scheuerman / Final Order on Motion for Attorney's Fees / January 9, 2006)

- Where petitioner was an attorney who represented himself successfully in an official records case, petitioner was entitled to an award of attorney's fees regardless of whether the legal fees were actually "incurred" by the petitioner or not. The arbitration cases that have decided the issue have ruled that a prevailing party who is a licensed Florida attorney representing himself is entitled to collect reasonable attorney's fees.

[Sunrise Landing Condo. Ass'n of Brevard, Inc. v. Wilson,](#)

Case No. 2005-05-9040 (Grubbs / Final Order on Attorney's Fees and Costs / May 9, 2006)

- Where response to motion for attorney's fees was not filed by either of the respondents, but was filed by a person stating that he was the caregiver for a respondent who had Parkinson's disease, epilepsy, and paranoid schizophrenia, the response could have been stricken because the respondent was not a Qualified Representative. However, the response was considered because the respondent was incapacitated and no other response from the respondents was received.

Prevailing Party

[4100 Condo. Corp. v. Espailat,](#)

Case No. 2005-04-1887 (Grubbs / Final Order on Attorney's Fees and Costs / January 26, 2006)

- Normally, where the petitioner files a Notice of Voluntary Dismissal Without Prejudice, attorney's fees cannot be awarded because the petitioner has dismissed its own case without prejudice, meaning that the case has not been resolved and the petitioner can file another case alleging the same facts and the same violations. Thus, there is no "prevailing party." However, in this particular case, the petitioner stated that the violation had been cured by the respondents and that it was reserving the right to seek attorney's fees and costs. Thus, the notice of voluntary dismissal was, in effect, more like a suggestion of mootness than a voluntary dismissal without prejudice, and the intent was to have the arbitrator dismiss the petition because it was moot.

- Rule 61B-45.048(7), F.A.C., has been interpreted to mean that when the respondent provides the relief requested, a rebuttable presumption is created that the action was taken as a result of the arbitration proceeding, and the petitioner will be considered the "prevailing party" unless there is evidence that the action was taken for some reason unrelated to the arbitration proceeding. A party will be found to be the "prevailing party" if the arbitration is the catalyst motivating the opposing party to provide the relief sought, so long as the opposing party's actions were required by law.

[Aquanique Ocean Club Condo. Ass'n, Inc. v. Smurlo,](#)

Case No. 2005-06-3649 (Earl / Final Order on Motion for Attorney's Fees and Costs / February 6, 2006)

- Where the unit owner voluntarily provided the relief requested by the association subsequent to receipt of the petition and did not rebut the presumption that the petition was the catalyst motivating his compliance, the association was found to be the prevailing party.

[Boca Country Estates Condo. Ass'n, Inc. v. Lopes,](#)

Case No. 2006-02-1243 (Earl / Final Order on Motion for Attorney's Fees and Costs / June 7, 2006)

- Where the association prevailed on only half of its claims and its time records did not indicate the amount of time spent on each claim, it was presumed that an equal amount of time was spent on each item. Therefore, the amount of requested time was reduced by half.

[The Diplomat Apartment Ass'n, Inc. v. Johnson,](#)

Case No. 2006-01-5487 (Grubbs / Final Order on Attorney's Fees and Costs / May 23, 2006)

- Where the unit owner removed illicit pets on the eve of trial, the association is considered the prevailing party and thus entitled to prevailing party attorney's fees notwithstanding the fact that there had been no trial on the merits or order of the arbitrator mandating removal of the animals. Rule 61B-45.047, F.A.C., clearly authorizes and award of fees even if there has been no ruling on the merits. It was plain here that the dogs were removed because of the arbitration proceeding and for no other reason.

[Faircrest Condo. Ass'n, Inc. v. Sullivan-Moore,](#)

Case No. 2006-02-2887 (Chavis / Final Order Denying Petitioner's Motion to Determine and Tax Attorney's Fees and Costs / June 19, 2006)

- Unauthorized lanai cover was removed prior to the date the respondent was served with the petition for arbitration; therefore, there was no prevailing party in the underlying action.

[Henderson v. Charleston Place Condo. Ass'n, Inc.,](#)

Case No. 2006-02-0068 (Chavis / Final Order on Motion for Costs and Attorney's Fees / May 8, 2006)

- Where petitioner in underlying case failed to provide respondent required pre-arbitration notice pursuant to section 718.1255, F.S., and case was dismissed with no decision on the merits of the dispute, neither party prevailed.

[Miller Sixty-Seven Townhouses Condo. Ass'n, Inc. v. Arias,](#)

Case No. 2006-01-5855 (Chavis / Final Order on Attorney's Fees and Costs / May 10, 2006)

- Association was found to be prevailing party when unit owner/tenants did not dispute that they were in violation of the association's governing documents requiring written consent and approval prior to occupancy.

[Ringler v. Tower Forty One Ass'n, Inc.,](#)

Case No. 2006-01-0719 (Grubbs / Final Order on Attorney's Fees and Costs / June 20, 2006)

- In determining the prevailing party in a "reverse recall", where the ousted board member is challenging the association's action in certifying the recall or deeming the recall certified by operation of statute, the petitioner can be the "prevailing party" even if he does not obtain the ultimate relief sought, i.e., reinstatement to the board, if the petitioner establishes that the association has failed to follow the designated procedures, though no fault of the petitioner, and the petitioner was not provided with the opportunity to review the recall agreement. In this case, however, after the petitioner was provided with access to the recall agreement during the arbitration proceeding, his amended petition failed to allege any reasons why the recall agreement was invalid and would not have been certified if properly considered by the board. Therefore, the association was considered the "prevailing party" for all fees generated from the time of the filing of the amended petition until the conclusion of the arbitration action. The petitioner on the first issue because he established that, though no fault of his own, the association had failed to properly proceed after being served with the recall agreement; however, he did not prevail on the second issue. He failed to allege or establish that the recall agreement would not have been certified had the association properly performed its duty.

[Sunrise Landing Condo. Ass'n of Brevard, Inc. v. Wilson,](#)

Case No. 2005-05-9040 (Grubbs / Final Order on Attorney's Fees and Costs / May 9, 2006)

- Issues that were not resolved in the association's favor but had an extremely minimal impact on the case would not be considered in determining prevailing party

status and the allocation of fees where the association prevailed on the only significant issues in the case.

[Sunset Grove Condo. Ass'n, Inc. v. Johnson,](#)

Case No. 2006-00-8419 (Earl / Final Order on Motion to Determine and Tax Attorney's Fees and Costs / June 6, 2006)

- Where the unit owner had failed to rebut the presumption that she complied with the association's demand in response to the petition, the association was found to be the prevailing party even though the underlying case was rendered moot by the unit owner's compliance.