

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/23/2016
File #	2016-03899

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2016013701

THE SUMMIT OWNERS ASSOCIATION, INC.

DS 2016-019

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (hereinafter "the Division") hereby issues this Declaratory Statement pursuant to sections 120.565 and 718.501, Florida Statutes.

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement on March 17, 2016, from The Summit Owners Association, Inc. ("Petitioner" or "Summit") seeking a declaratory statement as to the following two questions:

1. Whether Summit is considered a condominium timeshare plan pursuant to sections 718.103(11) and 721.05(39), Florida Statutes?
2. Whether Summit, if determined to be a condominium timeshare plan, is exempt from the term limits in section 718.112(2)(d)2., Florida Statutes, and may continue to elect directors for three-year terms?

The Division counsel responded on March 22, 2016, to confirm receipt of the Petition and request a complete copy of the governing documents.

Notice of receipt of the Petition was published in the March 23, 2016, issue of the Florida Administrative Register.

The Petitioner provided the Division with the governing documents on March 29, 2016.

Petitioner did not request a hearing.

FINDINGS OF FACT

The material facts are set out in the petition. The Division takes no position as to the accuracy of the facts and accepts them as submitted by the Petitioner for the purposes of issuing this declaratory statement.

1. Petitioner is the managing entity of The Summit, A Condominium ("Condominium"), located in Panama City Beach, Florida.
2. The Condominium was created pursuant to the Declaration of Condominium recorded on August 23, 1984 at Book 989, Page 1046, in the Official Records of Bay County, Florida.
3. Paragraph 13 of the Declaration, titled "Optional Time-Sharing Provisions," states in part:

TIME-SHARE APARTMENTS MAY BE CREATED WITH RESPECT TO APARTMENTS IN THE CONDOMINIUM. The Developer or any apartment owner may create time-share estates with respect to any apartment in the condominium upon compliance with all requirements imposed by law, including Chapters 718 and 721 of Florida Statutes...

4. The Condominium consists of one, fifteen story building, comprised of four hundred and forty-nine (449) units. Currently, thirty-two (32) of the units are operated as timeshare units, comprising 1,632 timeshare interests, and the remaining four hundred seventeen (417) units are wholly residential condominium units. Petitioner manages both the timeshare and residential units.
5. In 1989, Petitioner passed an amendment to its By-Laws changing the term limits of its board of directors to three-year terms.
6. Paragraph 15 of Association's By-Laws, as amended in 1989, states:

Number of Directors. The affairs of the Association shall be managed by a Board consisting of nine (9) directors.

7. Paragraph 17 of the Association's By-Laws, as amended in February 1989, states:

Director's Term and Staggered Directorships. Beginning with the year 1989, directors shall be elected to serve terms of three years except that during the 1989 annual meeting of the members, only three directors shall be elected to serve a three year term. The remaining directors shall be elected to serve a one year term. During the 1990 annual meeting of the members, only three of the six directors then

elected shall be elected to serve a three year term. Thereafter, members at subsequent annual meetings shall only elect as many directors as are needed to fill the vacancies of those directors whose term expires during that year.

For the purpose of the 1989 and 1990 elections, the three directors receiving the most votes shall be directors elected to serve three year terms as specified above.

8. Since the 1989 amendment, directors have continued to be elected for three-year terms.
9. Petitioner also cites to consent orders, correspondence, and complaint and arbitration cases where the Association was declared a timeshare. Specifically, the following instances were mentioned:
 - a. A July 20, 1999 letter issued by the Division in case number 19990712CC11803 against the Association. The Division determined that it did not have jurisdiction over that particular election issue, stating in part that the "statute does provide for the process of election procedures for condominium associations. However the statute also states that the provisions of that subparagraph shall not apply to timeshare condominium associations. Therefore, our office would not have jurisdiction in the matter."
 - b. A January 26, 2001 Final Order Dismissing Petition filed in Arbitration Case 00-1867 against the Association. The arbitrator determined that she did not have jurisdiction over that particular election issue "[b]ecause the voting provisions of Section 718.112(2)(d)3., do not apply to timeshare condominium associations..."
 - c. A February 18, 2013 letter issued by the Division to the Association requesting financial documents to be submitted pursuant to Chapter 721, Florida Statutes.
 - d. A March 20, 2013 "Investigative Memorandum" of the Division in case number 2012052400 against the Association. The memorandum provides in part: "Summit, A Condominium is a timeshare resort, located in Bay County, Florida. The Summit Owners Association, Inc. is the managing

entity of Summit, A Condominium and is the Respondent in this case. There are 1,632 timeshare interests available.”

- e. A May 1, 2013 Consent Order entered into between the Division and the Association. The Consent Order provides “Summit, A Condominium is a condominium “timeshare plan,” as those terms are defined in section 721.05(39), Florida Statutes, containing 1,632 timeshare interests located in Bay County, Florida. [Petitioner] is the “managing entity,” as that term is defined in section 721.05(22), Florida Statutes, that operates Summit, A Condominium.”
 - f. An April 9, 2014 letter from the Division in response to a complaint against the Association. The Division stated, “The project is considered a timeshare-condominium because it contains both whole units and timeshare units. Whenever there is one or more timeshare units in a condominium the entire project is considered a timeshare condominium and classified as a timeshare project and is subject to both Ch. 721 and 718, Florida Statutes... The handling of timeshare-condominium election ballots is specifically excluded in Chapter 718 and is not addressed in Chapter 721, or applicable administrative rules.”
 - g. An April 9, 2014 Consent Order entered into between the Division and the Association. The Consent Order provides “Summit is a ‘condominium,’ ‘timeshare plan,’ as those terms are defined in section 718.103(11) and 721.05(39), Florida Statutes, containing 1,632 timeshare interests located in Bay County, Florida. [Petitioner] is the “managing entity,” as that term is defined in section 721.05(22), Florida Statutes, that operates Summit.”
10. The Petitioner believes that Association is a timeshare condominium for purposes of 718.112(2)(d)2, and therefore may continue to elect directors for three-year staggered terms.
11. The Petitioner is seeking a declaratory statement as to the following questions:
- 1. Whether Summit is considered a condominium timeshare plan pursuant to sections 718.103(11) and 721.05(39), Florida Statutes?

2. Whether Summit, if determined to be a condominium timeshare plan, is exempt from the term limits in section 718.112(2)(d)2., Florida Statutes, and may continue to elect directors for three-year terms?

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501, 721.26, and 120.565, Florida Statutes.
2. Section 120.565, Florida Statutes, provides in pertinent part:
 - (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
 - (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.
3. Rule 28-105.001, Florida Administrative Code, provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.
4. The Association has standing to petition for a declaratory statement as a condominium association. §120.565, Fla. Stat. (2015).
5. Section 721.03(1), Florida Statutes, provides, in part:

This chapter applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least 3 years in which the accommodations and facilities, if any, are located within this state or offered within this state.
6. Section 718.103(11), Florida Statutes, provides in pertinent part:

"Condominium" means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

7. Section 721.05(39), Florida Statutes, provides:

“Timeshare plan” means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years. The term “timeshare plan” includes:

(a) A “personal property timeshare plan,” which means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and

(b) A “real property timeshare plan,” which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

8. The Petitioner's first question, whether Summit is considered a condominium timeshare plan pursuant to sections 718.103(11) and 721.05(39), Florida Statutes, is answered in affirmative. The Condominium consists of thirty-two (32) units operated as real property timeshare units, comprising 1,632 timeshare interests, for more than three years. Therefore, Summit is a condominium timeshare plan for purposes of sections 718.103(11) and 721.05(39), Florida Statutes.

9. The Petitioner's second question, whether Summit, if determined to be a condominium timeshare plan, is exempt from the term limits in section 718.112(2)(d)2., Florida Statutes, and may continue to elect directors for three-year terms, is also answered in affirmative.

10. Section 718.112(2)(d)2., Florida Statutes, provides, in pertinent part:

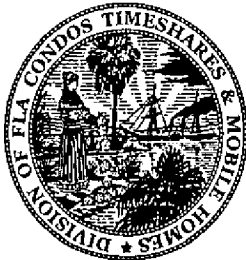
Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. If the bylaws or articles of incorporation permit terms of no more than 2 years, the association board members may serve 2-year terms.... This subparagraph does not limit the term of a member of the board of a nonresidential condominium. (Emphasis added).

11. Section 718.112(2)(d)2., Florida Statutes, provides a specific exemption for timeshare and nonresidential condominiums. Since Summit is considered a condominium timeshare plan, it is exempt from the term limits outlined in section 718.112(2)(d)2., Florida Statutes. Therefore, Petitioner may continue to elect directors for three-year terms.

For the reasons stated above it is hereby:

ORDERED that Summit is considered a condominium timeshare plan pursuant to sections 718.103(11) and 721.05(39), Florida Statutes, and is therefore exempt from the term limits in section 718.112(2)(d)2., Florida Statutes, and may continue to elect directors for three-year terms.

DONE and ORDERED this 23rd day of May 2016, at Tallahassee, Leon County, Florida.



A handwritten signature in black ink, appearing to read "Kevin Stanfield", written over a horizontal line.

KEVIN STANFIELD, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums,
Timeshares, and Mobile Homes
Northwood Centre
1940 North Monroe Street
Tallahassee, FL 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY ADVERSELY AFFECTED 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(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217; AGC.FILING@MYFLORIDALICENSE.COM; FAX (850) 488-5761, WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Timothy J. Sloan, Attorney for Petitioner, Timothy J. Sloan, P.A., Post Office Box 2327, Panama City, Florida 32402-2327, on this 23rd day of may 2016.


Agency Clerk's Office

Copies furnished to:

Ryan Lumbreras
Senior Attorney

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

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IN RE: PETITION FOR DECLARATORY STATEMENT

DS 2016-019

THE SUMMIT OWNERS ASSOCIATION, INC.

Docket No. 2016 013701

PETITION FOR DECLARATORY STATEMENT

Petitioner, THE SUMMIT OWNERS ASSOCIATION, INC. ("the Association"), hereby requests the State of Florida, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes ("the Division") to issue a Declaratory Statement based upon the following:

1. The name and address of Petitioner.

The Summit Owners Association, Inc.
8743 Thomas Drive
Panama City Beach, FL 32408

2. The specific provision(s) of the statute, rule, or order on which the Petitioner seeks a Declaratory Statement.

Section 718.112(2)(d)2 of the Florida Statutes involves the election of board members by the general membership of an association at unit owner meetings. As such, Petitioner seeks a declaration of the application of this provision, if at all, to the facts set forth in this Petition.

3. A statement of the reasons explaining why the Petitioner needs a Declaratory Statement.

Petitioner is the managing entity of The Summit, a Condominium ("Summit"), located in Panama City Beach, Florida. Petitioner seeks a Declaratory Statement to settle confusion as to whether Petitioner's board members may be elected for staggered terms of three (3) years each.

In 1989, Petitioner passed an amendment to its By-Laws changing the term limits of its board of administration ("directors") to three-year terms. Since the 1989 amendment, directors have continued to be elected for three-year terms.

Recently, a unit owner of Summit filed a Petition for Arbitration (Case No. 2015-02-9975) concerning whether the Association had improperly materially altered common elements without a vote of the owners. As a part of the arbitrator's Order Determining Jurisdiction, the arbitrator analyzed the application of certain provisions of Chapter 718 to the Association, an entity that has been consistently recognized as a timeshare condominium association, and found that the Association was subject to mandatory arbitration jurisdiction on the issues raised in Petition. Relying on Sections 721.13(8) and 718.113(2)(a), Florida Statutes, as well as the Association's governing documents, the arbitrator concluded that the alterations were not properly authorized. Seemingly based upon that decision, the same owner has now suggested that the term limitation provision in Section 718.112(2)(d)2 specifically applies to the Association, notwithstanding the Division's prior determinations that Summit is a timeshare condominium, resulting in a reversion of director terms to a single year (or to two-year staggered terms if enacted through a bylaw amendment.)

In an effort to prevent future arbitration or litigation concerning this issue, Petitioner seeks clarification that Summit is considered a timeshare condominium and thus need not conform to the one or two-year term restrictions in Section 718.112(2)(d).

- 4. A short, detailed, and to the point statement of all relevant facts in numbered paragraphs, and a request for the Division's official opinion of how the specified statute, rule or order applies to the Petitioners in their particular set of circumstances. Broad requests for interpretations of laws, rules or orders which apply to all condominiums generally and which are not restricted in scope to the Petitioner's circumstances will not be accepted by the Division.**
1. The Summit, a Condominium, was created pursuant to that certain Declaration of Condominium of The Summit, a Condominium ("Declaration"), and exhibits and attachments thereto, recorded on August 23, 1984 at Book 989, Page 1046, in the Official Records of Bay County, Florida.

Relevant portions of the Declaration and the By-Laws are attached as Exhibit "A".

2. Paragraph 13 of Summit's Declaration, entitled "OPTIONAL TIME-SHARING PROVISIONS", states, in part:

TIME-SHARE APARTMENTS MAY BE CREATED WITH RESPECT TO APARTMENTS IN THE CONDOMINIUM. The Developer or any apartment owner may create time-share estates with respect to any apartment in the condominium upon compliance with all requirements imposed by law, including Chapters 718 and 721 of Florida Statutes and the degree, quantity, nature and extent of the time-share estates shall be as follows...

3. Summit consists of one, fifteen story building, comprised of four hundred and forty-nine (449) units. Currently, thirty-two (32) of the units are operated as timeshare units, comprising 1,632 timeshare interests, and the remaining four hundred and seventeen (417) units are wholly residential condominium units. The Association manages both the timeshare and residential units.

4. Paragraph 15 of Petitioner's By-Laws, as amended in February of 1989, states:

NUMBER OF DIRECTORS. The affairs of the Association shall be managed by a Board consisting of nine (9) directors.

5. Paragraph 17 of Petitioner's By-Laws, as amended in February of 1989, states:

DIRECTOR'S TERM AND STAGGERED DIRECTORSHIPS.

Beginning with the year 1989, directors shall be elected to serve terms of three years except that during the 1989 annual meeting of the members, only three directors shall be elected to serve a three year term. The remaining directors shall be elected to serve a one year term. During the 1990 annual meeting of the members, only three of the six directors then elected shall be elected to serve a three year term. Thereafter, members at subsequent annual meetings shall only elect as many directors as are needed to fill the vacancies of those directors whose term expires during that year.

For the purpose of the 1989 and 1990 elections, the three directors receiving the most votes shall be the directors elected to serve three year terms as specified above.

6. Section 718.112(2)(d)2 of the Florida Statutes provides, in part:

Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. If the bylaws or articles of incorporation permit terms of no more than 2 years, the association board members may serve 2-year terms. (Emphasis added.)

7. In July of 1999, the Department of Business and Professional Regulation, Bureau of Condominiums, received a complaint from a Summit unit owner that Summit's 1998 election was conducted improperly under 718.112(2)(d)3, Florida Statutes (which has since been moved to 718.112(2)(d)4). The Division (under its former title) determined that it did not have jurisdiction over the issue raised in the complaint, stating, in part, that "[the] statute does provide for the process of election procedures for condominium associations. However, the statute also states that the provisions of that subparagraph shall not apply to timeshare condominium associations. Therefore, our office would not have jurisdiction in this matter." See Fl. DBPR, Bureau of Condos, Case No. 19990712CC11803 (attached as Exhibit "B").
8. In November of 2000, a Petition for Arbitration was filed against the Association which alleged that the latest election of directors had been conducted improperly under 718.112(2)(d)3, Florida Statutes (now 718.112(2)(d)4), and requested that the election be set aside and that a new election be conducted. See Cohen v. Summit Owners Association, Arb. Case No. 00-1867.
9. In December of 2000, the Association filed a Request for Expedited Determination of Jurisdiction, or, in the Alternative, Motion to Dismiss for Lack of Jurisdiction ("Request"), and argued that the arbitrator did not have

jurisdiction over the issue because 718.112(2)(d)3 specifically provided that "[t]he provisions of this subparagraph shall not apply to timeshare condominium associations." See Id.

10. In January of 2001, the arbitrator issued a Final Order Dismissing Petition. The arbitrator held that she lacked jurisdiction "[b]ecause the voting provisions of 718.112(2)(d)3 do not apply to timeshare condominium associations", and because the petitioner did not assert a violation of the governing documents. See Id. (Final Order attached as Exhibit "C").
11. On February 18, 2013, the Division's Bureau of Compliance issued a letter to the Association stating that "Chapter 721, Florida Statutes, requires each Florida timeshare resort to annually submit three financial documents with [the Division] for review," and notified the Association that its annual adopted budget submission, as required under Chapter 721, was past due. Said letter is attached as Exhibit "D".
12. On March 20, 2013, an "Investigative Memorandum, Timeshare Section" was sent to the Division's Bureau Chief of Compliance. Under the heading "Background Information," the memorandum stated that "Summit, A Condominium is a timeshare resort, located in Bay County, Florida. The Summit Owners Association, Inc. is the managing entity of Summit, A Condominium and is the Respondent in this case. There are 1,632 timeshare interests available." The investigative memorandum is attached as Exhibit "E".
13. On May 1, 2013, the Division entered into a Consent Order with the Association due to Association's failure to file its 2011 annual audited financial statement within the required timeframe. As a part of its "Statement of Facts," the Division determined that "Summit, A Condominium, is a condominium 'timeshare plan,' as those terms are defined in section 721.05(39), Florida Statutes, containing 1,632 timeshare interests located in Bay County, Florida," and that "[the Association] is the 'managing entity,' as that term is defined in section 721.05(22), Florida Statutes, that operates Summit, A Condominium." See Fl. DBPR, Div. of Fl. Condos, Timeshares, and Mobile Homes v. The Summit Owners Ass'n, Inc., Case No. 2012052400, Consent Order (May 1, 2013) (attached as Exhibit "F").

14. In 2013, several investigative complaints were filed against the Association asserting that the latest election of directors had been conducted improperly. See generally Fl. DBPR, Div. of Fl. Condos, Timeshares, and Mobile Homes, Case No. 2013047068.

15. In response to the investigative complaints in Case No. 2013047068, an investigator of the Timeshare Section concluded that the Division had no jurisdictional authority to address the complaints. In her reasoning, the investigator held that:

[Summit] is considered a timeshare-condominium because it contains both whole units and timeshare units. Whenever there is one or more timeshare units in a condominium the entire project is considered a timeshare condominium and classified as a timeshare project and is subject to both Ch. 721 and 718, Florida Statutes. Additionally, the timeshare units and whole units in this project are part of one association with one budget and one election..

The handling of timeshare-condominium election ballots is specifically excluded in Chapter 718 and is not addressed in Chapter 721, or applicable administrative rules. Therefore, the Division has no jurisdictional authority over the issues raised in your complaints and cannot address them further.

Id. (April 9, 2014 Letter)(attached as Exhibit "H").

16. On April 2, 2014, the Division entered into a Consent Order with the Association due to Association's failure to file its 2012 annual audited financial statement within the required timeframe. As a part of its "Statement of Facts," the Division determined that "Summit is a 'condominium,' 'timeshare plan,' as those terms are defined in 718.103(11) and 721.05(39), Florida Statutes, containing 1,632 timeshare interests located in Bay County, Florida," and that "[the Association] is the 'managing entity,' as that term is defined in section 721.05(22), Florida Statutes, that operates Summit." See Fl. DBPR, Div. of Fl. Condos, Timeshares, and Mobile Homes v. The Summit Owners Ass'n, Inc., Case No. 2014000877, Consent Order (April 2, 2014) (attached as Exhibit "G").

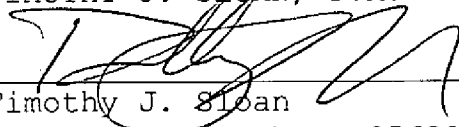
17. The unit owner whose questions to the Association led to this Petition for Declaratory Statement also recently filed a Request for Expedited Determination of Jurisdiction and a Petition for Arbitration against the Association asserting that it had materially altered its common elements without the requisite vote of the membership. See Hart v. The Summit Owners Ass'n, Inc., Arb. Case No. 2015-02-9975.
18. On October 25, 2015, the arbitrator concluded that he had jurisdiction over the issues raised in the unit owner's Petition but never asserted that Summit was not a timeshare condominium. On the contrary, the arbitrator cited to multiple cases in which timeshare condominiums have been subject to arbitration jurisdiction under Section 718.1255 of the Florida Statutes. See Id., Order Determining Jurisdiction (attached as Exhibit "I").
19. Summit is currently classified as a timeshare condominium in the Division's Payment History summary.
20. The legislature has clearly provided that certain provision of Chapter 718, Florida Statutes, do not apply to timeshare condominiums. See Cohen v. Summit (above); Markos v. Sandy Shores Condominium Ass'n, Inc., Arb. Case No. 200500-7877, Final Order of Dismissal (April 5, 2005); Potts v. Shell Island Beach Club Ass'n, Inc., Arb. Case No. 2009-02-0900, Order on Motion to Dismiss (July 2, 2009).
21. Petitioner believes that Summit is a timeshare condominium for purposes of 718.112(2)(d)2, and therefore may continue to elect directors for three-year staggered terms.
22. Petitioner requests a Declaratory Statement on the following:
 - A. Is Summit considered a timeshare condominium for purposes of 718.112(2)(d)2?
 - B. If the answers to question 22.A above is yes, may the Association continue to elect directors for three-year terms?

5. A statement as to whether the Petitioner (or intervenor) requests a hearing. The Division may, in its discretion, hold a hearing to dispose of the Petition.

Petitioner does not request a hearing at this time.

Respectfully submitted on this 16th day of March, 2016.

TIMOTHY J. SLOAN, P.A.



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Attorney for Petitioner

DECLARATION OF CONDOMINIUM
OF

THE SUMMIT, A CONDOMINIUM

Panama City Beach, Bay County, Florida

MADE THIS 22nd day of August, 1984, by Major Development Company, a Florida partnership, herein called the "Developer," for itself, its successors, grantees and assigns.

WHEREIN, the Developer makes the following declarations:

1. PURPOSE. The purpose of this Declaration is to submit the lands described in this instrument and the improvements on such lands to the condominium form of ownership and use in the manner provided by Chapter 718, Florida Statutes, 1983, hereinafter called the "Condominium Act."

A. Name and Address. The name by which this condominium is to be identified is "The Summit, a Condominium," hereinafter called "the condominium," and the condominium's address is 8743 Thomas Drive, Panama City Beach, Florida 32407.

B. The Land. The lands owned by the Developer, which by this instrument are submitted to the condominium form of ownership are the lands lying in Bay County, Florida more particularly described on Exhibit A hereto.

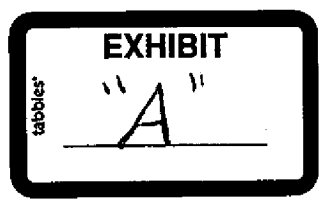
2. DEFINITIONS. The terms used in this Declaration and its exhibits shall have the meaning stated in the Condominium Act and as follows unless the context otherwise requires:

A. Apartment means unit as defined by the Condominium Act.

B. Apartment Owner means the unit owner as defined by the Condominium Act.

C. Association means The Summit Owners Association, Inc., a non-profit Florida corporation, and its successors.

D. Common Elements shall include the tangible personal property required for the maintenance and operation of the



struction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner that is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

(e) Certificate. Notwithstanding the provisions of this instrument, the insurance trustee shall not be required to determine whether or not sums paid by the apartment owners upon assessments shall be deposited by the Association with the insurance trustee, nor to determine whether the disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, the insurance trustee may rely upon a certificate of the Association made by its president and secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is required in this instrument to be named as payee, the insurance trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to an apartment owner; and further provided that when the Association, or a mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund, so requires the approval of an architect named by the Association upon disbursements in payment of costs of reconstruction and repair.

9. USE RESTRICTIONS. The use of the condominium property shall be in accordance with the following provisions as long as the condominium exists and the apartment building in useful condition exists on the land.

A. Apartments. Each of the apartments, shall be occupied only as a residence either permanent or transient and for no other purpose. Except as reserved to Developer, no apartment may be divided or subdivided into a smaller apartment nor any por-

tion sold or otherwise transferred without first amending this Declaration to show the changes in the apartment to be affected.

B. Common Elements. The common elements shall be used only for the purpose for which they are intended in the furnishing of services and facilities for the enjoyment of the apartments.

C. Nuisances. No nuisances shall be allowed upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No apartment owner shall permit any use of his apartment or make any use of the common elements that will increase the cost of insurance upon the condominium property unless provisions have been made for a special assessment pursuant to paragraph 7(C).

D. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part of it; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modifications or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

E. Leasing. Only entire apartments may be leased.

F. Regulations. Reasonable regulations concerning the use of the condominium property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-Laws. Copies of such regulations and amendments shall be furnished by the Association to all apartment owners and residents of the condominium upon request.

D. Upon written request to the Association identifying the name and address of the institutional mortgagee, such institutional mortgagee will be entitled to timely written notice of the following:

(1) Any condemnation, loss or other casualty loss which affects a material portion of the condominium or any apartment which is encumbered by a mortgage held by the institutional mortgagee;

(2) Any delinquency in the payment of assessments or common expenses owed by an owner of an apartment subject to a mortgage held by an institutional mortgagee, which remains uncured for a period of sixty (60) days;

(3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(4) Any proposed action which would require the consent of a specified percentage of mortgage holders.

13. OPTIONAL TIME-SHARING PROVISIONS. TIME-SHARE APARTMENTS MAY BE CREATED WITH RESPECT TO APARTMENTS IN THE CONDOMINIUM. The Developer or any apartment owner may create time-share estates with respect to any apartment in the condominium upon compliance with all requirements imposed by law, including Chapters 718 and 721 of Florida Statutes and the degree, quantity, nature and extent of the time-share estates shall be as follows:

A. Interval Ownership. All time-share estates shall be created pursuant to a time-sharing plan based upon the concept of "interval ownership." "Interval ownership" is a concept whereby an apartment and the share of the common elements assigned to the apartment are conveyed to various purchasers for periods of time with each purchaser receiving a stated time period for a period of years, together with a remainder over in fee simple as a tenant in common with all other purchasers of time in the same apartment. Apartments having a time-sharing plan are called "time-share apartments."

C. Intervals To Be Created. Time shall be conveyed in intervals called "time-share periods." A "time-share period" is a period of ownership in an apartment committed to a time-sharing plan which shall consist of not less than seven (7) days. Time-share periods are scheduled and computed as follows:

(1) Time-share period number 1 is the seven (7) days commencing at 12:00 Noon, local time, on the first Saturday in each year, and ending at 12:00 Noon local time on the second Saturday in each year.

(2) Time-share period number 2 is the seven (7) days commencing at 12:00 Noon, local time, on the second Saturday in each year, and ending at 12:00 Noon local time on the third Saturday in each year.

(3) Time-share periods number 3 through number 51 are computed in a like manner.

(4) Time-share period number 52 contains the seven (7) days succeeding the end of time of period number 51, without regard to the month or year, plus any days not otherwise assigned.

The minimum duration of the recurring periods of rights of use, possession, or occupancy that may be created with respect to any apartment shall be seven (7) days.

D. Maintenance Fees, Common Expenses, Extra Costs. All owners of time-share periods shall be assessed a maintenance fee. The maintenance fee shall include the following:

(1) The apartment's share of the common expenses as set forth in this Declaration.

(2) Expenses determined by the Association to be attributable to the time-share period owner's apartment, and not common to all apartments, including the following if not uniform among all apartments:

(a) Required up-keep for the interior of the apartment.

(b) Repair and replacement of furniture, furnishings, fixtures, appliances, carpeting and utensils in an apartment.

(c) Personal property, ad valorem and other applicable taxes assessed against the apartment, but not separately assessed against the individual owners.

(d) Any other expenses incurred in the normal operation and maintenance of the apartment not attributable to a particular time-share period owner.

This maintenance fee shall be prorated among all owners of time-share periods in a specific apartment by multiplying the total of all such expenses for the apartment by a fraction, the numerator of which is the number of time-share periods in the apartment owned by a specific owner, and the denominator of which is fifty-one (51). The foregoing shall not apply to any time-share period conveyed to the Association. Any expenses attributable to a specific time-share period owner shall be assessed against that owner.

E. Definition Of Apartment Owner. After a apartment has been committed to a time-sharing plan, any reference to "apartment owner" herein shall be construed to include all owners of time-share periods within any such apartment.

F. Ownership Of Common Elements. Each time-share period owner owns, for each time-share period owned, an undivided one-fifty-first (1/51) interest in fee simple in the condominium apartment of which that time-share period is a part. That ownership period entitles the time-share period owner to the exclusive use of that condominium apartment for the extent of the time-share period owned, but not any other time.

G. Voting Rights. Each owner of a time-share period in an apartment committed to a time-sharing plan shall be entitled to vote at meetings of the Association and shall be entitled to a one-fifty-first (1/51) vote for each time-share period owned.

H. Maintenance Time Period. One (1) time-share period of each apartment committed to a time-share plan will be conveyed to the Association at no cost to the Association to be used by the Association for maintaining, redecorating or refurbishing the apartment at the discretion of the Association.

I. Managing Entity. The Association shall be the managing entity responsible for operating and maintaining any time-sharing plan; provided that if the Association shall fail or refuse to act as the managing entity, a substitute professional managing entity may be selected by a majority of the owners of time-share periods of all apartments committed to a time-sharing plan.

14. AMENDMENTS. Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

A. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

B. Adoption. A resolution for the adoption of a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association, at a meeting called for this purpose. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approval must be either by:

(1) Approval by the owners of two-thirds (2/3) of the apartments; or

(2) Until the first election of Directors, only by all of the Directors, provided the amendment does not increase the number of apartments nor alter the boundaries of the common elements.

C. Proviso. Provided, however, that no amendment shall discriminate against any apartment owner nor against any

apartment or class or group of apartments, unless the apartments so affected shall consent; and no amendment shall change any apartment nor the share in the common elements appurtenant to it, nor increase the owner's share of the common expenses, unless the record owner of the apartment concerned and all record owners of mortgages on such apartment shall join in the execution of the amendment. Neither shall an amendment make any change in the section entitled "Insurance" nor in the section entitled "Reconstruction or Repair After Casualty" unless the record owners of all mortgages upon the condominium shall join in the execution of the amendment.

D. Execution and Recording. A copy of each amendment shall be attached to or incorporated in a certificate certifying that the amendment was adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate is recorded in the public records of Bay County, Florida.

15. TERMINATION. In addition to the manner provided by the Condominium Act, the condominium will be terminated without agreement if it is determined in the manner elsewhere provided in this Declaration that the apartment building shall not be reconstructed because of major damage.


16. SEVERABILITY. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision in this Declaration of Condominium or the exhibits thereto including the Articles of Incorporation, By-Laws and regulations of the Association shall not affect the validity of the remaining portions.

IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first above written.

Witnesses:


Gerald Charest

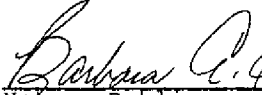
MAJOR DEVELOPMENT COMPANY,
a Florida partnership

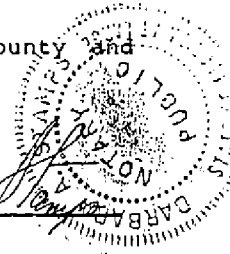
BY: 
W. C. GRIMSLEY, JR.
Partner

STATE OF FLORIDA
COUNTY OF BAY

BEFORE ME, the undersigned authority, personally appeared W. C. Grimsley, Jr. as a partner of Major Development Company, a Florida partnership, to me well known to be the person described in and who executed the foregoing Declaration of Condominium on behalf of the corporation and acknowledged that he executed same for the uses and purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this 22nd day of August, 1984.


Notary Public



My Commission Expires:

Notary Public, State of Florida
My Commission Expires Jan. 11, 1988
Bonded Through Troy Fain - Insurance, Inc.

THIS INSTRUMENT PREPARED BY:

LES W. BURKE
Attorney at Law
P. O. Box 70
Panama City, Florida 32402

EXHIBIT E TO THE DECLARATION
THE SUMMIT, A CONDOMINIUM
PAGE 1 OF 16 PAGES

BY-LAWS

** OFFICIAL RECORDS **
BK 989 PG 1337

OF

THE SUMMIT OWNERS ASSOCIATION, INC.
a corporation not for profit under the
laws of the State of Florida

1. Purpose. These are the By-Laws of The Summit Owners Association, Inc., called "Association" in these By-Laws, a corporation not for profit under the laws of the State of Florida. The Association has been organized for the purpose of providing for the operation, management, maintenance, control and administration of The Summit, a Condominium, and is with regard to such condominium, the legal entity created pursuant to Chapter 718, Florida Statutes, 1983, called the "Condominium Act" in these By-Laws.

2. Offices. The office of the Association shall be at 8743 Thomas Drive, Panama City Beach, Florida, in Bay County.

3. Fiscal Year. The fiscal year of the Association shall be the calendar year.

4. Seal. The seal of the corporation shall bear the name of the Association, the word "Florida" and the words "corporation not for profit," and the year of incorporation, "1984" an impression of which is as follows:



5. Members Meetings. The annual members meeting shall be held each year at the office of the corporation on a date during the month of September as from time to time determined by the Board of Directors for the purpose of electing directors and

1988-11-2

- f. Report of committees
- g. Election of inspectors of an election.
- h. Election of directors.
- i. Unfinished business.
- j. New business.
- k. Adjournment.

14. Reservation of Control by Developer. Until required by the Condominium Act including Section 718.301 thereof, or until Major Development Company, its successors or assigns or any subsequent developer, herein called the "Developer", elects to terminate their control of the Association and the condominium operated by it, whichever occurs first, the proceedings of all meetings of members of the Association shall have no effect unless approved by the Board of Directors.

15. Number of Directors. The affairs of the Association shall be managed by a Board of not less than three (3) nor more than nine (9) directors, the exact number to be determined at the time of the election.

16. Election of Directors. Election of directors shall be conducted in the following manner:

a. Election of directors shall be held at the annual members meeting.

b. A nominating committee of three (3) members shall be appointed by the Board of Directors not less than thirty (30) days prior to the annual meeting. The committee shall nominate one (1) person for each director then serving. Nominations for additional directorships created at the meeting shall be made from the floor, and other nominations may be made from the floor.

c. The election shall be by secret ballot (unless dispensed by unanimous consent) and by a plurality of the votes cast. The owner of each apartment shall be entitled to cast a vote for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

d. Except as vacancies provided by removal of directors by members, vacancies in the Board of Directors occur-

ring between annual meetings of the members shall be filled by the remaining directors.

e. Subject to the provisions of §718.301 of the Condominium Act, any director may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all members. A special meeting of the members to recall a director or directors may be called by ten percent (10%) of the members giving notice of the meeting as required for a meeting of the members, and the notice shall state the purpose of the meeting. The vacancy on the Board of Directors so created shall be filled by members of the Association at the same meeting.

f. Provided, however, that notwithstanding the provision of paragraph 16(a) through (e) above and paragraph 17 below to the contrary, until required by the Condominium Act including Section 718.301 thereof, or until the Developer elects to terminate its control of the Association, whichever occurs first, the first directors of the Association shall serve, and in the event of vacancies the remaining directors shall fill the vacancies, and if there are no remaining directors, the vacancies shall be filled by the Developer.

17. Director's Term. The terms of each director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

18. Director's Organizational Meeting. The organizational meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be affixed by the directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary.

19. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time, by a majority of the directors. Notice

AMENDMENTS TO THE BY-LAWS OF THE
SUMMIT OWNERS ASSOCIATION, INC.

AMENDMENT #1: Paragraph 17 of the By-Laws of the SUMMIT OWNERS ASSOCIATION, INC., is amended to read as follows:

SUBSTANTIAL REWORDING OF BY-LAW.
SEE PARAGRAPH 17 FOR PRESENT TEXT.

17. DIRECTOR'S TERM AND STAGGERED DIRECTORSHIPS.

Beginning with the year 1989, directors shall be elected to serve terms of three years except that during the 1989 annual meeting of the members, only three directors shall be elected to serve a three year term. The remaining directors shall be elected to serve a one year term. During the 1990 annual meeting of the members, only three of the six directors then elected shall be elected to serve a three year term. The remaining three directors will be elected to serve a one year term. Thereafter, members at subsequent annual meetings shall only elect as many directors as are needed to fill the vacancies of those directors whose term expires during that year.

For the purpose of the 1989 and 1990 elections, the three directors receiving the most votes shall be the directors elected to serve three year terms as specified above.

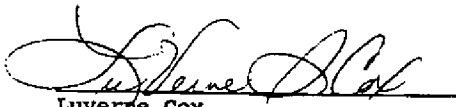
AMENDMENT #2: Paragraph 15 of the By-Laws of the SUMMIT OWNERS ASSOCIATION, INC., is amended to read as follows:

15. NUMBER OF DIRECTORS. The affairs of the Association shall be managed by a Board of ~~not less than three (3)~~ not more than consisting of nine (9) directors. ~~the exact number to be determined at the time of the election.~~

The foregoing amendments to the By-Laws of the SUMMIT OWNERS ASSOCIATION, INC., were adopted by a two-thirds (2/3) vote of all owners at a meeting of the members held February 25, 1989.



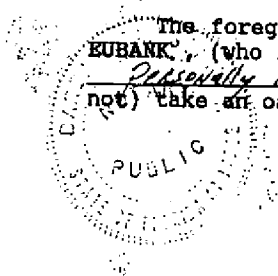
Dave Eubank
President

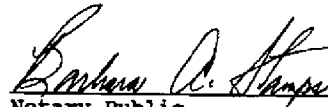


Luverne Cox
Secretary

STATE OF FLORIDA
COUNTY OF BAY

The foregoing instrument was acknowledged before me by DAVE EUBANK, (who is personally known to me) or (who has produced Personally Known as identification) and who (did) (did not) take an oath on this 9th day of December, 1993.



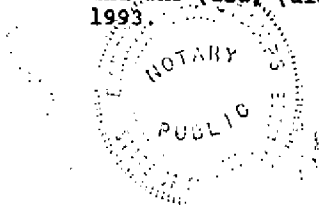


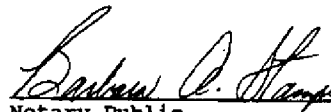
Notary Public
State of Florida at Large



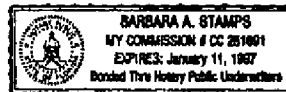
STATE OF FLORIDA
COUNTY OF BAY

The foregoing instrument was acknowledged before me by LUVERNE COX, (who is personally known to me) or (who has produced Personally Known as identification) and who (did) (did not) take an oath on this 9th day of December, 1993.





Notary Public
State of Florida at Large



RCD: DEC 10 1993 @ 10:55 AM
HAROLD BAZZEL. CLERK



DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

John Bush, Governor

Cynthia A. Henderson, Secretary

July 20, 1999

Mr. Gerald L. Reid
320 Nalley Drive
Jasper, Georgia 30143

RE: The Summit, a Timeshare Condominium
CASE NO. 19990712CC11803

Dear Mr. Reid

This office has reviewed your complaint and the attached materials received on July 12, 1999. After careful consideration, it does not appear that an investigation would be appropriate at this time.

This office investigates possible violations of Chapter 718, Florida Statutes (The Condominium Act) and the administrative rules promulgated pursuant thereto. When an investigation discloses evidence that a violation of these laws has occurred, the Division of Florida Land Sales, Condominiums and Mobile Homes can institute legal or administrative proceedings, in its own name, against the apparent violator. However, Chapter 718, F.S. does not address every possible problem or dispute that can occur at a condominium, and this office cannot investigate every type of complaint.

Your complaint alleges that the association, by allowing the ballots for the general election in 1998, to be removed from the impartial committee and counted outside the presence of the committee and the unit owners, violated section 718.112(2)(d)3., Florida Statutes.

The above-cited statute does provide for the process of election procedures for condominium associations. However, the statute also states that the provisions of that subparagraph shall not apply to timeshare condominium associations. Therefore, our office would not have jurisdiction in this matter.

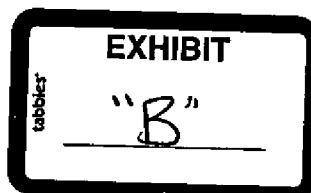
For the reasons given, this office does not plan to investigate your complaint and will recommend that the case be closed. Please understand that our inability to be of direct assistance to you is due to statutory limitations and not from a lack of concern on our part. If you have questions, please contact our Education Section at 800-226-9101.

Sincerely,

Vicki L. Chamelin
Real Estate Development Specialist
Bureau of Condominiums

Mc

DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES
BUREAU OF CONDOMINIUMS - ENFORCEMENT SECTION - WARREN BUILDING
MAILING ADDRESS: 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-1033
Telephone: (850) 448-0720 Fax: (850) 488-7473
INTERNET: www.dor.state.fl.us/dbar/rlm/foia/co_page.html



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

IN RE: PETITION FOR ARBITRATION

VICTOR COHEN,

Petitioner,

v.

Case No. 00-1867

SUMMIT OWNERS ASSOCIATION, INC.,

Respondent.

FINAL ORDER DISMISSING PETITION

The respondent filed a request for expedited determination of jurisdiction or, in the alternative, motion to dismiss for lack of jurisdiction on December 18, 2000. The respondent's filing is considered a motion to dismiss the petition.

The petition for arbitration alleges that the respondent failed to properly conduct an election of directors by permitting some individuals to vote who were not authorized and prohibiting voting by others who were authorized to vote. The petition alleges that the respondent violated Section 718.112(2)(d)3., Florida Statutes, which provides: "No unit owner shall permit any other person to vote his or her ballots, and any such ballots improperly cast shall be deemed invalid..."

The motion to dismiss the petition states that the respondent is a timeshare condominium association. As a timeshare condominium association, the motion asserts, the respondent would not be subject to mandatory non-binding arbitration under Section 718.1255(4), Florida Statutes, because the acts complained of are specifically excluded from the review of the division and, therefore, outside the jurisdiction of the arbitrator, under the provisions of Section



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718.112(2)(d)3., Florida Statutes. The respondent refers specifically to the fact that Section 718.112(2)(d)3., provides: "The provisions of this subparagraph shall not apply to timeshare condominium associations."

Section 718.1255, Florida Statutes, defines disputes that must be arbitrated prior to being filed in court:

(1) DEFINITIONS.—As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this **chapter or association document** to:

1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.

2. Give adequate notice of meetings or other actions.

3. Properly conduct meetings.

4. Allow inspection of books and records.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property. (emphasis supplied)

Because the voting provisions of Section 718.112(2)(d)3., do not apply to timeshare condominium associations, the claim stated in the petition does not fall within the definition of dispute, as the petition does not allege a violation of Chapter 718, Florida Statutes, or the governing documents.

In addition, timeshare condominium association disputes are not subject to arbitration pursuant to Section 718.1255, Florida Statutes. The arbitration program grew out of an exhaustive review of condominium problems in Florida by the Condominium Study Commission.

The commission focused on problems attendant to traditional condominium associations, as contrasted to timeshare condominium associations, and recommended creation of a program of mandatory arbitration for unit owners and condominium associations (Final Report of the Condominium Study Commission, February 1991). In addition, the Vacation Plan and Timesharing Act (Chapter 721, Florida Statutes) contains no provision requiring arbitration pursuant to Section 718.1255, Florida Statutes, as does the Condominium Act (See Sections 718.112(2)(k) and 718.1255, F.S.) and the Cooperative Act (See Sections 719.106(1)(l) and 719.1255, F.S.). Accordingly, the motion to dismiss is GRANTED, and the petition for arbitration is DISMISSED.

DONE AND ORDERED this 26th day of January 2001, at Tallahassee, Leon County, Florida.



Patricia A. Draper, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Brian D. Hess, Esq., P.O. Box 9454, Panama City Beach, FL 32417 and Tim Sloan, Esq., Harmon & Sloan, P.O. Box 2327, Panama City, FL 32402 this the 26th day of January 2001.



Patricia A. Draper, Arbitrator

Ken Lawson, Secretary

Rick Scott, Governor

February 18, 2013

Summit Owners' Association
c/o Murrey Stutts, General Manager
8743 Thomas Drive
Panama City, FL 34208

Re: Summit Owners' Association
Managing Entity: 63507

Dear Mr. Stutts:

Chapter 721, Florida Statutes, requires each Florida timeshare resort to annually submit three financial documents with the Division of Florida Condominiums, Timeshares and Mobile Homes for review. These documents are listed below. Those marked with an [X] have not been received by the Division and are past due.

- [X] The 2013 annual adopted budget. Due no later than 30 days after the beginning of a new fiscal year.
- [] The 2012 ad valorem tax statement of receipts and disbursements. Due no later than May 1 each year.
- [] The 2012 audited financial statement. Due no later than 5 months after the fiscal year end.

Please submit the above marked document(s) by **Tuesday March 5, 2013**.

The above submission date is not intended as a date of extension for Statute required deadlines. The Division seeks immediate compliance so that we can complete our review of the documents and post the financial information on our website in a timely manner. The purpose of our review is to protect purchasers by identifying financially distressed resorts and potential sources of financial problems with the mission of fostering compliance with applicable laws. The timely submission of these documents is an integral part of our mission for the public.

If you have any questions or we may assist you in any way, please feel free to contact me at 850-717-1456, or by email at Judith.Creese@dbpr.state.fl.us

Sincerely,
BUREAU OF COMPLIANCE



Judith Creese
Financial Examiner/Analyst

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Ken Lawson, Secretary

Rick Scott, Governor

**INVESTIGATIVE MEMORANDUM
Timeshare Section**

TO: Victoria Bedford, Bureau Chief of Compliance
FROM: Judith Creese, Financial Examiner/Analyst II
RE: The Summit Owners Association, Inc. ("Respondent")
Summit, A Condominium ("Project")
Case No. 2012052400
DATE: March 20, 2013

BACKGROUND INFORMATION

Summit, A Condominium is a timeshare resort, located in Bay County, Florida. The Summit Owners Association, Inc. is the managing entity of Summit, A Condominium and is the Respondent in this case. There are 1,632 timeshare interests available. Respondent's corporate status is active and fees to the Division are current.

NATURE OF INVESTIGATION

This case is the result of an internal complaint initiated by the Division, for failing to timely file financial records, during the 2012 calendar year, as required by Chapter 721, Florida Statutes. The law requires all timeshare plans registered in the State of Florida to annually file a copy of the adopted budget, year end audited financial statement, and an ad valorem tax escrow receipts and disbursements statement (if applicable).

The Division has focused its effort to ensure compliance with the annual requirements in order to fulfill its mission with respect to Florida timeshare plans.

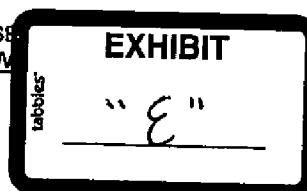
ISSUES

Allegation 1: The Respondent failed to file the January 1, 2011 – December 31, 2011, ("2011") ad valorem tax escrow statement of receipts and disbursements with the Division no later than May 1, 2012, in violation of section 721.13(3)(i), Florida Statutes.

Facts:

- Section 721.13(3)(i), Florida Statutes states in part: "Submitting to the division the statement of receipts and disbursements regarding the ad valorem tax escrow account, as required by s. 192.037(6)(e)."

LICENSE
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AIRLY.

- Section 192.037(6)(e), Florida Statutes states in part: "On or before May 1 of each year, a statement of receipts and disbursements of the escrow account must be filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, which may enforce this paragraph pursuant to s. 721.26."
- The 2011 ad valorem tax escrow statement of receipts and disbursements was due by May 1, 2012, but was not received until June 18, 2012 - 48 days late.
- The penalty guidelines set forth in rule 61B-41.003, Florida Administrative Code, provide for a penalty of \$1,000 for a non-prior, single violation of failure to timely file the ad valorem tax escrow statement of receipts and disbursements with the Division. Based on mitigating factors presented to the Division, the civil penalty has been reduced to \$500 per rule 61B-41.002(3)(i), F.A.C.

Conclusion: The Division found sufficient evidence to prove a violation. Therefore, we conclude the Respondent failed to timely file the 2011 ad valorem tax escrow statement of receipts and disbursements in violation of section 721.13(3)(i), Florida Statutes.

Allegation 2: The Respondent failed to file the January 1, 2011 – December 31, 2011, ("2011") annual audited financial statements, with the Division within five (5) calendar months after the end of the timeshare plan's fiscal year, in violation of section 721.13(3)(e), Florida Statutes.

Facts:

- Section 721.13(3)(e), Florida Statutes states, in pertinent parts, that "A copy of the audited financial statements must be filed with the division for review and forwarded to the board of directors and officers of the owners' association, if one exists, no later than 5 calendar months after the end of the timeshare plan's fiscal year."
- The timeshare plan's fiscal year ends December 31.
- The 2011 audited financial statement was due by May 31, 2012, but was not received until June 19, 2012 – 19 days late.
- The penalty guidelines set forth in rule 61B-41.003, Florida Administrative Code, provide for a penalty of \$2,500 for a single violation of failure to timely file a copy of the annual audited financial statement with the Division. Based on mitigating factors presented to the Division, the civil penalty has been reduced to \$1,250 per rule 61B-41.002(3)(i), F.A.C.

Conclusion: The Division found sufficient evidence to prove a violation. Therefore, we conclude the Respondent failed to timely file the 2011 annual audited financial statement, with the Division within five (5) calendar months after the end of the timeshare plan's fiscal year, in violation of section 721.13(3)(e), Florida Statutes.

COMPLIANCE HISTORY

N/A

RECOMMENDATION - CONSENT ORDER

To avoid further investigation and other administrative action, the Division is prepared to, and should, settle these matters with the Respondent through the execution of a Consent Order ("settlement"). The penalty guidelines set forth in rule 61B-41.003, Florida Administrative Code, provide for a total penalty of One Thousand Seven Hundred Fifty Dollars and No Cents, (\$1,750.00) for the above violations cited in this report.

CONSENT ORDER COMPLIANCE REQUIREMENTS

N/A

RESPONDENT'S REGISTERED AGENT

Mr. Timothy J. Sloan
427 McKenzie Avenue
Panama City, Florida 32401

ASSOCIATION INFORMATION

The Summit Owners Association, Inc.
c/o Mr. Steve A. Horton, President
8743 Thomas Drive
Panama City Beach, Florida 32408-4012

ASSOCIATION ATTORNEY

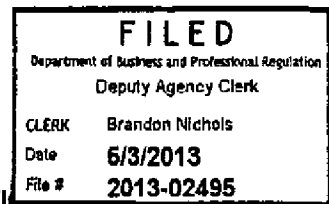
Charles J. Stafford, Attorney
c/o Timothy J. Sloan, P.A.
Attorneys And Counselors At Law
427 McKenzie Avenue
Panama City, FL 32402-2327

LIST OF WITNESSES

Judith Creese, Financial Examiner/Analyst
1940 N. Monroe St.
Northwood Centre – Suite 16
Tallahassee, FL 32399-1031
850.717.1456

Susan Lewis, Financial Examiner/Analyst
1940 N. Monroe St.
Northwood Centre – Suite 16
Tallahassee, FL 32399-1031
850.717.1475

Karen Mack, Financial Examiner/Analyst
1940 N. Monroe St.
Northwood Centre – Suite 16
Tallahassee, FL 32399-1031
850.717.1479



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

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

Petitioner,

v

CASE NO. 2012052400

THE SUMMIT OWNERS ASSOCIATION, INC.,

Respondent

CONSENT ORDER

Petitioner, the State of Florida, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), and Respondent, The Summit Owners Association, Inc. (Respondent), stipulate and agree to the terms and issuance of this Consent Order, pursuant to sections 120.57 and 721.26, Florida Statutes, as listed below.

PRELIMINARY STATEMENT

1. The Division is the state "agency," as that term is defined by section 120.52, Florida Statutes, that is statutorily responsible for enforcement of the Florida Vacation Plan and Timesharing Act, chapter 721, Florida Statutes.

2. The Division has investigated Respondent for the alleged violations of chapter 721, Florida Statutes, under Division investigative file number 2012052400.



3. Respondent desires to resolve this investigation without formal administrative or judicial proceedings that might be available.

4. Respondent and the Division agree that the statutory citations referenced in this Consent Order are intended to reference the correct statutory citations for the year(s) in which the violation(s) occurred as well as the Division's proper enforcement authority, and that any errors in such statutory citations are not substantive or prejudicial to either party.

5. Respondent neither admits nor denies the allegations but enters into this Consent Order to avoid further litigation costs.

STATEMENT OF FACTS

6. The Division is the state agency charged with enforcing chapter 721, Florida Statutes, the Florida Vacation Plan and Timesharing Act and the administrative rules promulgated there under.

7. Summit, A Condominium is a condominium "timeshare plan," as those terms are defined in section 721.05(39), Florida Statutes, containing 1,632 timeshare interests located in Bay County, Florida.

8. Respondent is the "managing entity," as that term is defined in section 721.05(22), Florida Statutes, that operates Summit, A Condominium.

9. The timeshare plan's fiscal year begins January 1.

10. Respondent failed to file the January 1, 2011 – December 31, 2011, ("2011") ad valorem tax escrow statement of receipts and disbursements with the Division no later than May 1. Specifically, the 2011 ad valorem tax escrow statement of receipts and disbursements was due May 1, 2012, but was not received until June 18, 2012 - 48 days late.

11. The timeshare plan's fiscal year ends December 31.

12. Respondent failed to file the January 1, 2011 – December 31, 2011, ("2011") annual audited financial statement, with the Division within five (5) calendar months after the end of the

timeshare plan's fiscal year. Specifically, the 2011 audited financial statement was due by May 31, 2012, but was not received until June 19, 2012 – 19 days late.

13. There is competent substantial evidence to support the foregoing facts.

CONCLUSIONS OF LAW

14. The Division has jurisdiction over these proceedings pursuant to chapters 120 and 721, Florida Statutes, and is authorized to enter into this Consent Order, assess civil penalties, and consider evidence of mitigation of violations, pursuant to sections 120.57 and 721.26(5), Florida Statutes.

15. Respondent failed to file the 2011 ad valorem tax escrow statement of receipts and disbursements with the Division no later than May 1. Specifically, Respondent filed the statement June 18, 2012 – 48 days late — in violation of section 721.13(3)(i), Florida Statutes.

16. Respondent failed to file the 2011 annual audited financial statement with the Division within five (5) calendar months after the end of the timeshare plan's fiscal year. Specifically, Respondent filed the annual audited financial statement on June 19, 2012 – 19 days late - in violation of section 721.13(3)(e), Florida Statutes.

17. Respondent agrees that there is competent substantial evidence to support the foregoing conclusions of law.

AGREEMENT

18. **Civil Penalty and Other Relief:** Respondent shall remit to the Division a civil penalty in the amount of One Thousand Seven Hundred Fifty Dollars and No Cents (\$1,750.00) by certified check, cashier's check, or money order made payable to **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION** as a condition precedent to the Division's

execution of this Consent Order. Respondent shall return the check with this Consent Order and include the case number on the check to ensure proper processing.

(a) Respondent understands that rule 61B-41.003, Florida Administrative Code, provides for escalating penalty amounts for repeated violations. And understands that the Division accepted mitigating circumstances in setting the penalty in this specific case.

(b) Respondent agrees to maintain its copy of this Consent Order as part of the association's official records.

(c) Respondent agrees that all items it has agreed to remit, provide, submit or in any way furnish to the Division shall be sent by certified mail, return-receipt requested to the following address:

Bureau of Compliance
Division of Florida Condominiums, Timeshares, and Mobile Homes
Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1031

(d) Respondent agrees that its duties pursuant to this Consent Order shall not be discharged until all items that Respondent has agreed to remit, provide, submit or in any way furnish to the Division have actually been received by the Division at the address above.

19. **Attorney's Fees and Prevailing Party.** The Division and Respondent agree that Respondent, through the rendition of this Consent Order, is not a "prevailing small business party" as that term is defined by section 57.111, Florida Statutes, and it is mutually agreed that Respondent shall bear its own costs and attorney's fees that are in any way associated with this action.

20. **Cease and Desist.** Respondent agrees to cease and desist from any and all violations of chapter 721, Florida Statutes, and the Division's administrative rules.

21. **Duress.** Respondent acknowledges and agrees it has entered into this Consent Order without duress and for the uses and purposes stated in this order.

22. **Effectiveness.** This Consent Order is effective on the last date executed below and upon its issuance it shall be a final administrative order. This Consent Order is fully enforceable by the Division under the provisions of sections 120.69 and 721.26, Florida Statutes.

23. **Failure to Comply.** As acknowledged and agreed between the Division and Respondent, this Consent Order is directly enforceable by petition to the Circuit Court of Leon County, Florida, as provided by section 120.69, Florida Statutes. For any violation by Respondent of the provisions of this Consent Order, Respondent understands the Division shall bring such action as is necessary to seek compliance with chapter 721, its administrative rules, and the provisions of this Consent Order. This Consent Order does not constitute a waiver of the rights of Respondent to a contested hearing on any subsequent alleged violation of this order.

24. **Future Actions.** Nothing in this order shall be construed to waive or restrict the Division's right to initiate any action against Respondent pursuant to chapters 120 and 721 Florida Statutes, including, but not limited to, administrative or civil action or referral for criminal prosecution if facts or information not presently known or available to the Division come to its attention subsequent to the execution of this Consent Order, including facts that may become known as a result of production of any documents to be produced in compliance with this Consent Order. The Division expressly reserves all rights to pursue such remedies should a cause of action exist. This agreement shall be binding upon the parties their successors, and assigns.

25. **Releases.** Respondent waives, releases, and forever discharges the Division and its employees, agents, and representatives from any and all causes of action in law or in equity, which Respondent may have arising out of this administrative proceeding. The Division accepts this release and waiver by Respondent without in any way acknowledging or admitting that any such cause of action does or may exist.

26. **Time.** Time is of the essence in this Consent Order.

27. **Waivers.** Respondent knowingly and voluntarily waives:

(a) any right to an administrative hearing provided by chapters 120 and 721, Florida Statutes;

(b) any right to the issuance of a recommended order by an administrative law judge from the Division of Administrative Hearings or from the Division; and,

(c) any and all rights to object to or challenge in any judicial proceeding, including but not limited to, an appeal pursuant to section 120.68, Florida Statutes, any aspect, provision or requirement concerning the content, issuance, procedure or timeliness of this Consent Order.

28. **Entire Agreement.** This Consent agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or agreements other than those contained herein and this document shall supersede all previous communications, representations, and or agreements whether written or verbal, between the parties hereto.

WHEREFORE, Respondent, The Summit Owners Association, Inc., by its duly authorized representative, Stephen A. HORTON pursuant to the following certified resolution agrees to the terms, conditions and issuance of this Consent Order on this 28th day of March, 2013.

Stephen A. Horton
President
(Title)

Stephen A. HORTON, President
(Type or Print Name and Title) SUMMIT OWNER'S ASST.

State of Alabama
County of Autauga

The foregoing instrument, consent order, was acknowledged before me this 28 day of March, 2013, by Stephen A. Horton who produced identification in the form of ADL 2240547 which was examined by me, and who (did) (did not) take an oath, and acknowledge that he/she is the person who executed the foregoing instrument.

(SEAL)

Benita B. Barron, Notary Public
State of Florida
State of Alabama

My Commission Expires 3/22/15

PLEASE COMPLETE THE FOLLOWING PARAGRAPH TO THIS ORDER:

BE IT RESOLVED, THAT ON _____, 2013, a meeting of the Board of Directors was held pursuant to legal notice and that the Officer's signature appearing on this Consent Order, executed in Case No. 2012052400 on behalf of this Corporate Respondent, is duly authorized, empowered and directed to execute the Consent Order on behalf of the Corporation and is further empowered to execute any other documents necessary to fulfill the intent of the Consent Order.

IN WITNESS WHEREOF, I have hereunto set my HAND AND SEAL of this Corporation this _____ day of _____, 2013.

CORPORATE SECRETARY'S SIGNATURE

CORPORATE SEAL

REPRESENTATIVE/ATTORNEY

CONTACT PERSON

(Address, Telephone)

(Address, Telephone)

DONE AND ORDERED in Tallahassee, Leon County, Florida this 1st day of May, 2013.



Michael T. Cochran
Michael T. Cochran, Director
Division of Florida Condominiums,
Timeshares, and Mobile Homes
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Consent Order has been furnished by U. S. Certified Mail to Registered Agent of Respondent, Mr. Timothy J. Sloan, 427 McKenzie Avenue, Panama City, Florida 32401, this 3rd day of May, 2013.

Brandon M. Nichols
AGENCY CLERK'S OFFICE

Copies furnished to:

Ms. Judith Creese
Financial Examiner/Analyst
Bureau of Compliance – Timeshare Section

The Summit Owners Association, Inc.
c/o Mr. Steve A. Horton, President
8743 Thomas Drive
Panama City Beach, Florida 32408-4012

Ken Lawson, Secretary

Rick Scott, Governor

April 9, 2014

Mr. Gerald Reid
320 Nailley Drive
Jasper, Georgia 30143
Email: rentPCB@aol.com

Ms. Anita Kay Piner
999 Walker Drive
Locust Grove, Georgia 30258
Email: kaypiner@gmail.com

Ms. Myra E. Floyd
1270 Omussee Road
Dothan, Alabama 35060
Email: beachgalpc1@yahoo.com

Ms. Donna J Adams
743 Beaver Creek Road
Dothan, Alabama 36303
Email: julianadams48@hotmail.com

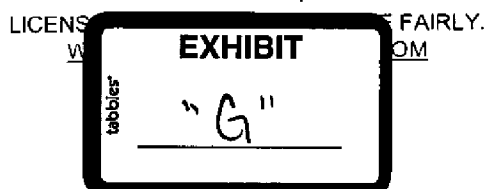
Re: Case No.: 2013047068
Related:
Case No.: 2013047121
Case No.: 2013047122
Case No.: 2013047123

Respondent: Summit Owner's Association, Inc.
Project: Summit

Dear Mr. Reid, Ms. Piner, Ms. Floyd, and Ms. Adams:

First, I would like to apologize for the delay in completing the investigation. You collectively say the election of the board of administration was held on 9/14/2013. You claim the following irregularities occurred.

- On 10/18/13, the voting materials were inspected. It was discovered that numerous votes were counted without a properly signed voting certificate, which is required by paragraph 10 of the Association bylaws and Florida Administrative Rule 61B-23.0021.
- Some of the votes were disregarded due to either the outside or inside envelopes not being sealed.
- A stack of envelopes from one owner that did not have both envelopes sealed were counted even though others with the same issue were not counted.
- An experienced election committee member saw several envelopes that had been opened then taped shut.
- There were approximately 30-40 ballots that were not be counted, which could have changed the election outcome. She was asked what about the ones that the outer envelope was not sealed. She told them they could not be counted pursuant to Condominium law under Florida Statutes Chapter 718. She said there were at least 27 timeshare envelopes that were not sealed. The General Manager called a director and was told to count the unsealed envelopes.



- The part-time Admin Assistant who works three afternoons during the week stated that envelopes with ballots had been left on her desk and unsecured prior to the 9/14/13 election.

Conclusion:

The project is considered a timeshare-condominium because it contains both whole units and timeshare units. Whenever there is one or more timeshare units in a condominium the entire project is considered a timeshare condominium and classified as a timeshare project and is subject to both Ch. 721 and 718, Florida Statutes. Additionally, the timeshare units and whole units in this project are part of one association with one budget and one election.

When a timeshare plan is subject to both the provisions of chapter 721 and 718, the plan shall meet the requirements of both chapters unless exempted as provided in this section. The division shall have the authority to adopt rules differentiating between timeshare condominiums and non-timeshare condominiums in the interpretation and implementation of chapter 718. In the event of a conflict between the provisions of chapter 721 and 718, the provisions of chapter 721 shall prevail.

The handling of timeshare-condominium election ballots is specifically excluded in Chapter 718 and is not addressed in chapter 721, or applicable administrative rules. Therefore, the Division has no jurisdictional authority over the issues raised in your complaints and cannot address them further.

If you have any questions, please contact me.

Sincerely,

Catherine Ray, Investigator Timeshare Section
State of Florida Department of Business and Professional Regulation
Division of Florida Condominiums, Timeshares and Mobile Homes
Bureau of Compliance
400 West Robinson St, Suite N-908
Orlando, FL 32801
Email: Catherine.Ray@myfloridalicense.com
Phone: 407.650.4070 Direct 407.317.7226 Main Office

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	4/9/2014
File #	2014-02523

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

Petitioner,

v.

CASE NO. 2014000877

THE SUMMIT OWNERS ASSOCIATION, INC.,

Respondent.

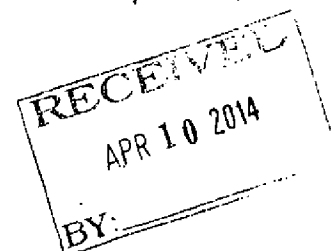
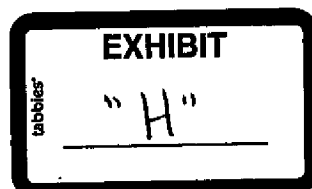
CONSENT ORDER

Petitioner, the State of Florida, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), and Respondent, The Summit Owners Association, Inc. (Respondent), stipulate and agree to the terms and issuance of this Consent Order, pursuant to sections 120.57, 718.501, and 721.26, Florida Statutes, as listed below.

PRELIMINARY STATEMENT

1. The Division is the state "agency," as that term is defined by section 120.52, Florida Statutes that is statutorily responsible for enforcement of the Florida Condominium Act, chapter 718, Florida Statutes, and the Florida Vacation Plan and Timesharing Act, chapter 721, Florida Statutes.

2. The Division has investigated Respondent for alleged violations of chapter 721, Florida Statutes, under Division investigative file number 2014000877.



3. Respondent desires to resolve this investigation without formal administrative or judicial proceedings that might be available.

4. Respondent and the Division agree that the statutory citations referenced in this Consent Order are intended to reference the correct statutory citations for the year(s) in which the violation(s) occurred as well as the Division's proper enforcement authority, and that any errors in such statutory citations are not substantive or prejudicial to either party.

STATEMENT OF FACTS

5. The Division is the state agency charged with enforcing chapter 718, Florida Statutes, the Condominium Act, chapter 721, Florida Statutes, the Florida Vacation Plan and Timesharing Act and the administrative rules promulgated thereunder.

6. Summit is a "condominium," "timeshare plan," as those terms are defined in section 718.103(11) and 721.05(39), Florida Statutes, containing 1,632 timeshare interests located in Bay County, Florida.

7. Respondent is the "managing entity," as that term is defined in section 721.05(22), Florida Statutes, that operates Summit.

8. Respondent failed to timely file the January 1, 2013 – December 31, 2013 ("2013") annual adopted budget. Specifically, the 2013 adopted budget was due by January 31, 2013, but was not received until February 27, 2013—27 days late.

9. Respondent failed to file the January 1, 2012 – December 31, 2012 ("2012") annual audited financial statement, with the Division within five (5) calendar months after the end of the timeshare plan's fiscal year. Specifically, the 2012 audited financial statement was due by May 31, 2013, but was not received until January 15, 2014 – 229 days late.

10. The timeshare plan's fiscal year is the calendar year, so it ends December 31.

11. There is competent substantial evidence to support the foregoing facts.

CONCLUSIONS OF LAW

12. The Division has jurisdiction over these proceedings pursuant to chapters 120, 718, and 721, Florida Statutes, and is authorized to enter into this Consent Order, assess civil penalties, and consider evidence of mitigation of violations, pursuant to sections 120.57, 718.501(1)(d), and 721.26(5), Florida Statutes.

13. Respondent failed to file the 2013 annual adopted budget with the Division no later than January 31, 2013. Specifically, the Respondent filed the budget February 27, 2013—27 days late—in violation of section 721.13(3)(c)(1), Florida Statutes and rule 61B-40.004, Florida Administrative Code.

14. Respondent failed to file the 2012 annual audited financial statements with the Division within five (5) calendar months after the end of the timeshare plan's fiscal year. Specifically, the Respondent filed the annual audited financial statements January 15, 2014—229 days late—in violation of section 721.13(3)(e), Florida Statutes and rule 61B-40.007, Florida Administrative Code.

15. Respondent agrees that there is competent substantial evidence to support the foregoing conclusions of law.

AGREEMENT

16. Civil Penalty and Other Relief:

(a) Respondent shall remit to the Division a civil penalty in the amount of One Thousand Seven Hundred Fifty Dollars and No Cents (\$1,750.00) by certified check, cashier's check, or money order made payable to **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION** as a condition precedent to the Division's execution of this Consent Order.

(b) Respondent shall return the check with this Consent Order and include the case number on the check to ensure proper processing. Respondent understands that rule 61B-41.003, Florida Administrative Code, provides for escalating penalty amounts for repeated

violations. Respondent also understands that the Division accepted mitigating circumstances in setting the penalty in this specific case.

(c) Respondent agrees to maintain its copy of this Consent Order as part of the association's official records, in accordance with section 718.111(12), Florida Statutes and rule 61B-23.002(7)(b), Florida Administrative Code.

(d) Respondent agrees that all items it has agreed to remit, provide, submit or in any way furnish to the Division shall be sent by certified mail, return-receipt requested to the following address:

Bureau of Compliance
Division of Florida Condominiums, Timeshares, and Mobile Homes
Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1031

(e) Respondent agrees that its duties pursuant to this Consent Order shall not be discharged until all items that Respondent has agreed to remit, provide, submit or in any way furnish to the Division have actually been received by the Division at the address above.

17. **Attorney's Fees and Prevailing Party.** The Division and Respondent agree that Respondent, through the rendition of this Consent Order, is not a "prevailing small business party" as that term is defined by section 57.111, Florida Statutes, and it is mutually agreed that Respondent shall bear its own costs and attorney's fees that are in any way associated with this action.

18. **Cease and Desist.** Respondent agrees to cease and desist from any and all violations of chapter 721, Florida Statutes, and the Division's administrative rules.

19. **Duress.** Respondent acknowledges and agrees it has entered into this Consent Order without duress and for the uses and purposes stated in this order.

20. **Effectiveness.** This Consent Order is effective on the last date executed below and upon its issuance, it shall be a final administrative order. This Consent Order is fully enforceable

by the Division under the provisions of sections 120.69 and 718.501, and 721.26, Florida Statutes.

21. Failure to Comply. As acknowledged and agreed between the Division and Respondent, this Consent Order is directly enforceable by petition to the Circuit Court of Leon County, Florida, as provided by section 120.69, Florida Statutes. For any violation by Respondent of the provisions of this Consent Order, Respondent understands the Division shall bring such action as is necessary to seek compliance with chapters 718, 721, its administrative rules, and the provisions of this Consent Order. This Consent Order does not constitute a waiver of the rights of Respondent to a contested hearing on any subsequent alleged violation of this order.

22. Future Actions. Nothing in this order shall be construed to waive or restrict the Division's right to initiate any action against Respondent pursuant to chapters 120 and 718, Florida Statutes, including, but not limited to, administrative or civil action or referral for criminal prosecution if facts or information not presently known or available to the Division come to its attention subsequent to the execution of this Consent Order, including facts that may become known as a result of production of any documents to be produced in compliance with this Consent Order. The Division expressly reserves all rights to pursue such remedies should a cause of action exist. This agreement shall be binding upon the parties, their successors, and assigns.

23. Releases. Respondent waives, releases, and forever discharges the Division and its employees, agents, and representatives from any and all causes of action in law or in equity, which Respondent may have arising out of this administrative proceeding. The Division accepts this release and waiver by Respondent without in any way acknowledging or admitting that any such cause of action does or may exist.

24. Time. Time is of the essence in this Consent Order.

25. Waivers. Respondent knowingly and voluntarily waives:

(a) any right to an administrative hearing provided by chapters 120, 718, and 721, Florida Statutes;

(b) any right to the issuance of a recommended order by an administrative law judge from the Division of Administrative Hearings or from the Division; and,

(c) any and all rights to object to or challenge in any judicial proceeding, including but not limited to, an appeal pursuant to section 120.68, Florida Statutes, any aspect, provision or requirement concerning the content, issuance, procedure or timeliness of this Consent Order.

26. Entire Agreement. This Consent agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or agreements other than those contained herein and this document shall supersede all previous communications, representations, and or agreements whether written or verbal, between the parties hereto.

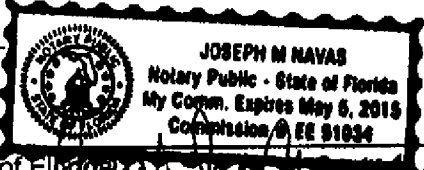
WHEREFORE, Respondent, The Summit Owners Association, Inc., by its duly authorized representative, David McNelly, pursuant to the following certified resolution agrees to the terms, conditions and issuance of this Consent Order on this 12 day of MARCH, 2014.

David W. McNelly
President
(Title)

David McNelly, President
(Type or Print Name and Title)

State of FLORIDA
County of Bay

THE FOREGOING INSTRUMENT, CONSENT ORDER, WAS ACKNOWLEDGED BEFORE ME THIS 12 DAY OF MARCH, 2014, BY David McNelly WHO PRODUCED IDENTIFICATION IN THE FORM OF Drivers License WHICH WAS EXAMINED BY ME, AND WHO ~~(DID)~~ (DID NOT) TAKE AN OATH, AND ACKNOWLEDGE THAT ~~HE~~ SHE IS THE PERSON WHO EXECUTED THE FOREGOING INSTRUMENT.

(SEAL)  Notary Public
State of Florida Joseph M Navas

PLEASE COMPLETE THE FOLLOWING PARAGRAPH TO THIS ORDER:

BE IT RESOLVED, THAT ON February, 15, 2014, a meeting of the Board of Directors was held pursuant to legal notice and that the Officer's signature appearing on this Consent Order, executed in Case No. 2014000877 on behalf of this Corporate Respondent, is duly authorized, empowered and directed to execute the Consent Order on behalf of the Corporation and is further empowered to execute any other documents necessary to fulfill the intent of the Consent Order.

IN WITNESS WHEREOF, I have hereunto set my HAND AND SEAL of this Corporation this 12 day of MARCH, 2014.


CORPORATE SECRETARY'S SIGNATURE

CORPORATE SEAL

REPRESENTATIVE/ATTORNEY

(Address, Telephone)

CONTACT PERSON

(Address, Telephone)

DONE AND ORDERED in Tallahassee, Leon County, Florida this 2nd day of April, 2014.



Ronnie Whitaker

Ronnie Whitaker, Director
Division of Florida Condominiums,
Timeshares, and Mobile Homes
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Consent Order has been furnished by U. S. Certified Mail to Timothy J. Sloan, Registered Agent of Respondent, 427 McKenzie Ave., Panama City, FL 32401 this 9th day of April, 2014.

Brendan M. Nichols
AGENCY CLERK'S OFFICE

Copies furnished to:

Ms. Susan E. Lewis
Financial Examiner/Analyst II
Bureau of Compliance – Timeshare Section

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

IN RE: PETITION FOR ARBITRATION

Susan Hart
Petitioner,

Filed with
Arbitration Section

OCT 20 2015

v.

Div. of FL Condos, Timeshares & MH
Dept. of Business & Professional Reg.

Case No. 2015-02-9975

The Summit Owners Association, Inc.¹,

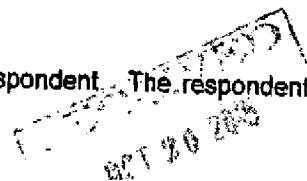
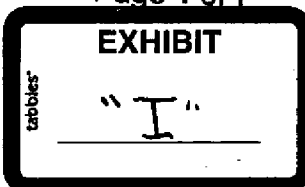
Respondent.

ORDER DETERMINING JURISDICTION

On July 7, 2015, Susan Hart (Petitioner), without benefit of counsel, filed a request for expedited determination of jurisdiction and a petition for mandatory non-binding arbitration naming as Respondent, Summit Owners Association, Inc. (the Association). Petitioner is the owner of Unit 419 of The Summit, a Condominium. At issue is whether the Association improperly materially altered the common elements without the required approval of the Association membership by painting a small portion of the building a different color, installing a small fountain and hanging two lattice work decorations and a "sunburst/wagonwheel" on the exterior wall of the building.

Pursuant to Rule 61B-45.016, Florida Administrative, the Association was permitted, by Order entered on July 15, 2015, to file a response on the issue of whether the dispute is subject to arbitration. After a request for extension of time was granted, the Association filed a response on August 6, 2015.

¹ The original petition named "Summit Owners Association, Inc." as the respondent. The respondent name has been corrected as suggested by the respondent.



On September 30, 2015, a telephonic case management conference (CMC) was held with both parties in attendance. On October 1, 2015, an Order Following Case Management Conference was entered; the Order required the parties to make certain filings. On October 14, 2015, the parties made their filings in compliance with the October 1, 2015 Order.

The parties agree that there are 449 units in the condominium. The parties also agree that 32 of the units are operated as timeshare units, and that the remaining 417 units are residential condominium units.

Jurisdiction

In its response to the July 15 Order and the October 1, 2015 Order, the Association argues that because the condominium is a timeshare condominium, the disputes alleged in the petition are not subject to arbitration under section 718.1255, Florida Statutes. In support of its argument, the Association cites to *Cohen v. Summit Owners Ass'n, Inc.*, Arb. Case No.00-1867, Final Order of Dismissal (Jan. 26, 2001), involving the same Association as the instant case. In *Cohen*, the petitioner alleged that the Association failed to properly conduct an election of directors by violating Section 718.112(2)(d)3., Florida Statutes. The arbitrator dismissed the petition because Section 718.112(2)(d)3. specifically states the provisions of the subparagraph do not apply to timeshare condominium associations.²

² Section 718.112(2)(d)3. is now 718.112(2)(d)4. That provision reads as follows:

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

For its position in the instant case, the Association quotes dicta from *Cohen* which states:

In addition, timeshare condominium association disputes are not subject to arbitration pursuant to Section 718.1255, Florida Statutes. The arbitration program grew out of an exhaustive review of condominium problems in Florida by the Condominium Study Commission. The commission focused on problems attendant to traditional condominium associations, as contrasted to timeshare condominium associations, and recommended creation of a program of mandatory arbitration for unit owners and condominium associations (Final Report of the Condominium Study Commission, February 1991). In addition, the Vacation Plan and Timesharing Act (Chapter 721, Florida Statutes) contains no provision requiring arbitration pursuant to Section 718.1255, Florida Statutes, as does the Condominium Act (See Sections 718. 112(2)(k) and 718.1255, F.S.) and the Cooperative Act (See Sections 719. 106(1)(l) and 719.1255, F.S.). Accordingly, the motion to dismiss is GRANTED, and the petition for arbitration is DISMISSED.

While the Association specifically was invited by this arbitrator in the July 15, 2015 Order requiring the Association to file a response to the Petitioner's Request for Expedited Determination of Jurisdiction to address *Westgate Blue Tree Orlando, LTD. v. Blue Tree Resort at Lake Buena Vista Condo. Ass'n, Inc.*, Arb. Case No. 2004-03-9446, Summary Final Order (Jan. 7, 2005) (hereinafter *Blue Tree*), the Association chose not to accept the invitation and relied solely on *Cohen* for its position that the instant dispute is not subject to arbitration. *Cohen* does not support the Association's position, because the portion of the decision relied on by the Association is mere dicta. The holding in the case denied jurisdiction in an election dispute based upon specific statutory language in what is now section 718.112(2)(d)4.

In *Blue Tree*, Westgate Blue Tree Orlando, LTD. was the developer of a condominium timeshare resort. The respondent was the condominium association governing the resort which was under the control of the owners other than the

developer. The dispute in *Blue Tree* was whether the Association, without having a unit owner vote, could undertake the construction of an administrative/check-in building on the common elements. The petitioner argued that the building would be a material change to the common elements in violation of section 718.113(2), Florida Statutes, if the unit owner vote was not taken.

The arbitrator took jurisdiction over the dispute, noting that Chapter 721, Florida Statutes, outright exempts certain timeshare condominiums from certain portions of Chapter 718. However, the arbitrator further noted that there is no outright exemption in section 721.03, Florida Statutes, for a timeshare plan or association from either section 718.113(2), relating to the requirements for approval of a material alteration or substantial change to the common elements, or section 718.110(4), relating to the requirements for approval of certain amendments to the declaration.³

The Association offers two other cases in support of its position, *The Charter Club of Naples Owners' Ass'n, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 02-5360, Order Denying Motions to Dismiss (Sept. 17, 2002) and *The Hollywood Beach*

³ The arbitrator in *Blue Tree* then quotes Section 712.13(8), Florida Statutes, as follows:

(8) Notwithstanding anything to the contrary in s. 718.110, s. 718.113, s. 718.114, or s. 719.1055, the board of administration of any owners' association that operates a timeshare condominium pursuant to s. 718.111, or a timeshare cooperative pursuant to s. 719.104, shall have the power to make material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative without the approval of the owners' association. However, if the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, such action by the board of administration must be approved by a majority of the owners of such residential units. Unless otherwise provided in the timeshare instrument as originally recorded, no such amendment may change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a member of the owners' association shares the common expenses, unless the record owners of the affected units or timeshare interests and all record owners of liens on the affected units or timeshare interests join in the execution of the amendment.

(underlined emphasis in the original; emphasis in italics added). This statute remains in effect, and the language in italics appears particularly relevant to the case at hand.

Resort Rental Program, LLC v. The Hollywood Beach Resort Condo. Ass'n, Inc., Arb. Case No. 2104-02-7659, Final Order of Dismissal (July 11, 2014). While the arbitrator in *Charter Club* found "[t]he holding in Cohen convincing," the arbitrator found *Cohen* did not control in the recall dispute at issue in *Charter Club* and went on to render a Summary Final Order in the recall dispute. Again, the Association is relying on dicta, and not on the holding, in the case it is offering in support of its position.

Finally, the Association points to *Hollywood Beach Resort* in support of its position. In *Hollywood Beach Resort*, the petitioner rental program filed a petition naming the condominium association and the master association as the respondents. Ultimately, all of the disputes alleged were dismissed for lack of jurisdiction. Citing *Cohen*, the arbitrator found that because all of the units subject to the master association were timeshare units and certain commercial activities, the arbitrator lacked jurisdiction. Under the Declaration of Condominium for all of the condominium units in the development, none of the condominium units were designated as residential units, rather all such units could be leased, rented, subleased or sub-rented, without restriction. Thus, the *Hollywood Beach Resort* is distinguishable from the case at hand because in *Hollywood Beach Resort* there were no residential condominium units in the development, while in the case at hand nearly all of the units are residential condominium units.

Petitioner, in support of her position that the instant case is subject to arbitration, offers the case of *Potts v. Shell Island Beach Club Ass'n, Inc.*, Arb. Case No. 2009-02-0900, Order on Motion to Dismiss (July 2, 2009). The primary significance of *Potts* for purposes of the instant case is that it also rejects *Cohen* as a basis for denying Section

718.1255 arbitration jurisdiction in a dispute involving a timeshare condominium. Given the foregoing, the arbitrator finds that the dispute alleged in the petition is subject to arbitration under Section 718.1255(1).

Breach of Fiduciary Duty

In its response to the October 1, 2015 Order Following Case Management Conference, the Association argues as follows:

Even if the arbitrator rules that Section 718.1255(1)(a) of the Florida Statutes does not preclude arbitration, the Petitioner also alleges a breach of fiduciary duty that is specifically excluded from the defined term of "dispute" and thus not subject to non-binding arbitration.

While Section 718.1255(1) specifically does exclude from arbitration disputes involving a breach of fiduciary duty,⁴ the Association fails to identify specifically where in the petition Petitioner alleges breach of fiduciary duty, and the arbitrator is unable to identify any such allegation. Therefore, this argument is without merit. Accordingly, it is

ORDERED:

⁴ Section 718.1255(1), Florida Statutes, provides as follows:

(1) DEFINITIONS.—As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document to:

1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.
2. Alter or add to a common area or element.

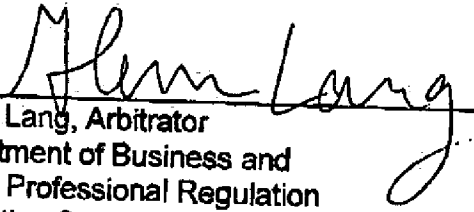
(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.
2. Give adequate notice of meetings or other actions.
3. Properly conduct meetings.
4. Allow inspection of books and records.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The dispute alleged in the petition is subject to arbitration under section 718.1255(1), Florida Statutes.⁵

DONE AND ORDERED this 20th day of October, 2015, at Tallahassee, Leon County, Florida.



 Glenn Lang, Arbitrator
 Department of Business and
 Professional Regulation
 Arbitration Section
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 Tallahassee, Florida 32399-1030
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Copy furnished by facsimile, where available, and by U.S. Mail to:

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⁵ A separate Order Requiring Answer has been entered simultaneously with the Order entered herein.