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

IN RE: PETITION FOR ARBITRATION

CELESTE RENEE VEZOLLES,

Petitioner,

v. **Case No. 2007-04-9865**

SUNSHINE BAY CONDOMINIUM
ASSOCIATION, INC,

Respondent.
_____/

SUMMARY FINAL ORDER

Procedural History

On August 24, 2007, Celeste Renee Vezolles, (the "Petitioner") filed a petition for non-binding arbitration naming Sunshine Bay Condominium Association, Inc., ("Respondent or Association") as the Respondent. An Order Requiring Answer was filed on September 10, 2007, to which Respondent filed an answer on September 21, 2007. This order is entered accordingly.

Statement of Issue

Whether the Respondent has violated the Declaration of Condominium and the Governing Documents of the Sunshine Bay Condominium Association by requiring Petitioner to provide an indemnification agreement before the Association will approve or vote on the installation of a central air conditioning system for Petitioner's unit, where the system will affect the common elements.

Findings of Fact

1. Sunshine Bay Condominium Association, Inc., is the legal entity responsible for the maintenance and operation of Sunshine Bay, a condominium subject to chapter 718, Florida Statutes.

2. The Petitioner is a unit owner and member of the condominium association.

3. Petitioner has requested permission from the Board to install a central air conditioning system (HVAC) in her unit.

4. The installation of the HVAC would require the installation of piping through the common element walls and the installation of an air handler on the common element roof of the building.

5. An indemnification agreement is required as leaks, electrical problems and/or installation problems could expose other common elements to possible water related damage or lead to other damage to common elements or areas.

6. Petitioner refuses to sign an indemnification agreement before beginning the project.

7. Petitioner has requested access to a number of the Association's records. This access was granted by the Association and Respondent has not denied Petitioner access.

Conclusions of Law

The Division has jurisdiction over this matter pursuant to section 718.1255, Florida Statutes. Section 10 of the Declaration of Condominium places the responsibility of maintaining the common elements on the Association. Section 11(c) of the

Declaration of Condominium states that: “There shall be no material alteration or substantial additions to the common elements, except as the same are authorized by the Board of Directors and ratified by the affirmative vote of members holding no less than 66 2/3% of the total votes of the Association.”

The Petitioner proposes that she be allowed to install piping through the common area walls as well as install an air handler on the common element roof. This is a material or substantial alteration to the common elements which, according to Section 11(c) of the Declaration, requires the authorization of the Board as well as the vote of the members of the Association. *See High Point of Delray West Condo. Ass’n v. Sharwell*, Arb. Case No. 2003-06-2857, Summary Final Order (August 5, 2003)(addition of a telephone line to the outside of a unit was found to violate provisions prohibiting the alteration of the condominium buildings or common elements), *New Hampton at Century Village Condo. III Ass’n, Inc. v. Brocato*, Arb. Case No. 98-3187, Final Order on Default (May 27, 1998)(where declaration prohibited any alteration to the unit without association approval and any modification or installation of electrical wiring or any material puncture or break in the boundaries of the unit, installation of a central air conditioning system without board approval which involved cutting through a fire safety wall clearly violated the provision).

When analyzed under the business judgment doctrine the Board has the duty to determine how and under what circumstances this system should be installed. The Petitioner has chosen to challenge the Board’s exercise of discretion in an area in which the Board’s judgment has traditionally received a large measure of deference due to the operation of this doctrine. Following this doctrine, a judge or an arbitrator is required to

afford the Board's judgment wide latitude where the subject area in which the Board is operating is found to be particularly infused with day to day business judgment that can only be exercised by the elected Board. The Board is permitted discretion in making decisions about the day-to-day operations of the condominium, including maintenance of common elements. *Hopkins v. Tamarynd Place Condo., Inc.*, Case No. 2004-02-7664, Summary Final Order (November 24, 2004).

Since the Association is not denying the Petitioner the ability to have the system installed they are not violating any of the applicable condominium documents. The Association has given the Petitioner options in accordance with the rules and applicable condominium documents in order for her to have the system installed.

Therefore, based upon the foregoing, it is ORDERED that Petitioner's request for relief is DENIED.

DONE AND ORDERED this 2nd day of October, 2007, at Tallahassee, Leon County, Florida.

_____

Michael B. Golen, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Trial *de novo* and Attorney's Fees

This decision shall be binding on the parties unless a complaint for trial *de novo* is filed in accordance with section 718.1255, Florida Statutes. As provided by section 718.1255, Florida Statutes., the prevailing party in this proceeding is entitled to have the other party pay reasonable costs and attorney's fees. Any such request must be filed in accordance with Rule 61B-45.048, F.A.C.

Copies furnished to:

Celeste Renee VeZolles
1241 13th Street, Unit 2
Miami Beach, Florida 33139

Donna Nortell
1900 Sunset Harbour Drive
Miami Beach, Florida 33139