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

IN RE: PETITION FOR ARBITRATION

Charles Pintozzi,
Rose Pintozzi and
Rose M. Pintozzi, TR

Petitioners,

v. **Case Nos. 2013-02-5382**
2013-02-7362

Mayan Towers Condominium I, Inc.,

Respondent.

_____/

SUMMARY FINAL ORDER

Statement of the Issue

The issue in this case is whether Petitioners are authorized to reinstall the wrap-around hurricane shutter tracks and hardware, and ultimately the hurricane shutters, on the balconies of their two units.[1]

Procedural History

On June 17, 2013, Petitioners filed a Petition for Mandatory Non-Binding Arbitration naming Mayan Towers Condominium I, Inc. (the Association) as Respondent. By Order entered on June 28, 2013, Petitioners were directed to file an Amended Petition, and they complied on July 2, 2013.

By Order entered on July 31, 2013, Arbitration Case Numbers 2013-02-5382 and 2013-02-7362 were consolidated, and a telephonic Case Management Conference

[1] In their memorandum of law, Petitioners' suggest that the issue is, "Whether the Petitioners have a right to have any hurricane shutters under the applicable statute in effect in 2012, Section 718.113, Florida Statutes."

(CMC) was scheduled. On August 16, 2013, Petitioners filed a motion to conduct discovery, and on the same day, they filed affirmative defenses to the Association's Answer. The CMC was held on August 23, 2013.

On August 26, 2013, an Order After Case Management Conference was entered. On October 4, 2013, the parties filed their memoranda of law as required by the August 26, 2013 Order.[2]

Findings of Fact

1. Within Mayan Towers Condominium I, Petitioners Charles Pintozzi and Rose Pintozzi own Unit 610 and Petitioner Rose M. Pintozzi, TR, owns Unit 500.

2. The Association is the corporate entity responsible for the operation of Mayan Towers Condominium I Condominium.

3. The time line and related findings based thereon are as follows:

DATE	SIGNIFICANT EVENTS
6-15-06	Minutes of the Association's Board of Directors (board) meeting on this date show the Board approved Petitioners' request to install hurricane shutters on their Units 500 and 610 around the railing. The minutes further state, "A provision included requires any owner of an apartment where shutters are installed to cover the cost of repairs to floor and ceiling of the balcony if tracks or shutters cause damage." Petitioner Charles Pintozzi was a member of the board at the time, but abstained from the vote on the motion. Petitioners installed wrap-around shutters on their units. There is no indication any other unit owner in the condominium sought approval for, or installed, wrap-around shutters.
5-4-11	Board adopts "Hurricane/Storm Protection Devices Policy." The Policy provides: All new and previously installed shutters will be governed by the following: 1. Shutters are allowed to be deployed during the official hurricane season, from June to November. 2. All owners will be required to maintain their shutters in a clean, well-maintained appearance. 3. Shutters shall be flush mount to the building: no new shutters will wrap the outer portion of any balcony. 4. The BOD reserves the right to require that shutters installed prior to June 1, 2011 be brought in compliance to this policy under the following circumstances: a. Sale or change of unit ownership

[2] On the same day, the Association filed "Respondent's Supplemental Legal Memorandum."

	b. Removal of shutters c. Replacement of shutters
2-13-12	Minutes of the Association's membership meeting on this date show approval of an "assessment of $2.1 million to address the building's longstanding problems with water intrusion through our sliding glass doors and windows. In addition, necessary concrete repairs followed by a new building painting are also included in the project."
2-21-13	Board approves moving forward with the project. The minutes state: "A number of owners' concerns will be addressed at the Thursday meeting with the three contractors [vying for the project]. Among them are: . . . Hurricane shutters: Existing shutters will be taken down and stored safely. Replacement is the responsibility of the owner."
3-30-12	Board "officially" notifies members of the project. Attached to the notice is a one-page document entitled, "Recommended Unit Preparation Procedures for the Concrete Restoration & Window and Door Replacement." Within that document is the following statement: 2. Hurricane shutters will be removed as necessary. The new doors and windows are totally weather proof and the shutters will not be needed. **We will plan to dispose of the shutters unless we get written instructions from the unit owner.** If for some reason a unit owner wants to keep their shutters, it will be their responsibility and expense to store and re-install them. Any shutters that are re-installed must meet the current Code and Association shutter policies. (emphasis in the original).
4-12-12	Notice of Commencement filed with the Palm Beach County Clerk of Court describing the improvement as "Replace windows and sliding glass doors with new impact rated windows and doors."
4-16-12	Notice of Commencement filed with Palm Beach County Clerk of Court describing improvement as "CONCRETE RESTORATION."
1-16-13	Email from the Association's property manager to Petitioners stating: As per my conversation with Mr. Pintozzi (Chuck) this morning . . . , I am requesting you immediately stop your installers from re-installation of your storm shutters on the balcony of unit #500. As previously discussed and reiterated again today [,] the balcony deck coating and building painting in this area of the project have not been completed.
1-16-13	Email from the Association's property manager to the board members indicating that after Mr. Pintozzi had been asked to stop the installation, Mr. Pintozzi instructed the workers to begin with the installation of the shutters on unit #610, and they were now doing so. With respect to Petitioners' units, the parties agreed at the August 23, 2013 Case Management Conference that the concrete restoration work on Petitioners' units involved the removal of Petitioners' hurricane shutters, supporting tracks and related hardware on the balcony and adjacent exterior building wall of each of Petitioners' units and the filling of the holes. Thereafter, Petitioners either drilled new holes or used the existing filled holes and reinstalled the hurricane shutter tracks and hardware.
1-21-13	Letter from a licensed professional engineer with the Association structural engineer and project management company stating: I have been requested to prepare this letter to discuss the reinstallation of hurricane shutters to the exterior of the building after installing hurricane rated, large missile impact (LMI) glazing. The Mayan Tower South Association is currently undergoing a comprehensive concrete restoration, painting, and glazing replacement project, which will address the long-term moisture infiltration and associated deterioration issues that have negatively impacted the building for many years. In fact, the Association previously undertook a majority restoration and glazing replacement project approximately twenty-two (22) years ago.

	. . . As a direct result of the glazing systems poor performance, there has been widespread deterioration and degradation of the interstitial areas between the interior and exterior components of the structure. The ongoing project has addressed and repaired the conditions which have only come to light once the old glazing components was [sic] removed, exposing the hidden decay. The Plaza sliding glass doors (SGD) and IWC windows are a significant upgrading and/or improvement from the previously installed products. They have significantly increased the ability of the building to withstand hurricane force winds and wind driven rain. In addition, all the installed products, being rated for "Large Missile Impact" (LMI), have the ability to provide a much higher level of protection from wind born debris, associated with hurricane and/or windstorm events. These products do not require additional and/or alternative impact apparatus to be installed to be able to provide protection against impact of windborne debris. Although hurricane rate [sic] glazing can withstand the wind loading associated with windstorm and/or hurricane event, these products can be susceptible to moisture infiltration. Essentially the hurricane rated glazing 'will bend but not break", thus not compromising the integrity of the structure in whole, but with the "bending" during intense wind loading events, there comes an increased probability of moisture infiltration. Hurricane shutters can provide additional protection against moisture infiltration through the windows and SDG's by minimizing and/or restricting the direct impact of rainfall on the glazing products themselves. With that said, and in light of the Association's current concrete restoration project, there can be negative long-term impact[s] of installing hurricane shutter[s] and that is [sic] associated with the aesthetic appearance and the potential for degradation of the reinforced concrete element to which they are anchored. The mounting and/or anchorage requirements dictate the fasteners be installed at intervals that do not exceed eight to ten inches, which creates multiple locations and/or penetrations for the potential of the infiltration of salt laden moisture. By now the Association should have fully [sic] and complete understanding of the long-term ramifications of salt laden moisture into the concrete lattice.
1-28-13	Email from the Association 's property manager to Rose Pintozzi stating, "I have been asked to notify you and request that you do not reinstall the shutters on your unit #500 until such time [as] a determination has been made by the Board of Director[s] to allow or deny any installation of shutters on the building."
2-5-13	The minutes of the Board meeting on this date show the board adopted a new shutter policy, "The board approved a motion providing that unit owners will not be allowed to attach anything non-structural to the exterior of the building, including but not limited to shutters, satellite dishes, tiles on balcony decks and other similar items."
2-15-13	Counsel for the Association wrote a letter to Petitioners stating that based upon the new 2-5-13 shutter policy, Petitioners may not reinstall their hurricane shutters.
2-22-13	Email from the Association's property manager to Rose Pintozzi informing Petitioners that reinstallation of shutters on unit #500 was not approved and requesting that Petitioners cease the reinstallation. Petitioners declined the request, whereupon the property manager informed Petitioners that the Association would remove the shutters from both units.

4-1-13	The Association's property manager attached to an email to Petitioners a memorandum containing a "Release of Shutters" form. The release form informs Petitioners that on March 25, 2013, the Association commenced, and on March 26, 2013, completed, "shutter removals [sic] and repairs of [sic] holes created due to the reinstallations [sic] of these shutters on the balcony decks and balcony overhead sections of your units #500 & #610 . . . .

4. The Association's Declaration of Condominium (Declaration) dates to 1969. Under the terms of the Declaration, the balconies and walls of the building are common elements, and the Association is responsible for their maintenance.[3]

---

[3] The Declaration defines "Common Elements" as:

> D. Common Elements. The common elements include the land and all other parts of the condominium not within the apartments and includes the limited common element of assigned parking. Common elements shall include the tangible personal property required for the maintenance and operation of the condominium, even though owned by the Association, as well as the items stated in the Condominium Act. This definition, however, is not to preclude the Association contracting for the maintenance of some or all of the common elements.

There is no separate definition of "Limited Common Elements" in the Declaration.

Section 13 of the Declaration provides:

> 13. MAINTENANCE, ALTERATON AND IMPROVEMENT. Responsibility for the maintenance of the condominium property, and restrictions upon its alteration and Improvement, shall be as follows:
>
> A. Apartments.
>
> (1) By the Association. The Association shall maintain, repair and replace at the Association's expense:
>
> (a) all portions of an apartment, except interior surfaces, contributing to the support of the apartment building, which portions shall include but not be limited to the outside walls of the apartment building and all fixtures on its exterior, boundary walls of apartments, floor and ceiling slabs, load-bearing columns and load-bearing walls;
>
> . . .
>
> B. Common Elements.
>
> (1) By the Association. The maintenance and operation of the common elements and limited common elements shall be the responsibility of the Association and a common expense
>
> (2) Alteration and Improvement. After the completion of the improvements included in the common elements contemplated by this Declaration there shall be no alteration or further improvement of the real property constituting the common elements without prior approval in writing by the owners of not less than 75% of the common elements except as provided by

Conclusions of Law

Pursuant to Section 718.1255, Florida Statutes, the undersigned has jurisdiction over the parties to, and the subject matter of, this dispute. If no disputed issues of material fact exist, the arbitrator may enter a summary final order. Fla. Admin. Code R. 61B-45.030.

Petitioners' primary argument is that the Association's February 5, 2013 shutter policy prohibiting a unit owner from attaching anything nonstructural to the exterior of the building, including shutters, is contrary to Section 718.113(5), Florida Statutes (2012).[4] In other words, Petitioners argue that by the terms of the statute they are

---

> the Bylaws. Any such alteration or improvement shall not interfere with the rights of any apartment owner without their consent.

[4] The statute provides:

> (5) Each board of administration shall adopt hurricane shutter specifications for each building within each condominium operated by the association which shall include color, style, and other factors deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code.
>
> (a) The board may, subject to the provisions of s. 718.3026 [relating to contracts for products and services; in writing; bids; exceptions], and the approval of a majority of voting interests of the condominium, install hurricane shutters, impact glass or other code-compliant windows, or hurricane protection that complies with or exceeds the applicable building code. However, a vote of the owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, or other code-compliant windows are the responsibility of the association pursuant to the declaration of condominium. If hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection which complies with or exceeds the current applicable building code has been previously installed, the board may not install hurricane shutters, hurricane protection, or impact glass or other code-compliant windows except upon approval by a majority vote of the voting interests.
>
> (b) The association is responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection authorized by this subsection if such hurricane shutters or other hurricane protection is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters or other hurricane protection authorized by this subsection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.
>
> (c) The board may operate shutters installed pursuant to this subsection without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property and association property. The installation, replacement, operation, repair, and maintenance of such shutters in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.

entitled to have redundant hurricane protection in the form of hurricane shutters in addition to the new impact rated windows and sliding glass doors that have been installed. For purposes of this case, there is no need to engage in statutory construction.[5]

> (d) Notwithstanding any other provision in the condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane shutters by a unit owner conforming to the specifications adopted by the board.

While not cited by either party, Section 718.115(1)(e), Florida Statutes, provides:

> Notwithstanding s. 718.116(9), and regardless of whether or not the declaration requires the association or unit owners to maintain, repair, or replace hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection, a unit owner who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of code-compliant hurricane protection that comply with the current applicable building code shall receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit. However, such unit owner remains responsible for the pro rata share of expenses for hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5) and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection

[5] Even if such were necessary, Petitioners' argument would fail. Petitioners rely on *Yacht Harbor Condo. Ass'n, Inc. v. Seikman*, Arb. Case No. 94-0167, Summary Final Order (Nov. 2, 1994) and *Mueller v. La Renaissance Condo. Ass'n, Inc.*, Arb. Case No. 96-0193, Final Order (Feb. 23, 1998). *Yacht Harbor* is inapposite because that case involved the closing of hurricane shutters already on the building, not re-installing shutters after other hurricane protection has been installed. In *Mueller,* the petitioner owned shutters before the Association adopted a rule permitting only accordion type shutters. In the course of a balcony restoration project, the Association removed from the balcony the hardware for the petitioner's shutters and did not reinstall it and required the petitioner to install accordion type shutters. Requiring the petitioner in *Mueller* to purchase a different type of shutter is distinguishable from the instant case. In the instant case, Petitioners are not being required to purchase different hurricane shutters, rather they are being prohibited from reinstalling hurricane shutters after the Association has installed new impact rated windows and doors.

Petitioners also attempt to distinguish all of the cases cited by the Association. In *Ortega v. Mirador 1200 Condo. Ass'n, Inc.*, Arb. Case No. 2012-02-5636, Final Order (Feb. 5, 2013), one of the issues was whether the Association improperly authorized the installation of impact windows on the first floor of the condominium without unit owner approval. The Association removed the accordion shutters and windows and doors on the first floor of the condominium and installed impact glass windows. In contrast, the membership in the instant case approved the installation of new impact rated windows and

Over time, the Association has changed its hurricane shutter policy. In 2006, when the board approved Petitioners' installation of wrap-around shutters on the balcony of Petitioners' units 500 and 610, the Association apparently had no hurricane shutter policy. In May of 2011, the Association adopted a hurricane shutter policy. That policy addressed Petitioners' situation as follows:

> All new and previously installed shutters will be governed by the following:
> . . .
> 3. Shutters shall be flush mount to the building: no new shutters will wrap the outer portion of any balcony.
> 4. The BOD reserves the right to require that shutters installed prior to June 1, 2011 [which would include Petitioners shutters installed in 2006] be brought in compliance to this policy under the following circumstances:
>
> a. Sale or change of unit ownership
> b. Removal of shutters
> c. Replacement of shutters

Thus, if Petitioners' shutters were removed, Petitioners could be prohibited from reinstalling their wrap-around shutters. The policy is silent with respect to what might trigger the "removal of shutters" provision.

In February 2012, the Association's membership approved replacement of windows and sliding glass doors in the condominium with new impact rated windows and doors. The membership also approved restoration of the building's concrete. The parties agree that the concrete restoration work on Petitioners' units involved the

---

doors and the concrete restoration. Petitioners also erroneously argue that hurricane protection on individual units does not serve to protect the common element building within which the units are located.

In *Bennett v. Solamar Condo. Ass'n, Inc.*, Arb. Case No. 01-2207, Final Order (Jan. 2, 2002), the arbitrator denied the petitioners request to install accordion hurricane shutters on the perimeter of their balcony. The Association's hurricane shutter specifications required roll downs on the building face. The Association had installed accordion shutters on the building's atrium openings. Petitioners in the instant case ignore dicta in *Bennett* wherein the arbitrator indicated that by the adoption of one kind of specification for the units, the Association "has prohibited all other styles." Such language runs directly counter to Petitioners' argument that they are entitled to redundant hurricane protection in the form of hurricane shutters, even though the Association has installed new impact rated windows and doors in all units in the building. Petitioners remaining attempts to discredit the other cases cited by the Association also are without merit.

removal of Petitioners' wrap-around hurricane shutters, supporting tracks and related hardware on the balcony and adjacent exterior building wall of each of Petitioners' units and the filling of the holes. Thus, Petitioners' wrap-around shutters were removed, and under the May, 2011 hurricane shutter policy, Petitioners could only install shutters mounted flush on the building. In violation of this policy, Petitioners either drilled new holes or used the existing filled holes and reinstalled their wrap-around hurricane shutter tracks and hardware, and the shutters.

In February 2013, the board adopted a new shutter policy. That policy provides that unit owners will not be allowed to attach anything non-structural to the exterior of the building, including, but not limited to, shutters. Thus, under either the May, 2011 hurricane shutter policy or the February, 2013 policy, Petitioners cannot reinstall their wrap-around hurricane shutter tracks and hardware, and shutters.

Based upon the foregoing, it is **ORDERED**:

Petitioners may not reinstall wrap-around hurricane shutters, supporting tracks and related hardware on the balcony and adjacent exterior building wall of each of Petitioners' units #500 and #610.

DONE AND ORDERED this 11th day of December, 2013, at Tallahassee, Leon County, Florida.

_____

Glenn Lang, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1030
Phone: 850-414-6867; FAX: 850-487-0870

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 Fla. Admin. Code R. 61B-45.048.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by facsimile and by U.S. Mail to the following persons on this 11th day of December 2013:

John J.R. Skrandell, Esq.
Jerome F. Skrandel, P.A.
300 Prosperity Farms Road, Suite D
North Palm Beach, Florida 33408
Facsimile: 561-863-1606
Attorneys for Petitioners

David W. Craft, Esq.
David W. Craft, P.A.
3418 Poinsettia Ave
West Palm Beach, Florida 33407
Facsimile: 561-844-6267
Attorney for Respondent

_____
Glenn Lang, Arbitrator