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

IN RE: PETITION FOR ARBITRATION

VILLA VALENCIA CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. **Case No. 2013-04-2076**

ELIAV JECOBY,

Respondent.
_____/

SUMMARY FINAL ORDER

Relevant Procedural History

On October 7, 2013, Villa Valencia Condominium Association, Inc. (the Association) filed a petition for arbitration naming Eliav Jecoby as Respondent. The Association's petition seeks an Order requiring Respondent to provide the Association a key to his unit to provide access to his unit and to permit the Association to perform emergency maintenance on the common elements.

On December 16, 2013, Respondent filed an Answer alleging violations of the federal and state Fair Housing Acts. Respondent alleges it is his sincerely held religious belief that a non-Jewish person cannot enter his unit without a Jewish person also present due the sacred texts and articles in his unit. On December 18, 2013, the arbitrator entered an order striking Respondent's fair housing claims because the responsibility for deciding such claims does not lie in arbitration pursuant to Section 718.1255, Florida Statutes. On January 6, 2014, Respondent filed proof that Respondent filed a complaint with the proper fair housing agency.

On January 7, 2014, the arbitrator abated the case until the fair housing authority had an opportunity to resolve Respondent's fair housing complaint. On November 25, 2014, the Association filed a copy of the Notice of Determination of No Reasonable Cause entered by the Palm Beach County Office of Equal Opportunity (Fair Housing Agency) on November 14, 2014.

Findings of Fact

1. Villa Valencia Condominium Association, Inc. 2, is the legal entity responsible for the maintenance and operation of Villa Valencia, a Condominium.

2. Respondent Eliav Jecoby is the owner of Unit 128 within Villa Valencia, and a member of the Association.

3. The Association requires that unit owners provide a key to their units so the Association may have access for maintenance and emergency repair purposes.

4. Respondent refused to provide a key because he has a religious belief that a non-Jewish person cannot enter his unit without a Jewish person also being present due to the sacred texts and articles in his unit.

5. The Association has agreed to accommodate Respondent's religious beliefs by giving notice of non-emergency maintenance so he may have a Jewish person present.

6 The Association is still requiring a key so that it may access the unit in case of an emergency. Respondent has refused to provide a key.

7. In his answer, Respondent alleged a violation of the Fair Housing laws, which was struck by order of the arbitrator. Thereafter, the Fair Housing Agency

determined there was no violation of the fair housing laws by requiring Respondent to produce a key for access for emergencies.

Conclusions of Law

The Division has jurisdiction over this matter pursuant to Section 718.1255, Florida Statutes. Rule 61B-45.030, Florida Administrative Code, requires entry of a Summary Final Order when no disputed issues of material fact have been raised by the pleadings.

The authority of an Association to enter a condominium unit without the owner's permission is based upon Section 718.111(5), Florida Statutes, which provides:

> (5) RIGHT OF ACCESS TO UNITS. — The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to common elements or to a unit or units.

The interest of Respondent to protect his property behind the locked door of his unit must yield to the need for the Association to protect condominium property. The Declaration put Respondent on notice that condominium property also lies behind the locked door to his unit, including walls, pipes, wires, conduits and utility lines.

It is a basic principle of condominium law that, by choosing to live in a condominium, individual unit owners give up certain freedoms and accept certain restrictions upon rights which could be expected in separate, privately-owned property. *Woodside Village Condo. Ass'n, Inc. v. Jahren*, 806 So. 2d 452 (Fla. 2002); *Hidden Harbour Estates, Inc. v. Norman*, 309 So. 2d 180 (Fla. 4th DCA 1975). The statute provides two broad purposes for access: for maintenance or to prevent damage.

Cypress Isle at the Polo Club Condo. Ass'n. Inc. v. Shelton, Arb Case No. 98-4090 (July 22, 1998).

Use of the word "irrevocable" emphasizes the legislative intent that the right of access cannot be limited by governing documents of a condominium or by a negotiated condition in the sale of units. Access will be allowed even when a unit owner has given a written warning that the association should not enter a unit. *See Hidgon v. Seaspray Condo. Ass'n, Inc*., Arb. Case No. 96-0430, Final Order (March 24, 1998).

A key may be required because the right of access is for the protection of all units within a building, and the owner of one unit may not be available to give permission at the time of an emergency. See *Costa Bella Association, Inc. v. Scuteri*, Arb. Case No. 02-4624, Final Order (June 7, 2002) (in light of the irrevocable nature of the right of association access, numerous defenses have been considered and rejected, including: distrust of association personnel, fear that property will be damaged or stolen by persons gaining access, and even the claim that the owner keeps national defense secrets secured in his unit). A common type of emergency occurs when a plumbing leak in one unit causes damage to another unit or to the common elements. *See Oceanview Towers Condo. Ass'n, Inc. v. Diaz*, Arb. Case No. 2006-01-6632, Final Order (January 3, 2007).

In general, issues of the timing of the entry and notification to the owners are a function of good business judgment, prudence, and civility, which are concepts that resist further enunciation and definition in the case law. *Higdon, supra*. The fact that the statute, case law and governing documents do not attempt to define emergencies

demonstrates the futility of an effort to specify unexpected events or foreseeable events happening at unexpected times.

Respondent's defense that the Association has not met his conditions for entry is invalid. An impermissible denial of access occurs where a unit owner seeks to place conditions upon the association's access to his or her unit. *Park Lake Towers Condo. Ass'n, Inc. v. Halley*, Arb. Case No. 2003-08-3367, Amended Final Order on Motions for Attorney's Fees (January 28, 2004)(Where the association sought access to the respondent's unit in order to fix a plumbing assembly, and where the respondent directed that the association would only be permitted access upon providing proof of insurance and a valid building permit, the respondent was held to have denied access to the unit.) Pursuant to Section 718.111(5), Florida Statutes, Respondent must provide the Association a key to his unit without conditions.

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

On or before December 31, 2014, Respondent Eliav Jecoby shall provide the Association a key to his unit.

DONE AND ORDERED this 3rd day of December, 2014, at Tallahassee, Leon County, Florida.

_____

Terri Leigh Jones, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1030
Telephone (850) 414-6867
Facsimile (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 U.S. Mail and facsimile (if provided) to the following persons on this 3rd day of December, 2014:

Karl M. Scheuerman, Esq.
Sach Sax Caplan
660 East Jefferson Street
Suite 202
Tallahassee, FL 32301
Fax: 850-412-0306
Attorney for Petitioner

Eliav Jecoby
50 SE 12th Street, #128
Boca Raton, FL 33432
Respondent

_____
Terri Leigh Jones, Arbitrator