

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

IN RE: PETITION FOR ARBITRATION

**Golden Lakes Village Condominium
Association "A", Inc.,**

Petitioner,

v.

Case No. 2014-02-9188

**Audrey Anderson and
Unknown Occupants,¹**

Respondents.

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FINAL ORDER OF DISMISSAL

On July 11, 2014, Golden Lakes Village Condominium Association "A", Inc. (the Association) filed a petition for mandatory non-binding arbitration naming Audrey Anderson and Unknown Occupants as Respondents. The petition summarizes the violations of the governing condominium documents as follows:

21. Respondent Unknown Occupants, who are under fifty-five (55) years of age, are residing in the Unit along with two children, who are under eighteen (18) years of age, in violation of the Association's age restrictions.

22. Respondent Owner and Respondent Unknown Occupants are violating Petitioner Association's governing documents by keeping a dog within the Unit, allowing the dog to run loose and unleashed throughout the community, allowing more than two (2) persons for each bedroom contained within the Unit, failing to obtain the Association's approval and authorization to allow the Respondent Unknown Occupants to occupy the unit and allowing more than two (2) vehicles to be parked on the Petitioner Association's property.

23. Respondent Unknown Occupants are violating the Petitioner Association's governing documents by violating the age restrictions contained within the governing documents and creating a nuisance and causing disturbances which are a source of annoyance to residents or occupants of Units and interfering with the peaceful possession and proper

¹ Respondents appear as stated in the petition filed.

use of the Condominium Property by causing noises and other disruptive behavior.

24. Respondent Owner is violating the Petitioner Association's governing documents by failing to provide written notice to the Association of the name(s) of any intended guests, the anticipated date of arrival, the anticipated date of the departure and a description of any vehicles to be parked on the property and allowing a car, owned by another individual not residing within the Unit, to be parked in Respondent Owner's assigned parking space.

In its entirety, the petition requests the following as relief:

- a. Respondent Owner cease allowing occupancy of her Unit by other persons in violation of the age restrictions contained in Petitioner Association's governing documents, including but not limited to, requiring the removal of the children residing in the Unit;
- b. Respondent Owner submit a written notice containing the terms of any offer Respondent Owner receives or which it wishes to accept to rent or lease the Unit;
- c. Respondent Owner submit written notice to the Association of the name(s) of any intended guests, the anticipated date of arrival, the anticipated date of the [sic] departure and a description of any vehicles to be parked on the property;
- d. Respondent Owner obtain [Petitioner] Association's approval prior to leasing/renting the Unit or allowing a guest to occupy the Unit for more than thirty (30) days;
- e. Respondent Owner remove the car, owned by another individual not residing within the Unit, that is parked in Respondent Owner's assigned parking space;
- f. Respondent Unknown Occupants vacate the Unit;
- g. Respondent Owner and Respondent Unknown Occupants remove the dog from the community;
- h. Respondent Owner and Respondent Unknown Occupants cease occupying the Unit in violation of the age restrictions contained in Petitioner Association's governing documents;
- i. Respondent Owner and Respondent Unknown Occupants cease allowing more than two (2) persons to occupy a bedroom;
- j. Respondent Owner and Respondent Unknown Occupants cease parking more than two (2) vehicles on Petitioner Association's property; and
- k. Respondent Owner and Respondent Unknown Occupants cease causing unreasonable noises, disturbances and disruptive behavior which are a source of annoyance to residents and occupants of Units and cease causing disturbances that interfere with the peaceful possession and proper use of the Petitioner Association's property.

Paragraphs a., f., h., and i. of the request for relief seek, in effect, eviction of the unknown occupants.

Section 718.1255(1), Florida Statutes, identifies disputes not subject to arbitration 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.

(emphasis added). Where the Association has requested that a unit owner be ordered to remove an occupant, prior arbitration cases have held that the dispute is not eligible for arbitration and have broadly defined the term "tenant" to include friends, family members and other occupants whose rights to occupy a unit exist in the absence of a formal lease or rental agreement. See *Skylake Gardens No. 3, Inc. v. Ramos*, Arb. Case No. 2005-02-9274, Final Order of Dismissal (June 9, 2005); *Sandalfoot OneSouth*

One, Inc. v. Perez, Arb. Case No. 2005-00-1209, Order on Request for Expedited Determination of Jurisdiction (March 9, 2006).

Rule 61B-45.013(4), Florida Administrative Code, provides, “(4) Where a controversy involves both matters eligible and ineligible for arbitration, the arbitrator shall determine by order whether the ineligible matters may properly be severed from the controversy so that the remaining eligible issues may be arbitrated.” Arbitration cases have held that where some of the issues in the arbitration petition within the jurisdiction of the arbitrator pursuant to Section 718.1255(1), Florida Statutes, are intertwined with issues that are not within the jurisdiction of the arbitrator, the petition for arbitration will be dismissed. *See, e.g., Madura v. Lakebridge Condo. Ass’n, Inc.*, Arb. Case No. 2011-04-9793, Final Order of Dismissal (Oct. 25, 2011); *Esch v. Wing South, Inc.*, Arb. Case No. 2009-05-6400, Final Order of Dismissal (May 7, 2010) (where ineligible breach of fiduciary duty by the board by allegedly failing to obtain competitive bids and approving work not in compliance with FAA standards intertwined with notice of meetings and inspection of official records, petition was dismissed); *Cypress Chase Condo. “C” Ass’n, Inc. v. Austin, et al.*, Arb. Case No. 97-0082, Order Dismissing Petition for Lack of Jurisdiction (Aug. 26, 1997) (where ineligible title issue intertwined with noise, unit condition and access issues, petition was dismissed). The heart of the instant case involves eviction which is intertwined with the issues of nuisance noise, notice and approval of leasing, notice of guests, vehicle parking and maintaining a dog. The issues within the jurisdiction of the arbitrator are so intertwined with the issue that is not that judicial economy requires that all of the issues be determined in a single forum.

Therefore, the Association will be permitted to pursue its claims in a court of competent jurisdiction.

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

Arbitration Case Number 2014-02-9188 is DISMISSED, and the Association may seek relief in a court of competent jurisdiction.

DONE AND ORDERED this 17th day of July, 2014, 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

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail, postage prepaid, to the following person on this 17th day of July 2014:

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