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

IN RE: PETITION FOR ARBITRATION

TERESA PETRELLA,

Petitioner,

v. **Case No. 2016-05-3594**

THE WAVE CONDOMINIUM ASSOCIATION, INC.,

Respondent.
_____/

SUMMARY FINAL ORDER

Relevant Procedural History

On November 14, 2016, Petitioner, Teresa Petrella, filed a petition for arbitration against Respondent, The Wave Condominium Association, Inc. (the Association), seeking an Order determining that Petitioner's installation of keypad door locks on the front door of her unit was permissible under the Association's governing documents. The petition alleged that Petitioner's installation of keypad door locks is allowed by Section 19(h) and Section 22 of the Rules and Regulations of the Association.

An Order Requiring Answer was entered November 14, 2016. The Association filed an answer on December 19, 2016. In the answer, the Association requested that the relief sought in the petition be denied. On January 9, 2017, the arbitrator conducted a case management conference. On January 10, 2017, the arbitrator entered an Order After Case Management Conference which required the parties to file briefs on the issue of summary disposition. On February 27, 2017, the parties filed the documents

responsive to the Order After Case Management Conference. This Order is entered after the arbitrator has considered the pleadings and the documents filed by the parties.

Statement of the Issue

Whether Petitioner's installation of keypad door locks on the front door of her unit was permissible under the Association's governing documents.

Findings of Fact

1. Petitioner owns Unit 925 in The Wave Condominium, is a member of its Association and is subject to the Declaration of Condominium and the Rules and Regulations.

2. The Association is the entity responsible for maintenance and operation of The Wave Condominium.

3. Section 3.2(c) of Article 3 of the Association's Declaration provides that the exterior of the unit entrance door is a common area.

4. Section 17.4 of the Association's Declaration states that no unit owner shall cause improvements or changes to the common elements which "in any manner" change the appearance of any portion of the building without the prior written consent of the Association.

5. Section 19(h) of the Association's Rules and Regulations provides:

> No Resident shall paint, decorate, adorn or place signs upon the outside of the Unit, including doors to the Unit except as provided for in Section 17.4 of the Declaration. Mezuzahs may be attached to doorframes. Exteriors of Unit doors shall not be altered except for the installation of a lock or peephole. Installation of flooring must comply with the Declaration and shall not extrude on the Unit door threshold or otherwise cause a non-uniform corridor appearance.

(Emphasis supplied.)

6. Section 22 of the Association's Rules and Regulations provides, in pertinent part:

> Unit owners installing private alarm systems for their Units most notify the Manager in writing prior to installation. Flush-mounted alarm function indicators and keypads are permitted, but security cameras that project into the corridor or outside the unit are prohibited. Residents must register the alarm monitoring company's name and phone number with the Association to allow entry in the case of an emergency. Individual security systems that may be disruptive, in the opinion of the Board, to other Residents are not permitted. Unit Owners are responsible for any costs incurred in removing such systems or modifying them in order to eliminate any disruptions if so determined by the Board.

(Emphasis supplied.)

7. In March of 2011, Petitioner changed the door handle and installed keypad door locks on the exterior entry door to her Unit 925, without the Association's prior written consent.

8. On July 16, 2015, the Association sent Petitioner a letter demanding that the keypad door locks be removed from the door to Petitioner's unit. Additional notifications by the Association concerning the fact that the keypad had to be removed from the door were sent to Petitioner on August 4, 2015; January 5, 2016; March 10, 2016; and May 17, 2016.

9. The petition does not plead or seek relief for selective enforcement, waiver, laches, or running of the statute of limitations.

10. The keypad door locks Petitioner installed changed the appearance of the door to her unit.

Conclusions of Law

The arbitrator has jurisdiction over this matter pursuant to Section 718.1255, Florida Statutes, to determine the authority of the board of directors to require the owner to take action involving the owner's unit or the appurtenances thereto. This Summary Final Order is entered pursuant to Rule 61B-45.030, Florida Administrative Code, which requires the arbitrator to summarily enter a final order if no disputed issues of material fact exist.

The declaration of condominium, which is the condominium's "constitution," creates the condominium and "strictly governs the relationships among the condominium unit owners and the condominium association." *Woodside Village Condominium Ass'n v. McClernan*, 806 So. 2d 452, 456 (Fla. 2002). A declaration of condominium must be strictly construed. *Palm Beach Hotel Condominium Ass'n v. Rogers*, 605 So. 2d 143, 145 (Fla. 4th DCA 1992). Section 3.2(c) of Article 3 of the Association's Declaration provides that the exterior of the unit entrance door is a common area. Section 17.4 of the Association's Declaration states that no unit owner shall cause improvements or changes to the common elements which "in any manner" change the appearance of any portion of the building without the prior written consent of the Association.

In the case at hand, Petitioner changed the door handle and installed keypad door locks on the exterior entry door to her unit, without the Association's prior written consent. The keypad door locks Petitioner installed changed the appearance of the door to her unit.

Petitioner argues that Section 19(h) of the Association's Rules and Regulations permits the unit owner to modify the exterior of the unit's door by the installation of a

lock. There is no doubt that the keypad door locks are, in fact, door locks. The manufacturer's product name is the "Schlage Keypad Lock," product number 23780042. However, the provision in Section 19(h) allowing the modification of the exterior of the unit's door by the installation of a lock must be read *in pari materia* with Section 17.4 of the Declaration prohibiting modifications to the common elements which "in any manner" change the appearance of any portion of the building. If a unit owner replaces a turnkey lock with the same kind of lock, this does not change the appearance of the unit's door. It would not make sense if every time a unit is sold or leased, or if an owner simply wanted to change the lock to their unit, that they be required to obtain written Association approval first. The arbitrator concludes that the intent and purpose of Section 19(h) is to facilitate an owner's changing the turnkey lock on their unit, without changing the appearance of the exterior of the unit's door.

Prior arbitration case law has addressed a fact pattern similar to that of the instant case. In *The Asia Condominium Ass'n, Inc. v. Naranjo*, Arb. Case No. 16-03-8228, Summary Final Order (October 27, 2016), the respondent installed a keyless access/fingerprint lock without the Association's approval. All of the other units used a basic turnkey lock. The arbitrator found that a "keyless access/fingerprint scanner is perceptively different than a turnkey lock, in appearance and function." Therefore, the arbitrator in *Naranjo* determined that the installation of the keyless access/fingerprint scanner was a material alteration. Similarly, in the case under consideration, keypad door locks are appreciably and perceptively different from the turnkey locks permitted by the Association. Petitioner's installation of keypad door locks on her unit's door without prior written approval from the Association therefore violated Section 17.4 of the Declaration.

Petitioner further argues that Section 22 of the Association's Rules and Regulations allowing a unit owner to install "[f]lush-mounted alarm function indicators and keypads" permits her to install keypad door locks on her unit's door. However, this argument is not persuasive. Based on a reading of the full paragraph of Section 22 and the context of this language, the arbitrator concludes that this provision in the Rules and Regulations pertains to the installation of keypads for alarm systems for units, not keypads for door locks on the exterior door to the unit. However, even if the arbitrator found that Section 22 of the Association's Rules and Regulations allowed the installation of a keypad on the unit's exterior door, the Rule would be invalid as an improper amendment of Section 17.4 of the Declaration prohibiting modifications changing the appearance of any portion of the building. An association cannot adopt a rule which, in effect, amends the declaration of condominium. *Gordon v. Palm Aired Country Club Condominium Ass'n No. 9*, Inc., 497 So. 2d 1284, 1285 (Fla. 4th DCA 1986).

Finally, Petitioner argues that the doctrines of selective enforcement, waiver, laches, or running of the statute of limitations immunize her from being required to remove the keypad door locks from her unit's door. However, it is unnecessary for the arbitrator to analyze these issues, as such were not raised in the petition. *See Foxmoor II Condominium Ass'n, Inc. v. Carey*, Arb. Case No. 16-00-4214, Final Order on Default (June 3, 2016)("As this allegation was not contained in the petition, no relief may be granted regarding it.").

Accordingly, it is ORDERED:

Based on the foregoing, Petitioner's requests for relief are DENIED.

DONE AND ORDERED this 4th day of April, 2017, at Tallahassee, Leon County, Florida.

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David R. Slaton, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
2601 Blair Stone Road
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 Rule 61B-45.048, F.A.C.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by facsimile and U.S. Mail to the following persons on this 4th day of April, 2017:

Gregory R. Eisinger, Esq.
Eisinger, Brown, et al.
4000 Hollywood Boulevard
Suite 265-South
Hollywood, FL 33021
Attorney for Petitioner

Howard J. Perl, Esq.
Becker & Poliakoff, P.A.
1 East Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301
Attorney for Respondent

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David R. Slaton, Arbitrator