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

**IN RE: PETITION FOR ARBITRATION**

**ROBERT JONES,**

**Petitioner,**

**v.** **Case No. 2017-01-8901**

**GLEN CREST CONDOMINIUM ASSOCIATION, INC.,**

**Respondent.**
_____/

# NOTICE OF REASSIGNMENT OF ARBITRATOR AND SUMMARY FINAL ORDER

## Reassignment of Arbitrator

The undersigned hereby gives notice that this case has been reassigned. Therefore, all future pleadings and other communications should be directed to the attention of the undersigned.

## Summary Final Order

### Statement of the Issue

The issue in this case is whether Glen Crest Condominium Association, Inc. (the Association) failed to provide timely access to certain official records of the Association.

### Relevant Procedural History

On April 11, 2017, Robert Jones (Petitioner) filed a petition for arbitration. On May 26, 2017, the Association filed its answer. On June 21, 2017, Petitioner filed a reply. On July 26, 2017, the Association filed a brief in support of summary disposition. On July 31, 2017, Petitioner filed his legal brief.

## Findings of Fact

1. Robert Jones (Petitioner) owns a unit in Glen Crest Condominium.

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

3. On January 30, 2017, the Association received a records inspection request from Petitioner; Petitioner filled out a form provided by the Association for this purpose. Petitioner listed among the documents requested the January 4, 2017 board meeting minutes.

4. Petitioner and the Association agreed to schedule the records inspection for February 24, 2017; however, on February 24, 2017, the Association did not produce minutes for the January 4, 2017 board meeting.

5. The Association explained that it does not record its board meetings. Instead an employee of the Association's management company makes handwritten notes of the meeting; these notes are later compiled into draft minutes to be presented to the board for approval at a subsequent board meeting.

6. On February 24, 2017, the minutes of the meeting were still in "note" form, and thus not in possession of the Association.

7. On March 6, 2017, Petitioner sent his pre-arbitration letter demanding access to the January 4, 2017 board meeting minutes, within 30 days of the date of the Association's receipt of the letter.

8. However, the draft minutes for the January 4, 2017 meeting not presented to the Association for approval until the April 19, 2017 board meeting during which the minutes were approved at that meeting.

## Conclusions of Law

9. The Division has jurisdiction over this matter pursuant to Section 718.1255, Florida Statutes. Because there is no issue of material fact in dispute after the filings provided to date by the parties, this case is appropriate for summary disposition pursuant to Rule 61B-45.030, Florida Administrative Code.

10. Section 718.111(12)(b), (c), Florida Statutes, provide in pertinent part:

> (b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 5 working days after receipt of a written request by the board or its designee.
> . . .
> (c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. . . . The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request.

Section 718.111(12)(a), Florida Statutes provides in pertinent part:

> (12) OFFICIAL RECORDS.—
> (a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:
> . . .

> 6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.
>
> . . .
>
> 15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

11. First, Petitioner alleges that he was entitled to inspect the notes of the management company's employee. However, personal notes taken by the management company employee are not official records of the Association. Similarly, the employee's work product drafts are also not official records of the Association. Instead, draft minutes become official records of the Association when they are become in possession of the Association. Most often this occurs when the draft minutes are provided to board members with the agenda of the next meeting. In the instant case, draft minutes were not in possession of the Association at the time of the February 24, 2017 inspection or during the time Petitioner gave the Association in his pre-arbitration notice.

12. Second, Petitioner alleges that the Association has a duty to maintain minutes of its past board meetings. Although such a duty exists, the Association must be given a reasonable time to draft and approve its minutes. At the time of his original request and during the time given in his pre-arbitration notice, the Association only had one other meeting to approve the minutes. The Association approved the minutes at the next meeting. The Association was not unreasonable in preparing and approving the minutes in the instant case.

13. Consequently, the Association did not fail in providing Petitioner access to inspect the January 4, 2017 board meeting minutes or drafts thereof, because no such official record existed at the time of Petitioner's requests. Additionally, the Association

did not fail to maintain the January 4, 2017 board meeting minutes, as it is afforded a reasonable time to draft and approve its minutes.

Based on the foregoing, it is ORDERED:

The relief requested by the Petitioner is **DENIED**.

DONE AND ORDERED this 8th day of March, 2018, at Tallahassee, Leon County, Florida.

_____

Terri Leigh Jones, 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, Florida Administrative Code.**

## Certificate of Service

I hereby certify that a true and correct copy of the foregoing summary final order has been sent by U.S. Mail and email to the following persons on this 8th day of March, 2018:

Robert Jones
7924 Starfire Way
New Port Richey, FL 34654
Email: pontiac51@hotmail.com
Petitioner

Stephen C. Nikoloff, Esq.
Cianfrone, Nikoloff, Grant & Greenberg, P.A.
1964 Bayshore Boulevard
Suite A
Dunedin, Florida 34698
Email: Steve@attorneyjoe.com
Attorney for Respondent

_____
Terri Leigh Jones, Arbitrator