

# **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

## **Division of Florida Land Sales, Condominiums, and Mobile Homes Arbitration Section**

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# **ATTORNEY'S FEES FINAL ORDER INDEX SUPPLEMENT**

**December 2005**

Note: This interim supplement contains summaries of final orders entered by division arbitrators in the arbitration program described by Section 718.1255, Florida Statutes, from July 1, 2005 through December 31, 2005. The final order summaries are organized by subject matter. Final orders entered after December 31, 2005 will be reported in a subsequent publication. Indexes of earlier final orders are available online at the above web address.

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**Costs**[Brittany Condo. Ass'n., Inc. v. Yankwitt,](#)

Case No. 2005-03-9437 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / September 1, 2005)

- Costs related to mailing pre-arbitration notice letters via certified mail are to be factored into an attorney's hourly rate and are not separately recoverable costs.

[Greye v. Alpine Woods Ass'n., Inc.,](#)

Case No. 2005-00-9688 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / September 20, 2005)

- Where the association requested compensation for loss of operating costs for monies allegedly improperly taken by former board members from association funds and used to pay another attorney for legal services, such a payment is not in the nature of a recoverable cost, but is an item of damage.

[Inverness III Condo. Ass'n., Inc. v. Flournoy,](#)

Case No. 2005-00-9710 (Earl / Final Order Awarding Fees Related to Motion for Rehearing / September 26, 2005)

- Fees and costs incurred defending a motion for rehearing on the arbitrator's final order awarding fees may be awarded since the rehearing primarily addressed the arbitrator's decision that the respondent was entitled to an award of attorney's fees and costs.

[Key Colony No. 4 Condo. Ass'n., Inc. v. Alcazar,](#)

Case No. 2005-05-3204 (Earl / Final Order on Motion for Attorney's Fees and Costs / December 7, 2005)

- The cost of photocopies is not awarded as it is a normal overhead expense to be incorporated into the attorney's hourly rate.

[Ludwig v. Tudor Cay Condo. Ass'n., Inc.,](#)

Case No. 2004-02-0464 (Scheuerman / Final Order on Motion for Rehearing / September 8, 2005)

- Where the prevailing pro se unit owner sought to recover his costs incurred in the arbitration proceeding, costs of newsletters distributed in the doors of the other owners' units before the petition was filed could not be awarded as the costs were not incurred in the arbitration proceeding. Additionally, the request for a rebate of the owner's pro-rata share of the attorney's fees incurred by the association was denied as the remedy provided by s. 718.303, Florida Statutes, was only applicable to court proceedings, and had not been requested during the main arbitration proceeding.

[Margate Village Condo. Ass'n., Inc. v. Fink,](#)

Case No. 2005-05-5533 (Earl / Final Order on Motion for Attorney's Fees and Costs / December 7, 2005)

- The cost of a title search is not typically awarded unless the association demonstrates that it was necessary.
- The costs of postage, photocopies and facsimiles were not awarded, as they are normal overhead expenses factored into the attorney's hourly rate.

[Sunrise Springs Condo. Ass'n., Inc. v. Stern,](#)

Case No. 2005-04-7908 (Earl / Final Order on Motion for Attorney's Fees and Costs / October 21, 2005)

- The cost of service of process is recoverable as it was necessary to serve the respondent.

[Whitehall South Condo. Ass'n., Inc. v. Mathieson,](#)

Case No. 2005-04-8872 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / October 31, 2005)

- Photocopying costs are ordinary office expenses factored into an attorney's hourly rate, rather than separately recoverable cost, even where the volume of copies expended is relatively large.

## **Defenses**

### ***Failure to timely file/request fees***

[Bedford A Condo. Ass'n., Inc. v. Skaggs,](#)

Case No. 2004-02-4717 (Bembry / Final Order on Motion for Attorney's Fees / November 2, 2005)

- No fees were awarded to the association where it failed to file its motion for attorney's fees and costs within 45 days of the entry of the final order in the underlying arbitration case, pursuant to rule 61B-45.048, Florida Administrative Code. Motion was filed 46 days after the final order was entered.

### ***General defenses***

[Crescent Beach Club Condo. Ass'n., Inc. v. Krueger,](#)

Case No. 2005-00-9695 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / December 23, 2005)

- Pre-arbitration demand letter sent one day prior to the filing of the petition for arbitration did not provide adequate notice to the respondent and was not valid notice under s. 718.1255, F.S.

[Margate Village Condo. Ass'n., Inc. v. Fink,](#)

Case No. 2005-05-5533 (Earl / Final Order on Motion for Attorney's Fees and Costs / December 7, 2005)

- Except for the drafting of the statutorily mandated pre-arbitration notice, the prevailing party may not be awarded fees for efforts prior to the arbitration.
- Association not awarded any time for the efforts of an attorney only identified as "PARTN" on the time statement since the arbitrator cannot determine the reasonableness of the requested rate because the association has not provided this person's qualifications.

[Sea Isle Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-04-4206 (Grubbs / Final Order Denying Motion for Attorney's Fees and Costs / August 30, 2005)

- Rule 61B-50.1405, F.A.C, forecloses an award of attorney's fees and costs in a recall proceeding initiated pursuant to Section 718.112(2)(j), F.S.

[Stevens v. Cricket Club Condo. Assn., Inc.,](#)

Case No. 2005-02-6340 (Scheuerman / Final Order on Motions for Attorney's Fees / July 29, 2005)

- Only time spent on activities undertaken in the arbitration proceeding are recoverable under section 718.1255, F.S. Of the 15.7 hours spent prior to the drafting of the petition, the arbitrator awarded only one hour for preparation of the pre-arbitration demand letter required by section 718.1255, F.S.
- Where counsel spent 7.0 hours preparing a reply to an answer that was unsolicited, not permitted or required by the rules of procedure, and did not contain arguments not already present in the petition, counsel was only awarded 3.0 hours for this effort.
- The sum of 5.0 hours spent drafting a petition for trial de novo was not recoverable as it was not incurred in the arbitration proceeding.

**Excessive / Reasonable**[330 South Ocean, Inc. v. Martig,](#)

Case No. 2005-04-0838 (Bembry / Final Order on Motion for Award of Attorney's Fees and Costs / October 13, 2005)

- Hourly rate of \$200.00 was considered reasonable for attorney having at least fifteen years of experience in the practice of law.

[Brittany Condo. Ass'n., Inc. v. Yankwitt,](#)

Case No. 2005-03-9437 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / September 1, 2005)

- Where the underlying arbitration case resulted in a final order on default and only minimal pleadings were filed by the association, its request for 18.10 hours for legal fees was deemed excessive and reduced to 8.00 hours, plus an additional 2.00 hours for activities undertaken to perfect personal service of certain arbitration orders on the respondents, as required by the arbitrator; totaling 10.00 hours for legal services in this matter.

[Costa Del Sol Condo. Ass'n., Inc. v. Labari,](#)

Case No. 2005-03-2332 (Earl / Final Order on Motion for Attorney's Fees and Costs / September 14, 2005)

- Requested rate of \$200.00/hour for an attorney who has been practicing for two years found to be unreasonable. \$185.00/hour was found to be a reasonable rate.

[Delphi Towers Condo. Assn., Inc. v. Swain,](#)

Case No. 2005-01-8415 (Grubbs / Final Order on Attorney's Fees and Costs / July 13, 2005)

- Although 10.6 hours spent on the underlying case was a considerable amount of time, considering that the respondent defaulted, the respondent had to be personally served, which added to the length of time required to pursue this case, and several hours were spent by the attorney researching arbitration cases involving similar issues. Therefore, the amount of time expended was not found to be unreasonable.

[Doral Court Condo. Assn., Inc. v. Verdasco,](#)

Case No. 2005-02-2856 (Bembry / Final Order on Motion for Award of Attorney's Fees and Costs / August 23, 2005)

- Hourly rate of \$185.00 for legal services rendered was deemed reasonable for attorney with two years of experience after consideration of the reputation and ability of attorney and where affidavit supporting fees motion established that hourly rates charged in the area where attorney practiced were comparable to the hourly rate sought.

[Greve v. Alpine Woods Ass'n., Inc.,](#)

Case No. 2005-00-9688 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / September 20, 2005)

- Based on the complexity of the issues presented and the number of pleadings submitted in the underlying arbitration case, the arbitrator determined that the association's request for 53.20 hours for attorney's fees was excessive and such was reduced to an award of 40.00 hours.

[Hoyos v. Fern Isle Garden Condo. Ass'n., Inc.,](#)

Case No. 2005-04-7912 (Earl / Final Order on Motion for Attorney's Fees and Costs / October 24, 2005)

- Requested hourly rate of \$200.00 per hour for an attorney with nineteen years experience found to be reasonable.

[Karanda Village V Condo., Inc. v. Goldstein,](#)

Case No. 2005-03-5477 (Bembry / Final Order on Motion for Attorney's Fees and Costs / November 9, 2005)

- Hourly rate of \$185.00 was considered excessive for attorney having less than one year of experience in the practice of law.

[Kendall Gate, Inc. v. Schwartz,](#)

Case No. 2005-02-9895 (Bembry / Final Order on Motion for Award of Attorney's Fees and Costs / August 26, 2005)

- Hourly rate of \$185.00 for legal services rendered was deemed reasonable for attorney with two years of experience after considering the reputation and ability of the attorney and where it was shown that rates charged in locality of attorney were comparable.

[Key Colony No. 4 Condo. Ass'n., Inc. v. Alcazar,](#)

Case No. 2005-05-3204 (Earl / Final Order on Motion for Attorney's Fees and Costs / December 7, 2005)

- Requested rate of \$250.00 per hour for an attorney with over twenty-five years experience found to be reasonable.

[Mango Bay I at Bridgewater Bay Condo. Ass'n., Inc. v. Garduna,](#)

Case No. 2005-04-4215 (Earl / Final Order on Motion for Attorney's Fees and Costs / September 22, 2005)

- Requested rate of \$250.00 per hour for attorneys with twelve and five years experience found unreasonable. Reasonable rate for the attorney found to be \$225.00/hour and 200.00/hour, respectively.

[Margate Village Condo. Ass'n., Inc. v. Fink,](#)

Case No. 2005-05-5533 (Earl / Final Order on Motion for Attorney's Fees and Costs / December 7, 2005)

- Requested rate of \$185.00 per hour for an attorney with less than two years experience found excessive; rather, \$165.00 per hour found to be reasonable.

[Murray v. Ironwood Recreation One Association, Inc.,](#)

Case No. 2005-03-9445 (Scheuerman / Final Order on Motion for Attorney's Fees / September 6, 2005)

- No one may say that the sum of \$225.00 per hour is unreasonable for an attorney who has been a member of the Florida Bar in excess of 25 years and who has considerable experience in the area of community association representation is excessive.

[Pine Crest Village II Condo. Ass'n., Inc. v. Guerriera.](#)

Case No. 2005-04-4211 (Scheuerman / Final Order on Motion for Attorney's Fees and Costs / October 24, 2005)

- The arbitrator deducted 1.20 hours of attorney time spent on a motion for clarification of the final order that was denied, as well the .50 hour that was claimed for reading the order denying the motion.
- Where counsel had only been a member of the Bar for 7 years but specialized in community association practice, the sum of \$300.00 per hour was excessive; the association was instead reimbursed at \$225.00 per hour.

[Plantation Forest Condo. Ass'n., Inc. v. Garay.](#)

Case No. 2005-04-0881 (Earl / Final Order on Motion for Attorney's Fees and Costs / September 15, 2005)

- Where the association failed to inform the arbitrator the dispute was moot for weeks after being notified by its manager that the violation had been cured and only so informed the arbitrator in response to the arbitrator's order to show cause why the matter should not be dismissed, the association was not awarded any time subsequent to date the association's attorney was informed that the violation had been cured.
- Association awarded \$165.00/hour instead of the requested \$185.00/hour for the services of an attorney who had practiced law less than one year.

[Quail Run Condo. Ass'n. of Hillsborough County, Inc. v. Allaway.](#)

Case No. 2005-04-4220 (Bembry / Amended Final Order on Motion to Tax Attorney's Fees and Costs / November 4, 2005)

- Hourly rate of \$170.00 was found to be reasonable for attorneys having less than one year of experience in the practice of law.
- Hourly rate of \$205.00 was considered excessive for attorney having practiced law for less than one year.

[Skylake Gardens No. 1, Inc. v. Jerberg.](#)

Case No. 2005-03-5779 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / August 12, 2005)



- An hourly rate of \$250.00 was determined excessive for an attorney who has been practicing law since 1987 and only has some experience in condominium law and is reduced to \$200.00 per hour.
- Where counsel spent 6.10 hours preparing the original and amended petitions for arbitration, legal research, correspondence and phone calls for a relatively basic issue, the hours are deemed excessive and reduced to 4.00 hours.

[Sunrise Springs Condo. Ass'n., Inc. v. Stern,](#)

Case No. 2005-04-7908 (Earl / Final Order on Motion for Attorney's Fees and Costs / October 21, 2005)

- Requested rate of \$185.00 per hour for an attorney who has been practicing for ten years with significant experience involving community associations, found to be reasonable.

[Timber Lakes Estates, Inc. v. Scott,](#)

Case No. 2005-02-8393 (Bembry / Final Order on Motion for Attorney's Fees and Costs / July 12, 2005)

- Hourly rate of \$195.00 was deemed reasonable fee for attorney having over 25 years of experience in the practice of law.
- Final order granting association's motion for attorney's fees and costs entered where unit owner did not dispute the association's claim of prevailing party status.

[Vista at Stonebridge Place Condo. Assn., Inc. Magalnick,](#)

Case No. 2005-02-9902 (Grubbs / Final Order on Attorney's Fees and Costs / August 10, 2005)

- Petitioner will not be reimbursed for attorney's fees for correspondence sent before the pre-arbitration demand letter since they were not incurred as part of the arbitration proceeding.

[Wander Residence of Tierra Verde Condo. Ass'n., Inc. v. Losch,](#)

Case No. 2005-04-2677 (Earl / Final Order on Motion for Attorney's Fees and Costs / September 19, 2005)

- Requested rate of \$200.00 per hour for an attorney with 21 years of experience found to be reasonable.

[Whitehall South Condo. Ass'n., Inc. v. Mathieson,](#)

Case No. 2005-04-8872 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / October 31, 2005)

- Attorney who had been practicing law for approximately 7 years was not entitled to an hourly rate of \$215.00, rather, counsel was compensated at the rate of \$195.00 per hour for legal services provided in the underlying arbitration proceeding.

### **Generally**

#### [330 South Ocean, Inc. v. Martig,](#)

Case No. 2005-04-0838 (Bembry / Final Order on Motion for Award of Attorney's Fees and Costs / October 13, 2005)

- Time requested in attorney's fees proceeding for preparation of motion to enforce final judgment in related arbitration proceeding was disallowed, as an action for enforcement is properly pursued in a court of competent jurisdiction in which the condominium is located, pursuant to section 718.1255(4)(m), Florida Statutes.

#### [Eagles Nest Condo. Ass'n., Inc. v. Pelaez,](#)

Case No. 2005-03-9190 (Bembry / Final Order on Motion for Determination as to Attorney's Fees and Costs / September 13, 2005)

- A total of 4.0 hours to litigate arbitration proceeding involving removal of a pet from the condominium property that was concluded with a final order of default was determined to be a reasonable amount of time expended by the association's attorney.

#### [Foxcroft Condo. Apartments, Inc. v. Olibrice,](#)

Case No. 2005-02-5791 (Grubbs / Final Order of Dismissal / July 5, 2005)

- Although the Notice of Voluntary Dismissal filed in the fees case stated that the case was being dismissed "withouth prejudice", because there is a 45-day time limit for filing a motion for attorney's fees, a voluntary dismissal after that 45-day period is necessarily "with prejudice" because another motion for attorney's fees cannot be timely filed.

#### [International Village Assn., Inc. v. Graminga,](#)

Case No. 2005-00-1074 (Bembry / Final Order on Motion for Attorney's Fees and Costs / August 1, 2005)

- Hourly rate of \$225.00 was deemed reasonable for attorney having 27 years of experience in the practice of law and substantial experience in the area of condominium law.

#### [Ludwig v. Tudor Cay Condo. Ass'n., Inc.,](#)

Case No. 2004-02-0464 (Scheuerman / Final Order on Motion for Rehearing / September 8, 2005)

- Where the arbitrator, while denying the association's motion for prevailing party attorney's fees in the amount of \$3,285.00 in the final order on motion for attorney's fees, inadvertently failed to rule on the unit owners' request for reimbursement in the amount of \$300.00, a motion for rehearing filed by the owner beyond the time permitted

for a motion for rehearing was a nullity and was struck. However, the arbitrator on his own motion re-opened the case and awarded the unit owner the sum of \$140.00.

[Margate Village Condo. Ass'n., Inc. v. Fink,](#)

Case No. 2005-05-5533 (Earl / Final Order on Motion for Attorney's Fees and Costs / December 7, 2005)

- Except for the drafting of the statutorily mandated pre-arbitration notice, the prevailing party may not be awarded fees for efforts prior to the arbitration.
- Association not awarded any time for the efforts of an attorney only identified as "PARTN" on the time statement since the arbitrator cannot determine the reasonableness of the requested rate because the association has not provided this person's qualifications.

[Oakwood Manor Homeowners Condo. of Sarasota, Florida, Inc. v. LaDuke,](#)

Case No. 2005-04-0877 (Bembry / Final Order on Motion to Tax Costs and for Reasonable Attorney's Fees / September 20, 2005)

- The prevailing party in the underlying arbitration was entitled to recover the time its attorney spent in informal settlement negotiations even though the case was ultimately resolved by a final order of default.

[The Pines of Clearwater Condo., Inc. v. Hrstka,](#)

Case No. 2005-04-2689 (Bembry / Final Order on Petitioner's Request for Attorney's Fees and Costs / September 21, 2005)

- Hourly rate of \$195.00 charged by an attorney with over 25 years of legal experience was considered to be reasonable and awarded.

[Sea Isle Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-04-4206 (Grubbs / Final Order Denying Motion for Attorney's Fees and Costs / August 30, 2005)

- Rule 61B-50.1405, F.A.C, forecloses an award of attorney's fees and costs in a recall proceeding initiated pursuant to Section 718.112(2)(j), F.S.

[Seminole on the Green Cavalier Building One Ass'n., Inc. v. Lorenzo,](#)

Case No. 2005-03-4157 (Grubbs / Final Order of Dismissal as Moot / September 22, 2005)

- The petitioner's motion for attorney's fees, filed two days after petitioner's letter stating that respondent had cured the violation, was premature. A motion for attorney's fees should be filed after the final order has been entered. In an arbitration proceeding, a motion for attorney's fees is treated as a separate and distinct pleading when the underlying case is closed -- a new case file is opened, and the motion is given its own

case number. In this case, the motion was held in abeyance until the entry of the final order and treated as if filed after the date of the final order

### **Prevailing Party**

#### [Avant Garde Condo. Ass'n, Inc. v. Prichici,](#)

Case No. 2005-05-7352 (Mnookin / Amended Final Order on Motions for Award of Attorney's Fees / December 20, 2005)

- Attorney's fees would not be awarded to responding party claiming prevailing party status in the underlying arbitration case where the respondent moved for and obtained an order of dismissal for lack of personal jurisdiction. The case involved a tenant's vehicle and was situated in the 4<sup>th</sup> District Court. Arbitration precedent establishes that where a case is dismissed on jurisdictional issues unrelated to the merits of the case, the party who succeeded in obtaining the dismissal will not necessarily be considered the prevailing party.

#### [Baffly Woods Condo., Inc. v. Weaver,](#)

Case No. 2005-02-9261 (Bembry / Final Order on Motion for Attorney's Fees and Costs / July 12, 2005)

- The association's motion for attorney's fees was granted where unit owner did not dispute the association's claim that it was the prevailing party in the underlying case and where requested hourly rate of \$185.00 for the services of attorney having eight years of experience was found to be reasonable.

#### [Costa Del Sol Condo. Ass'n., Inc. v. Labari,](#)

Case No. 2005-03-2332 (Earl / Final Order on Motion for Attorney's Fees and Costs / September 14, 2005)

- The association was found to be the prevailing party as to the alleged violations that the unit owner corrected subsequent to receipt of the petition, as the respondent failed to rebut the presumption that the arbitration action motivated his compliance. However, the association did not establish that the other eight alleged violations remained uncorrected subsequent to the respondent's receipt of the petition. As the time records did not indicate the amount of time spent on each issue, it was presumed that an equal amount of time was spent on each issue and a proportional amount of time was awarded for each issue on which the association prevailed prior to the date it was determined that only eight issues remained in dispute. Subsequent to this date, the association was awarded all its time incurred as this time was clearly spent litigating the issues upon which they prevailed.

#### [Crescent Beach Club Condo. Ass'n., Inc. v. Krueger,](#)

Case No. 2005-00-9695 (Mnookin / Final Order on Motion for Attorney's Fees and Costs / December 23, 2005)

- Where each party prevailed on one of two issues, the fees and costs incurred by each were offset by the fees and costs of the other, and the parties were ordered to pay their own cost and attorney's fees.

[Hoyos v. Fern Isle Garden Condo. Ass'n., Inc.,](#)

Case No. 2005-04-7912 (Earl / Final Order on Motion for Attorney's Fees and Costs / October 24, 2005)

- Where the underlying petition was dismissed with prejudice, denying the unit owner petitioner his requested relief because the owner failed to comply with the arbitrator's order to consult a plumber in order to determine the origin of the plumbing leaking in his unit, without which proof he could not prevail, the association was the prevailing party.

[Lindback v. Sand Pebbles of Islamorada Ass'n., Inc.,](#)

Case No. 2005-03-9450 (Mnookin / Final Order on Motion for Attorney's Fees / December 21, 2005)

- Where, in the case below in which the unit owner commenced the action to require the association to repair the staircase outside its unit, the association initially denied that the stairwell was a common element, but later in the case conceded that it was, and proceeded to amend the declaration to remove the upper portion of the staircase from the common elements, each party received some benefit in the case and the arbitrator required them to bear their own costs and attorney's fees.

[Ludwig v. Tudor Cay Condo. Ass'n., Inc.,](#)

Case No. 2004-02-0464 (Scheuerman / Final Order on Motion for Attorney's Fees / August 20, 2004)

- Although the petitioning unit owner did not prevail on each and every count alleged in his petition, where the final arbitration order reversed a fine imposed by the association, found that the association was selectively enforcing its rules and regulations, and prohibited the association from enforcing its rule against any owner, the unit owner succeeded in obtaining all or most of the relief requested, and is deemed to be the prevailing party.

[Murray v. Ironwood Recreation One Association, Inc.,](#)

Case No. 2005-03-9445 (Scheuerman / Final Order on Motion for Attorney's Fees / September 6, 2005)

- Where a unit owner filed a petition for arbitration arguing that the master association was an association regulated by Ch. 718, Florida Statutes, and further alleging that the master association had violated the election provisions of Ch. 718, Florida Statutes, where the answer of the association did not contest association status under Ch. 718 but argued that the master association's election procedures complied with Ch. 718, the unit owner did not prevail on any issues in the case where the arbitrator found the

master to be a regulated association and further found that the conduct of the election complied with the statute.

- Where a unit owner filed a petition alleging that the master association was a condominium association subject to the statute, and further alleging that the master association violated the election provisions of Ch. 718, Florida Statutes, and where the association raised as defenses the statute of limitation and waiver, the fact that these defenses were ultimately rejected did not make the unit owner the prevailing party, where the owner was awarded none of the relief he requested.

[McWilliam v. May Marca Condo. Apartments, Inc.,](#)

Case No. 2005-05-3842 (Scheuerman / Final Order Motion for Attorney's Fees / December 20, 2005)

- Where the arbitrator dismissed the petition of the unit owner who sought to challenge a rental rule on the basis that the owner did not demonstrate that he had been threatened with enforcement of the rule, the association was not a prevailing party and would not be awarded its fees. Dismissal was based on a lack of standing and was not related to the merits of the disputed issue.

[Seminole-on-the-Green Cavalier Building One Ass'n., Inc. v. Lorenzo,](#)

Case No. 2005-04-9413 (Grubbs / Final Order on Motion for Attorney's Fees and Costs / December 21, 2005)

- Where numerous demands had been made on the respondent to repair the window prior to the petition for arbitration being filed, but the window was not repaired until after the petition was served on the respondent, the petition was found to be motivating factor for the repair of the window and the petitioner was found to be the prevailing party in accordance with rule 61B-45.048(7), F.A.C.

[Stevens v. Cricket Club Condo. Assn., Inc.,](#)

Case No. 2005-02-6340 (Scheuerman / Final Order on Motions for Attorney's Fees / July 29, 2005)

- Where the petitioning unit owner challenged the results of an election and sought entry of a final order declaring his candidate of choice to be named to the board, the unit owner was the prevailing party where the arbitrator ordered the association to conduct a runoff election. A runoff election was within the ambit of the relief requested. Also, the fact that the owner's favored candidate ultimately withdrew her candidacy after the runoff had been ordered is mere happenstance, and does not affect prevailing party status.

[Tequesta Hills Condo. Assn., Inc. v. Cavalieri,](#)

Case No. 2005-01-8418 (Grubbs / Final Order on Motion for Attorney's Fees and Costs / August 11, 2005)

- Where the petition alleged that respondent's behavior was a nuisance, but the last incident alleged to be a nuisance occurred over four months before the petition was served on the respondent, and the petition is subsequently dismissed as moot, the association will not be deemed to be the prevailing party because the unit owner's change in behavior occurred well before the respondent was served with the petition. However, when an allegation of nuisance is involved, whether the nuisance has been corrected and when it was corrected can vary depending on the facts alleged in that particular case.
- Attorney's fees should not be used as liquidated damages for past violations. Before a petition is filed seeking injunctive relief, the petitioner has an obligation to determine whether the relief it seeks in the petition has already been provided. A petition should not be filed when there is no longer a current dispute. The petitioner will not be found to be the prevailing party when the relief was provided prior to the petition being filed.

[Villager Assn., Inc. v. Dowling,](#)

Case No. 2005-01-7011(Grubbs / Final Order on Attorney's Fees and Costs / July 6, 2005)

- A party cannot be considered a "prevailing party" for purposes of attorney's fees when it succeeds in obtaining relief on only one portion of one "count" of its petition and that portion was not even specifically mentioned in the petition. In the petition, the association alleged that the respondents had placed furniture and decorations on the balcony in violation of the declaration. At the hearing, it was determined that a light fixture installed by the respondents over the stairwell would have to be removed by the respondents, but on all other issues tried, the owners prevailed. The arbitrator concluded that it would be hard to justify the association being considered the prevailing party on a "significant" issue when the association found the issue so insignificant that the light over the stairwell was not even mentioned in the petition for arbitration or pictured in the photographs attached to and incorporated into the petition.
- Even if the association could have been considered the prevailing party as to the one issue it successfully pursued, attorney's fees still could not be awarded because the association made no attempt to apportion its attorney's fees between the one issue on which it claimed to have prevailed and the other issues raised in the petition and the vast majority of the fees claimed could not have been expended on the issue it prevailed upon.

[Vista at Stonebridge Place Condo. Assn., Inc. Magalnick,](#)

Case No. 2005-02-9902 (Grubbs / Final Order on Attorney's Fees and Costs / August 10, 2005)

- Where the unit owner waited until three days before the scheduled final hearing before removing the dog from the property after maintaining the defense of selective enforcement from the outset of the arbitration action, the association was determined to

be the prevailing party. Pursuant to Rule 61B-45.048(7), F.A.C., when the opposing party provides the relief requested in the course of the arbitration proceeding, it will be presumed that the action was taken as a result of the arbitration action and the petitioner will be considered the prevailing party unless there is evidence that the action was taken for reasons unrelated to the arbitration proceeding.

- When, after receipt of the petition, the respondent provides the relief requested in the petition and the case is dismissed as moot, Rule 61B-45.048(7), F.A.C. creates a rebuttable presumption that the respondent's actions were caused by the initiation of the arbitration action and that the petitioner is the prevailing party.