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REGULAR FINAL ORDER INDEX SUPPLEMENT

September 2007

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, 2006 through September 13, 2007. The final order summaries are organized by subject matter. Indexes of earlier final orders are available online at the above web address.

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Age-Restrictions (See [Fair Housing Act](#))

Alienation (See Unit-[Restraints on alienation](#))

Annual Meeting (See Meetings-[Unit owner meetings](#))

Arbitration

Affirmative defenses

[Bayfront Tower Condominium Association Residential, Inc. v. Rebmann,](#)

Arb. Case No. 2006-06-6721 (Earl / Final Order/ September 13, 2007)

- Where Respondents raised various affirmative defenses for the first time during the final hearing, the defenses were deemed to have been raised untimely and were not considered by the arbitrator.

[The Gardens at Pembroke Lakes Condominium Association, Inc., v. Marie Placide,](#)

Arb. Case No. 2006-06-7816 (Campbell/ Partial Summary Final Order/April 11, 2007)

- Where Petitioner waited six years to file a petition for relief for removal of tile flooring, Petitioner would be barred by applicable five-year statute of limitation from maintaining complaint against Respondent, who asserted defense that the tile flooring had been installed prior to her occupancy of the unit. The fact that the Respondent lived in the unit for more than a year before the tile floor became noticeable warranted the conclusion that the alleged noise problem was not caused by the tile flooring, per se, or by Respondent's activities during an extended time. Arbitrator found it appropriate to issue a partial summary final order denying the relief requested by Petitioner that would have required the Respondent to apply for approval for the existing tile flooring.

Evidence

Generally

[Frank Hock, et. al v. Plaza Resort and Spa Condominium Association, Inc.,](#)

Arb. Case No. 2006-06-8783 (Chavis/Final Order Dismissing Petition for Lack of Jurisdiction/June 18, 2007)

- A pre-arbitration notice on behalf of an "Ad Hoc Committee" of unidentified individuals does not constitute sufficient pre-arbitration notice pursuant to section 718.1255(4)(b), F.S.

[Limetree Condominium Association, Inc. v. John Sweeney and Marilyn Sweeney and Michael P. Sweeney,](#)

Arb. Case No. 2006-05-1827 (Campbell/Order Denying Motion for Rehearing/April 9, 2007)

- Where motion for rehearing does not demonstrate a clear error of law or fact as required by Rule 61B-45.044, F.A.C., there is no basis for the arbitrator to modify the substance of the final order.

Jurisdiction (See [Dispute](#))

Misarbitration

Parties (See also [Dispute-Standing](#))

Prevailing party (see separate [index on attorney's fees cases](#))

Sanction

[Perez v. Alameda Tower 4 Condo. Ass'n, Inc.](#)

Arb. Case No. 2007-03-0831 (Earl / Final Order of Dismissal / September 6, 2007)

- Where Petitioner failed to amend his petition as directed by the arbitrator, the matter was dismissed, in accordance with rule 61B-45.036, Florida Administrative Code.

Assessments for Common Expenses (See [Common Expenses](#))

Associations, Generally (For association records, See [Official Records](#))

Attorney-Client Privilege

Board of Administration

Business judgment rule

Ratification (See [Meetings-Board meetings-Ratification](#))

Resignation

Term limitations (See [Elections/Vacancies-Term limitations](#))

Vacancies (See [Elections/Vacancies](#))

Board Meetings (See [Meetings-Board meetings](#))

Boats

Budget

Bylaws

Amendments

Generally

Interpretation

Cable Television

Common Elements/Common Areas

Generally

Hurricane shutters (See [Hurricane Shutters](#))

Limited common elements

Maintenance and protection

[Grand Cay Villas at Ponte Verda Condo. Ass'n, Inc. v. Coppedge](#),
Case No. 2006-01-2192 (Scheuerman / Final Order / September 22, 2006)

- Where it was necessary to upgrade the building's fire alarm system, the board's decision to require one unit in each building to house the fire system panel was upheld, where it was shown that placement within a unit would contribute to the overall reliability and responsiveness of the fire safety system. Installation of the panel on the building's exterior wall would have been more expensive and less reliable.

Material alteration or addition (See also [Fair Housing Act](#))

Right to use

Common Expenses

Constitution

Corporation

Equal protection

Free speech

Generally

State action

Covenants (See Declaration-[Covenants/restrictions](#))

Declaration

Alteration to appurtenances to unit (See Unit-[Appurtenances](#))

Amendments

Covenants/restrictions

Exemptions

Generally

Interpretation

Validity

Default

Generally

[Seminole Colony, Inc. v. Linda Hollenback,](#)

Arb. Case No. 2006-06-7493 (Campbell / Order on Request to Set Aside Default and Notice of Communication/February 6, 2007)

- In moving to set aside a default, the Respondent must demonstrate excusable neglect, mistake, surprise, or inadvertence and demonstrate a meritorious defense to the allegations contained in the petition.

Sanctions (See [Arbitration-Sanctions](#))

Developer

Disclosure

Exemptions (See also [Declaration-Exemptions](#))

Filing

Generally

Transfer of control (See also [Elections/Vacancies](#))

Disability, Person with (See [Fair Housing Act](#))

Discovery

Attorney-client privilege (See [Attorney-Client Privilege](#))

Generally

Dispute

Considered dispute

[St. Luis Condominium Association, Inc. v. Sonia Negron,](#)

Arb. Case No. 2007-00-4264 (Campbell/Final Order of Dismissal/February 5, 2007)

- Section 718.1255, F.S., limits the disputes that can be subject to mandatory nonbinding arbitration. Because the petition affirmatively alleges the storage unit is not part of the owner's unit or appurtenances thereto, the alleged dispute is not eligible for arbitration.

Generally

Jurisdiction

[Silvia v. Lakeview at Carlton Lakes Condo. Ass'n, Inc.,](#)

Arb. Case No. 2007-01-8138 (Earl / Order on Request for Expedited Determination of Jurisdiction / April 3, 2007)

- Arbitrator lacked jurisdiction over dispute where it was alleged that the Association had improperly delegated authority to a roofing contractor to negotiate settlement with the Association's insurance company.

[Charlotte Sweeney, et. al v. Golden Horn Association, Inc.,](#)

Arb. Case No. 2006-06-7026 (Earl/ Order on Respondent's Motion to Dismiss, (February 6, 2007)

- Where disputes alleged by the Petitioners involved the authority of the Association's board to alter or improve common elements and an issue involving the levy of a special assessment to fund the projects complained of by the Petitioners, the dispute involving the levy of special assessment was properly dismissed and the remaining issues were deemed eligible for arbitration.

[Bernard Whitsett and Dora Whitsett, Trustees or their successors in trust, and the Bernard Whitsett Living Trust dated September 12, 1996 v. John L. Slack and Pineda Ocean Club Condominium Association, Inc.,](#)

Arb. Case No. 2007-01-8565 (Chavis/Final Order Dismissing Petition for Lack of Jurisdiction/April 12, 2007)

- Arbitrator lacked jurisdiction over dispute that primarily involved a claim for damages to Petitioner's unit due to Association's alleged failure to maintain the common elements.

Moot

[Garrison v. Sunset Towers Condo. Ass'n, Inc.,](#)

Arb. Case No. 2007-00-8531 (Campbell / Final Order of Dismissal / April 5, 2007)

- Arbitration proceeding rendered moot where the Association indicated that it would conduct a new election and disregard of the results of the prior election challenged by the Petitioner.

Not considered dispute

[Calais at Pelican Bay Condominium Ass'n, Inc. v. Apuzzo,](#)

Arb. Case No. 2007-04-7129, (Earl / Final Order of Dismissal / August 30, 2007)

- Where Association sought an order compelling Respondents to remove their sons from their unit, the dispute was not eligible for arbitration since it involved the eviction or removal of tenants.

[Pebble Springs Condominium Association of Bradenton, Inc. v. Alcorn,](#)

Arb. Case No. 2007-04-7007 (Earl / Order on Request for Expedited Determination of Jurisdiction / August 30, 2007)

- Where Association sought an order requiring Respondent to remove her tenant from her unit, the dispute was not eligible for arbitration since it involved the eviction or removal of a tenant.

Not ripe/bona fide dispute / live controversy

Pending court or administrative action / abatement / stay

Relief granted or requested

[Bayfront Tower Condominium Association Residential, Inc. v. Rebmann,](#)

Arb. Case No. 2006-06-6721 (Earl / Final Order/ September 13, 2007)

- Where Respondents' dog was found to have engaged in aggressive behavior towards other dogs in violation of the governing documents, the undersigned did not find it necessary to order the removal of dog, rather, Respondents were required to securely leash and muzzle the dog at all times he is outside Respondents' unit on the common elements or condominium property.

[Grand Cay Villas at Ponte Verda Condo. Ass'n, Inc. v. Coppedge,](#)

Case No. 2006-01-2192 (Scheuerman / Final Order / September 22, 2006)

- Where the association's decision to use a portion of a unit's interior to house the common element fire alarm system was affirmed by the arbitrator, the association was required to pay host unit owner the sum of \$250 annually.

Standing

Easements

Elections/Vacancies

Candidate information sheet

Generally

Master association

Notice of election

Term limitations

Voting certificates

Estoppel (See also [Selective Enforcement](#); [Waiver](#))

Evidence (See Arbitration-[Evidence](#))

Fair Housing Act

Family (See also [Fair Housing Act](#); [Guest](#); [Tenants](#))

Financial Reports/Financial Statements

Fines

Guest (See also [Fair Housing Act](#); [Family](#); [Tenants](#))

Hurricane Shutters

Injunctive Type Relief (See Dispute-[Relief granted](#))

Insurance

Jurisdiction (See [Dispute](#))

Laches (See also [Estoppel](#); [Waiver](#))

**[The Gardens at Pembroke Lakes Condominium Association, Inc., v. Marie Placide](#),
Arb. Case No. 2006-06-7816 (Campbell/ Partial Summary Final Order/April 11, 2007)**

- Where Petitioner waited six years to file a petition for relief for removal of tile flooring, Petitioner would be barred by applicable five-year statute of limitation from maintaining complaint against Respondent, who asserted defense that the tile flooring had been installed prior to her occupancy of the unit. The fact that the Respondent lived in the unit for more than a year before the tile floor became noticeable warranted the conclusion that the alleged noise problem was not caused by the tile flooring, per se, or by Respondent's activities during an extended time. Arbitrator found it appropriate to issue a partial summary final order denying the relief requested by Petitioner that would have required the Respondent to apply for approval for the existing tile flooring.

Lien

Marina

Meetings

Board meetings

Committee meetings

Emergency

Generally

Notice/agenda

Quorum

Ratification

Recall (See separate [index on recall arbitration](#))

Unit owner meetings

Generally

Notice

Quorum

Recall (See separate [index on recall arbitration](#))

Moot

Mortgagee

Nuisance

[La Paz Condominium Association, Inc. v. Ruth Bishins,](#)

Arb. Case No. 2006-05-1817 (Chavis/Final Order/April 11, 2007)

- The noise emanating from the Respondent's televisions exceeded reasonable expectations of normal use of the unit at all times and was therefore deemed a nuisance. Although unit owners who live in close proximity to one another must expect to tolerate some noise of a certain degree, this does not excuse behavior that rises to the level of nuisance.

Official Records

[Frank Hock, et. al v. Plaza Resort and Spa Condominium Association, Inc.,](#)

Arb. Case No. 2006-06-8783 (Chavis/Final Order Dismissing Petition for Lack of Jurisdiction/June 18, 2007)

- A request for official records on behalf of an "Ad Hoc Committee" of unidentified individuals does not constitute a request for official records by a unit owner pursuant to section 718.111(12)(c), F.S.

[Herbert S. Rose v. The Village of Kings Creek Condominium Association, Inc.,](#)
Arb. Case No. 2006-05-0289 (Earl/Final Order/April 13, 2007)

- Where the Association is unable to provide access to records because it failed to maintain them, the proper finding as to the Association's violation is not denial of access, but failure to maintain properly the official records. However, where the Association is aware that it is statutorily required to maintain a record and that a deficiency exists, and over a period of time fails to correct the deficiency, the Association has willfully failed to provide access to the records within the meaning of section 718.111(2), Florida Statutes.
- The Association cannot avoid a finding that it willfully denied the Petitioner access to records where the Association should have known it did not have possession of the documents and could have readily obtained copies. Any delay in acquiring records due to the absence of the Association's manager or the manager's ignorance does not justify the delay.
- Petitioner did not establish that the requested records inspection could not have been accomplished within the time permitted by statute, where it was shown that the Association attempted to schedule the inspection of available records at a time convenient to the Petitioner, and that the Petitioner did not seek inspection at an earlier time. It is noted that the Petitioner repeatedly established that he insisted the Association communicate with him in writing, therefore contributing to the delay in inspection.
- Where the testimony at final hearing demonstrated that a failed inspection of roofing documents was due to a misunderstanding between the parties, the Association was not found to have willfully denied access to its official records.

[Alphonse J. Vacca v. Belleview Biltmore Villas-Oaks-150 Belleview Blvd., Inc.,](#)
Arb. Case No. 2007-01-3975 (Campbell/Summary Final Order/April 13, 2007)

- The Association's answer and affirmative defenses did not rebut the presumption that its failure to make the records available within the time required was willful. Petitioner is entitled to statutory minimum damages.
- Petitioner is entitled to \$50.00 per day for June 28, 29 and 30, 2006, but not including July 1, 2006, the day on which the records were made available.

Parking/Parking Restrictions

Parties (See Arbitration-[Parties](#))

Pets

[Bayfront Tower Condominium Association Residential, Inc. v. Rebmann,](#)

Arb. Case No. 2006-06-6721 (Earl / Final Order/ September 13, 2007)

- Respondents found to have violated governing documents that prohibited unit owners from keeping more than one dog. Respondents' argument that they had sold one of their dogs to another unit owner did not alleviate the violation where it was found that the dog continued to live in Respondents' unit and was only seen in their exclusive custody and control.

Prevailing Party (See separate [index on attorney's fees cases](#))

Purchase Contracts

Quorum (See [Meetings](#))

Ratification (See Meetings-Board meetings-[Ratification](#))

Recall of Board Members (See Meetings-Board meetings-[Recall](#)) (See separate [index on recall arbitration](#))

Recreation Leases

Relief Requested (See Dispute-[Relief granted or requested](#))

Rental Restrictions/Rental Program (See Tenants-[Rental Restrictions/Rental Program](#))

Reservation Agreements

Reserves

Restraints on Alienation (See Unit-[Restraints on alienation](#))

Sanctions (See Arbitration-[Sanctions](#))

Security Deposits (See [Purchase Contracts](#))

Selective Enforcement (See also [Estoppel](#); [Waiver](#))

Standing (See Dispute-[Standing](#))

State Action (See also [Constitution-State action](#))

Tenants

Generally

Nuisance (See also [Nuisance](#))

Rental restriction/rental programs

Unauthorized tenant/association approval

[Calais at Pelican Bay Condominium Ass'n, Inc. v. Apuzzo,](#)

Arb. Case No. 2007-04-7129, (Earl / Final Order of Dismissal / August 30, 2007)

- Where Association sought an order compelling Respondents to remove their sons from their unit, the dispute was not eligible for arbitration since it involved the eviction or removal of tenants.

[Pebble Springs Condominium Association of Bradenton, Inc. v. Alcorn,](#)

Arb. Case No. 2007-04-7007 (Earl / Order on Request for Expedited Determination of Jurisdiction / August 30, 2007)

- Where Association sought an order requiring Respondent to remove her tenant from her unit, the dispute was not eligible for arbitration since it involved the eviction or removal of a tenant.

Violation of documents

Transfer of Control of Association (See [Developer](#); [Election/Vacancies](#))

Transfer Fees

Unit

Access to unit

[Grand Cay Villas at Ponte Verda Condo. Ass'n, Inc. v. Coppedge,](#)

Case No. 2006-01-2192 (Scheuerman / Final Order / September 22, 2006)

- Where it was necessary to upgrade the building's fire alarm system, the board's decision to require one unit in each building to house the fire system panel was upheld, where it was shown that placement within a unit would contribute to the overall reliability and responsiveness of the fire safety system. Installation of the panel on the building's exterior wall would have been more expensive and less reliable.

Alteration to unit (See also [Fair Housing Act](#))

Appurtenances; changes to the appurtenances; Section 718.110(4)

Floor coverings

Generally; definition

Rental (See also [Tenants](#))

Repair

Restraints on alienation

Sale

Unit Owner Meetings (See [Meetings](#))

Voting Rights (See Developer-[Transfer of control](#); [Elections](#))

Waiver (See also [Estoppel](#); [Selective Enforcement](#))