

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

DS 2003-014

IN RE PETITION FOR DECLARATORY STATEMENT

LAURALEE LARSEN, unit owner,
Sea Monarch Condominium, Inc.

Docket No. LS 036485,
2003062379

Final Order No. BPR-2003-02627 Date: **9-4-03**
FILED
Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk

By: *Sarah Wachman*

DECLARATORY STATEMENT

Lauralee Larsen (Larsen), Petitioner, filed a petition for declaratory statement requesting an opinion as to whether an association rule requiring guests to sign an overnight guest registration form violates section 718.106, Florida Statutes.

STATEMENT OF FACTS

The following facts are based on information submitted by Petitioner. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this declaratory statement. Petitioner did not request a hearing and none was held.

1. Larsen filed her petition with the Division on May 16, 2003. Notice of the Petition was published in Florida Administrative Weekly on June 6, 2003.
2. Sea Monarch Condominium, Inc. (Association), is an "association" as that term is defined by section 718.103(2), Florida Statutes (2002).
3. The copy of the Certificate of Recording filed with the Division indicates that the Restated Declaration of Condominium of Sea Monarch Condominium and the Restated Articles of Incorporation and Bylaws of Sea Monarch Condominium, Inc., were

recorded in the public records of Broward County on September 3, 1999 at OR BK
29815, Page 0916.

4. Article X, section 5 of the Articles of Incorporation provides:

The Association shall have the right to adopt, establish, proclaim and enforce such rules and regulations for the use of the condominium units and the common elements and any other property jointly leased by all members of the Association. The Association shall have the power to enforce the provisions of this Declaration of Condominium for and on behalf of its members and its By-Laws.

5. Article V, section 10 of the By-Laws provides:

The Board of Governors shall, among other duties, carry out the following:

- (1) Make rules and regulations respecting the use of the condominium property.

6. Article II, paragraph g, of the Articles of Incorporation provides the

Association shall have the power:

To make and amend regulations governing the use of the Condominium property and to enforce in any manner necessary and proper, the provisions of all Condominium documents, including these Articles, By-Laws and other rules and regulations from time to time existing which relate to the Condominium property.

7. Sea Monarch's House Rules and Regulations provides:

12. GUESTS

A. REGISTRATION: It is important for the continued safe operation of the building that all guests and workmen sign-in with the Security Guard upon entering the building. **THIS INCLUDES GARAGE ENTRIES.**

13. OVERNIGHT GUESTS WHILE THE OWNER IS IN RESIDENCE

The **OWNER**, or the **DESIGNATED VOTING OFFICER APPROVED FOR OCCUPANCY** as stipulated to the Sea Monarch Board of Governors, of a Corporation Limited Partnership or General Partnership, is responsible to obtain the **OVERNIGHT REGISTRATION FORM** to register the guests.

8. In a letter dated March 25, 2003, Larsen was informed by the Building

Manager that she was in violation of the guest registration rules. The letter states in part:

Charlie, has been seen entering the garage and has not registered before doing and performing services for you i.e. washing your vehicle. He must be registered before visiting your apartment or doing any service on the common areas for you. Also, he had stayed as an overnight guest without an overnight guest form.. [sic] If you would like, you could make him a permanent resident and there would be no need for an overnight guest form. This is your decision!

Please see that this does not happen again.

9. Larsen, in the Petition for Declaratory Statement, states that when she and other unit owners brought up the issue of the registration rule to the Association, the President or other Board Member would state that the rule was based on a requirement of the Fire Department of Broward County. Larsen states she called the Fire Department and the Fire Marshall; neither office knew of any such requirement.

10. Page A of the Revised House Rules and Regulations states:

These rules and regulations have been adopted, not for the restriction of one's conduct, but rather for the purpose of making living in the Sea Monarch a more comfortable, safe and contented experience for all concerned. The compliance by all owners, guests and lessees will make our building a desirable and pleasant place to live, as well as enhancing the value of our investment.

11. The Association's response to the Petition for Declaratory Statement states that the guest rules "serve an important safety function and allow the Association to know what third parties are occupying the units, as well as what workmen are in the building." The rules also "serve as a tracking system to see whether a particular guest has violated another rule that restricts the length of time a person may occupy a unit before being considered a permanent occupant and subject to Association approval." This response further states the guest rules "do not restrict an owner's ability to have or bring guests,

nor do they limit the number of guests, how often the guests can visit, or how long the guests can stay."

CONCLUSIONS OF LAW

12. The Division has jurisdiction to enter this order in accordance with sections 120.565 and 718.501, Florida Statutes (2002).

13. Section 718.106, Florida Statutes (2002), provides:

- (2) There shall pass with a unit, as appurtenances thereto:
- (b) The exclusive right to use such portion of the common elements as may be provided by the declaration . . .

14. Nothing in section 718.106, Florida Statutes, prevents an association from adopting rules and regulations related to guest registration because the guest registration rules applicable here do not limit the unit owners' right to use the common elements.

15. Section 718.111(2), Florida Statute (2002), applicable to the power of the Association to adopt rules, provides:

The powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the declaration and bylaws . . .

16. The established two-part test for determining whether a rule enacted by a board of directors is valid is "whether the board acted within its scope of authority and, second, whether the rule reflects reasoned or arbitrary and capricious decision making." Beachwood Villas Condo. v. Poor, 448 So. 2d 1143, 1144 (Fla. 4th DCA 1984).

17. Under the first part of the Beachwood test, the declaration, by-laws, and articles of incorporation grant the Association broad authority to regulate the use of the condominium property, including registration of third parties who occupy the condominium property. Additionally, under this test, it is required that the rules and

regulations adopted by the Association not contradict any specific provision of the declaration of condominium or infringe on the rights of the unit owners. Meadowbrook Lakes View Condo. Ass'n, Inc., Declaratory Statement, Dep't of Bus. & Prof'l Reg. Case No. 88A-163 (March 9, 1989) (on file with Agency Clerk, Dep't of Bus. & Prof'l Reg.). The rules on guest registration do not contradict any express provision of the declaration because the declaration of condominium is silent on the issue of guest registration. Therefore, the first part of the Beachwood test is satisfied because the Board was given the authority to adopt rules and regulations related to guest registration.

18. Under the second part of the two-part Beachwood test, the guest registration rules must not be arbitrary or capricious. A board-adopted rule must be reasonably related to the promotion of the health, happiness, and peace of mind of all the unit owners. Pines of Boca Barwood Condo. Ass'n, Inc. v. Cavouti, 605 So. 2d 984, 985 (Fla. 4th DCA 1992). In Hidden Harbour Estates, Inc. v. Norman, 309 So. 2d 180, 181-82 (Fla. 4th DCA 1975), the court states:

It appears to us that inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. . . .

Certainly, the association is not at liberty to adopt arbitrary or capricious rules bearing no relationship to the health, happiness and enjoyment of life of the various unit owners. On the contrary, we believe the test is reasonableness.

19. The Association states the reason for the rules on guest registration is to promote the safety of the unit owners who occupy the condominium property. A rule that promotes safety would thus be reasonably related to the promotion of the health, happiness, and peace of mind of the unit owners, and therefore is not arbitrary and capricious. Accordingly, the second part of the Beachwood test is satisfied.

ORDER

Based upon the findings of fact and conclusions of law, it is declared that section 718.106, Florida Statutes (2002), does not limit the Association's ability to make rules requiring the registration of an overnight guest.

DONE and ORDERED this 29th day of August, 2003.



ROSS FLEETWOOD, Director
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTER, TALLAHASSEE, FLORIDA 32399-2217 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Lauralee Larsen, the Sea Monarch Condominium, 111 N. Pompano Beach Blvd., Apt. #1014, Pompano Beach, Florida 33062, and Robert Rubinstein, Becker & Poliakoff, P.A., P.O. Box 9057, Ft. Lauderdale, Florida 33310-9057, this 8th day of September, 2003.

Robin Bradwell
Robin Bradwell, Docket Clerk

Copies furnished to:

Ross Fleetwood, Director

Janis Sue Richardson, Senior Attorney
Office of the General Counsel