

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/5/2015
File #	2015-02093

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2014039218

VINCENT CASTELLUCCI, JR., Unit Owner
CELEBRATION POINT MASTER ASSOCIATION, INC.

DS 2014-123

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (hereinafter Division) issues this Declaratory Statement under section 120.565, Florida Statutes.

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement on September 17, 2014 from Vincent L. Castellucci, Jr. (hereinafter Petitioner) seeking a declaratory statement as to whether a member of Celebration Point Master Association (hereinafter Association) may serve on the Board of Directors without possessing firearm privileges under section 718.112(2)(d)2, Florida Statutes.

Division counsel responded October 8, 2014 to confirm receipt of Petitioner's Petition for Declaratory Statement. Division counsel notified Petitioner that the Division would serve a copy of the petition on the Association, as required by section 718.501(1)(g), Florida Statutes, allowing it to intervene and file a response if it so chose to do so. The Association filed a motion to intervene with the Division on October 28, 2014 requesting the Division deny Petitioner's Petition for Declaratory Statement. The Division granted the Association standing to intervene.

Notice of receipt of the petition was published in the October 9, 2014 issue of the Florida Administrative Register.

Petitioner did not request a hearing.

FINDINGS OF FACT

The material facts are set out in the petition. The Division takes no position as to the accuracy of the facts and accepts them as submitted by the petitioner for the purposes of issuing this declaratory statement.

1. Celebration Point is a Florida condominium.
2. Celebration Point Master Association, Inc. is the Association that operates the condominium's common elements.
3. The Association removed Petitioner from the Board, claiming that he is ineligible to serve on the Board of Directors because he does not have the right to possess a firearm. In doing so, the Association relied on the following provision of section 718.112(2)(d)2, Florida Statutes, which provides:

A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board.

4. The aforementioned provision is silent as to firearms privileges when it mentions the restoration of civil rights.
5. Petitioner argues that this provision does not bar a unit owner from serving on an association's board of directors because the statute does not consider restoration of the right to possess a firearm as part of restoration of civil rights as it applies to section 718.112(2)(d)2, Florida Statutes.
6. Petitioner wishes to know whether a unit owner may serve on an association's board of directors if the unit owner does not possess firearm privileges under section 718.112(2)(d)2, Florida Statutes.

CONCLUSIONS OF LAW

7. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.
8. Section 120.565, Florida Statutes, provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set or circumstances.

9. Rule 28-105.001, Florida Administrative Code provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

10. Petitioner has standing to petition for a declaratory statement as a unit owner.¹

11. Section 718.112(2)(d)1, Florida Statutes (2007), provided:

A person who has been convicted of any felony by any court of record in the United States and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her residence is not eligible for board membership.

12. In 2008, section 718.112(2)(d)1, Florida Statutes (2008), was amended by the Florida Legislature to read:

A person who has been convicted of any felony in this state or in a United States District Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for a period of no less than 5 years as of the date on which such person seeks election to the board.

¹ § 120.565, Fla. Stat.

13. The Florida legislature amended section 718.112(2)(d)1, Florida Statutes (2012), in 2012 to reclassify the provision as section 718.112(2)(d)2, Florida Statutes (2012).

14. The Division previously issued a declaratory statement that civil rights, as the term applies to section 718.112(2)(d)2, Florida Statutes, includes the right to possess a firearm.² The Division held that a convicted felon's failure to have his firearm authority restored prevents him from serving on the board of directors for a condominium association.³ The Division reasoned that restoration of civil rights but not the right to possess a firearm was a "partial restoration," and thus it should not be considered a restoration of civil rights for the purposes of section 718.112(2)(d)2, Florida Statutes.⁴

15. The Division previously relied on a court holding that the right to possess a firearm should be considered a civil right.⁵ The Division reasoned that the statutory language analyzed in the *France* holding, and amendments made to section 718.112(2)(d)2, Florida Statutes, reflect a legislative intent to include firearm authority as part of the civil rights that must be restored for an individual to serve an association's board of directors. However, the court in *France v. State* considered a previous version of section 790.23(2), Florida Statutes (1981), which provided:

(2) This section shall not apply to a person convicted of a felony whose civil rights have been restored.

16. The statute interpreted by the court in the *France* decision is chapter 790, Florida Statutes, rather than chapter 718, Florida Statutes, which is an entirely separate statute. Even if the statutes are to be considered together, the Florida legislature later amended this provision of chapter 790, Florida Statutes, to read:⁶

(2) This section shall not apply to a person convicted of a felony whose civil rights and firearm authority have been restored.

² *In Re: Pet. for Dec. Stmt. Jules Rose (The Pierre Ass'n, Inc.)*, DBPR-10-03379.

³ *Id.* at 7.

⁴ *Id.*

⁵ *Thompson v. State*, 438 So. 2d 1005, 1006 (Fla. 2d DCA 1983) (citing *France v. State*, 436 So. 2d 428, 430 (Fla. 5th DCA 1983).

⁶ Ch. 93-416, § 6, Laws of Fla.

17. The addition of “firearm authority” to the above section shows that the Florida Legislature did not intend for firearm authority to be considered part of the restoration of civil rights. By using “civil rights” and “firearm authority” as separate and distinct terms under the same section, the Florida legislature made it clear that the terms are not to be used interchangeably.
18. Similarly, section 493.6118(4), Florida Statutes, which addresses whether applicants previously convicted of certain crimes can obtain licensure under Chapter 493, Florida Statutes, draws a distinction between “civil rights” and “the specific right to possess, carry, or use a firearm.”
19. Section 493.6118(4), Florida Statutes, provides in part:
- (a) If the applicant or licensee has been convicted of a felony, the department shall deny the application or revoke the license unless and until civil rights have been restored by the State of Florida or by a state acceptable to Florida and a period of 10 years has expired since final release from supervision.
 - (b) A Class “G” applicant who has been convicted of a felony shall also have had the specific right to possess, carry, or use a firearm restored by the State of Florida.
20. By separating “the specific right to possess, carry or use a firearm” from “civil rights,” the Florida legislature has expressed a clear intention that firearm privileges are not encompassed within “civil rights.”
21. This distinction is further reinforced by the construction of the term “restoration of civil rights” by the Florida Office of Executive Clemency (hereinafter FOEC), which provides:⁷

G. Restoration of Civil Rights in Florida

The Restoration of Civil Rights restores to an applicant all of the rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.

⁷ FLA. COMM’N ON OFFENDER REVIEW, Fla. Rules of Exec. Clemency § 4(l)(G), *available at* https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf (last revised Mar. 9, 2011).

22. The FOEC clearly separates the restoration of civil rights from the restoration of firearm authority. In fact, the rules contain a separate definition of the authority to own, possess, or use a firearm.⁸ The FOEC has a category for individuals who have their civil rights restored, as defined in the above section, and is also granted firearm authority. However, the FOEC does not use “restoration of civil rights” to define this procedure. Instead, it refers to this procedure as a “full pardon,” which includes restoration of civil rights, restoration of firearm authority, the unconditional release of a person from punishment, and forgives guilt.⁹
23. If the legislature intended for section 718.112(2)(d)2, Florida Statutes, to include firearm authority as part of the restoration of civil rights, it could have done so by using language similar to the current versions of sections 790.23(2) and 493.6118(4), Florida Statutes. Alternatively, the Florida legislature could use a more specific term, “full pardon,” to make clear their intent to include firearm privileges as part of the civil rights an individual must have restored in order to serve on an association’s board of directors.
24. Additionally, there is no rational connection between possessing firearm privileges and the duties and responsibilities of a board of directors. No duties or responsibilities charged to a board of directors under chapter 718, Florida Statutes, involve use or possession of a firearm. On the other hand, civil rights such as the right to vote and the right to hold public office are rationally connected to the duties and responsibilities of a condominium association under section 718.112 and 718.114, Florida Statutes. Directors are elected by unit owners, conduct regular meetings, and adopt rules and restrictions for the condominium. These functions are rationally connected to the right to hold public office and the right to vote.
25. The legislature did not intend for section 718.112(2)(d)2, Florida Statutes, to require the restoration of firearm privileges. To that end, it would be improper for an association to forbid unit owners from serving on the board of directors because they do not possess firearm privileges.

⁸ *Id.* at §4(I)(F).

⁹ *Id.* at §4(I)(A).

For the reasons stated above it is hereby:

ORDERED that a member of a condominium association is eligible to serve on the board of directors without possessing firearm authority under section 718.112(2)(d)2, Florida Statutes.

DONE and **ORDERED** this 3rd day of March 2015, at Tallahassee, Leon County, Florida.





KEVIN STANFIELD, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums, Timeshares,
and Mobile Homes
Northwood Centre
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 ANY PARTY ADVERSELY AFFECTED 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 CENTRE, TALLAHASSEE, FLORIDA 32399-2217; AGC.FILING@MYFLORIDALICENSE.COM; FAX (850) 488-5761, 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 Vincent L. Castellucci, Jr., 15555 Miami Lakeway N. Unit #203, Miami Lakes, FL 33014; and Katzman Garfinkel & Berger, Registered Agent for the Association, 5297 W. Copans Road, Margate, FL 33063 on this 5th day of March 2015.



Agency Clerk's Office

Copies furnished to:

Thomas Morton
Chief Attorney